

**The Report of the
Patrick Finucane Review
The Rt Hon Sir Desmond de Silva QC**

December 2012

Return to an Address of the Honourable
the House of Commons
dated 12 December 2012
for

The Report of the Patrick Finucane Review

The Rt Hon Sir Desmond de Silva QC

Volume I

Ordered by the House of Commons to be printed on 12 December 2012

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ISBN: 9780102981087

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 254679 12/12 23621 19585

Printed on paper containing 75% recycled fibre content minimum.

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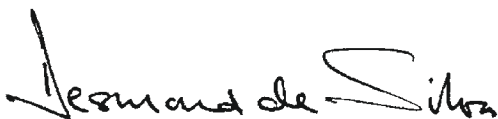
Foreword

“... amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace.”¹

These memorable words, spoken by Lord Atkin during a landmark case at the height of the Second World War, have been ever present in my mind during the preparation of this Report. Few words could be more appropriate to the facts and events that my staff and I have explored as we stepped back in time into the Troubles of over 20 years ago, when assassination and torture stalked the political landscape of Northern Ireland.

It has been my singular good fortune to have had the support of an outstanding and dedicated team, with a vital grasp of the location and content of the million pages of documents which formed the basis of this Review. The most detailed scrutiny and sifting of intelligence material which gave rise to the bulk of our work was done with true professionalism by my staff, who have worked tirelessly for over a year to help me produce this Report on time. To them I extend my wholehearted thanks and admiration.

Their good humour, commitment and unfailing courtesy helped to sustain me during the onerous year it has taken to complete this Review. My gratitude to my permanent staff knows no bounds. To those who came in to assist with certain aspects of this Review I wish to extend my most profound thanks.

A handwritten signature in black ink that reads "Desmond de Silva". The signature is written in a cursive, flowing style.

The Rt Hon Sir Desmond de Silva QC

December 2012

¹ *Liversidge v Anderson* [1942] AC 206

Executive Summary and Principal Conclusions

1. Patrick Finucane, a practising lawyer, was murdered in his home in North Belfast on the evening of Sunday 12 February 1989. The attack was carried out by gunmen from the loyalist paramilitary group, the Ulster Defence Association (UDA), as he sat down for dinner with his wife, Geraldine, and their three young children. Geraldine Finucane was injured in the attack.

2. I was appointed by the Secretary of State for Northern Ireland on 12 October 2011 to conduct an independent Review into the question of State involvement in the murder. On that day the Prime Minister, the Rt Hon David Cameron MP, made the following comments in the House of Commons:

“I profoundly believe that the right thing for the Finucane family, for Northern Ireland and for everyone in the United Kingdom is ... for the British Government to do the really important thing, which is to open up and tell the truth about what happened 22 years ago. Frank acknowledgement of what went wrong, an apology for what happened – that is what is required.”

3. The Prime Minister’s comments were followed by an Oral Statement by the then Secretary of State for Northern Ireland, the Rt Hon Owen Paterson MP, who said:

“The Government accept the clear conclusions of Lord Stevens and Judge Cory that there was collusion. I want to reiterate the Government’s apology in the House today. The Government are deeply sorry for what happened. Despite the clear conclusions of previous investigations and reports, there is still only limited information in the public domain. That is why my right honourable friend the Prime Minister and I have committed to establishing a further process to ensure that the truth is revealed.”

4. I was provided with the following Terms of Reference for my Review:

“Drawing from the extensive investigations that have already taken place, to produce a full public account of any involvement by the Army, the Royal Ulster Constabulary, the Security Service or other UK Government body in the murder of Patrick Finucane.

The Review will have full access to the Stevens archive and all Government papers, including any Ministry of Defence, Security Service, Home Office, Cabinet Office or Northern Ireland Office files that you believe are relevant. The account should be provided to the Secretary of State for Northern Ireland by December 2012, for the purpose of its publication.”

The work of my independent Review

5. The references in the Secretary of State's statement to "*the clear conclusions of Lord Stevens and Judge Cory*" are to the separate investigations touching on Patrick Finucane's murder which Lord (formerly Sir John) Stevens, the former Metropolitan Police Commissioner, and former Justice Peter Cory (of the Supreme Court of Canada) had previously undertaken. Whilst I have drawn on their investigations and findings, I decided to approach my task by looking at the evidence afresh, without feeling bound by their earlier findings – particularly as Justice Cory expressed his own to be "*provisional*".
6. Sir John Stevens carried out a series of criminal investigations into alleged collusion between the security forces and loyalist paramilitaries in Northern Ireland. His third investigation (Stevens III) was commissioned in 1999 and focused specifically on the murder of Patrick Finucane. As a result of the three investigations carried out by Sir John, I am the beneficiary of some 12,000 witness statements, 32,000 documents and, in all, over a million pages of material.
7. However, although the volume of material already collated by Sir John Stevens was enormous, I decided at the outset of my Review that it was important to conduct a far more wide-ranging process than a straightforward examination of the available evidence gathered by the criminal investigations. I have, therefore, sought and received new documentary material from all the organisations cited in my Terms of Reference and a number of Government Departments. That material has included new and significant information that was not available to Sir John Stevens or Justice Cory.
8. A further aspect of my Review has involved engaging with key individuals who could assist me in producing a full public account. Amongst others, I met with individuals who had served in the Army, the RUC and the Security Service, and questioned them about these matters. I also received a series of written submissions. I have engaged in this process both in order to receive new information that could assist me in my work, and to provide individuals and organisations with an opportunity to make representations about issues on which they have been the subject of criticism.
9. I also came to the conclusion that it was insufficient for my Report to involve merely an account of my findings. In view of the background to this case, and the intense controversy it has aroused, I announced on 10 November 2011 that I would be declassifying and publishing documents, including original intelligence material, alongside my Report. As part of this process, I identified the key documents relating directly to the murder of Patrick Finucane, and have published them in Volume II of this Report.
10. In view of the serious obstruction of previous criminal investigations examined in this Report, it is important to acknowledge that all relevant Government Departments and Agencies co-operated fully and openly with my Review. Although I had no statutory powers of compulsion, I was given access to all the evidence that I sought, including highly sensitive intelligence files. I should

specifically acknowledge the assistance provided by the Ministry of Defence, the Security Service and the Police Service of Northern Ireland, all of which held a large quantity of relevant material. The assistance and co-operation provided by these organisations was exemplary.

11. I should also record that retired senior intelligence officers, and the former BBC journalist John Ware, also engaged extensively with the work of my Review and provided me with important evidence and insights. Their assistance was provided voluntarily and was extremely valuable in enabling me to produce this Report.
12. In this Executive Summary and Principal Conclusions, I deal in outline form with the key facts and findings in this case. However, my conclusions have been based on a detailed examination of the evidence. This Summary must, therefore, be considered in conjunction with my full Report, in which I set out the evidence that I have considered and my reasons for reaching certain conclusions.

The context to the murder of Patrick Finucane

13. In his statement to Parliament on 12 October 2011, the Secretary of State for Northern Ireland expanded on my remit by explaining that:

“[The Government] accepting collusion is not sufficient in itself. The public now need to know the extent and nature of that collusion.”
14. In order to examine the extent and nature of what the Government accepts to be collusion, I have undertaken an exhaustive examination of the context to the murder of Patrick Finucane in 1989.
15. My Report deals at length with the historical and security background in Northern Ireland in the late 1980s. In view of the gravity of my findings, it is essential to highlight in this Summary some of the key contextual issues.
16. By 1989 Northern Ireland had experienced over two decades of sustained and often brutal conflict. Although the Government viewed the paramilitary violence endemic during the Troubles as a form of terrorism, it essentially treated both republican and loyalist terrorists as criminals who were to be brought to justice within the judicial system in place in Northern Ireland.
17. The security forces and intelligence agencies faced an extraordinarily difficult task. Many RUC and Army personnel were murdered throughout the course of the Troubles as they sought to carry out their duties to the public and the State. During the late 1980s there was an upsurge in Irish Republican Army (IRA) violence following the importation of arms from Libya and an increasingly militant loyalist backlash following the 1985 Anglo-Irish Agreement, which was seen by many loyalists as a betrayal by the UK Government.
18. A significant part of my Report focuses on the organisations involved in intelligence-gathering in Northern Ireland. I believe that the intelligence-led security response to the Troubles did play a significant role in constraining all

terrorist organisations, to the extent that they were forced to realise that their aims were not achievable by violence.

19. In the context of this Report, it is important to acknowledge, in particular, that the work of the Royal Ulster Constabulary's Special Branch (RUC SB) and the Security Service had a significant impact in thwarting and constraining loyalist terrorist groups. Many intelligence-led operations against republican paramilitary groups were also notably successful during this period.
20. In order to understand how an event such as the murder of Patrick Finucane could have occurred, it is important to consider a number of other key contextual themes which I have examined, as follows:
- (i) the lack of any adequate framework or guidance for the handling of agents in Northern Ireland;
 - (ii) the actions of the Army agent Brian Nelson during the period 1987–89 and the accountability of agencies of the State in his case;
 - (iii) the responsibilities of the RUC, and in particular the handling of threat intelligence during the period; and
 - (iv) the flow of information from members of the security forces to loyalist paramilitaries during the late 1980s.

I summarise my findings on each of these thematic issues below.

The lack of an adequate framework for agent-handling

21. Intelligence gained from human agents is, clearly, a potent weapon for the State in countering terrorism of the kind that prevailed during the Troubles. Nowhere was the need for a proper legal framework for agent-handling thrown into sharper focus than in Northern Ireland. I have accordingly considered at length the accusations that have been made against successive governments that they each failed to provide a proper and lawful regime for the conduct of agent-handling operations.
22. The submissions made to my Review by all former intelligence officers stressed that an agent could only provide the most valuable, and potentially life-saving, intelligence if they were infiltrated into the heart of a terrorist group. It followed that agents who were so infiltrated would, in order to maintain their cover, be required of necessity to engage in criminal conspiracies with their terrorist associates (whilst, in theory, seeking to help the security forces to frustrate the realisation of these plans).
23. In my view, the running of effective agents in Northern Ireland was such a fraught and difficult task that it manifestly required the support of a clear legal and policy framework. I have established, though, that there was no adequate framework in Northern Ireland in the late 1980s. Accordingly, each of the three agencies running agents – the RUC SB, the Army's Force Research Unit (FRU) and the Security Service – operated under their own separate regimes. The result was

that: the RUC SB had no workable guidelines; the FRU were subject to Directives and Instructions that were contradictory; and the Security Service received no effective external guidance to make clear the extent to which their agents could be permitted to engage in criminality in order to gather intelligence.

24. It was apparent 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. I found that repeated attempts were made by senior RUC, Security Service and (latterly) Army officers to raise this very issue with Government Ministers at Cabinet level. Yet it was not until 1993 that some Cabinet Ministers belatedly came to support the creation of a legislative framework. Even then, it was not until seven years later, when the Regulation of Investigatory Powers Act 2000 (RIPA) was passed, that any description of a statutory regime was created.
25. The practical implications of the failure to provide policy direction on agent-handling were significant. It meant that agent-handlers and their superiors were expected to gather intelligence without clear guidance as to the extent to which their agents could become involved in criminal activity in order to achieve this objective. Intelligence officers were, in effect, being asked to perform a task that, in some cases, could not be achieved effectively in ways that were lawful. It is my view that those charged with upholding the law should never be put in the position of potentially having to break the law in order to discharge their official duties.
26. My overall conclusion is that there was a wilful and abject failure by successive Governments to provide the clear policy and legal framework necessary for agent-handling operations to take place effectively and within the law.

The actions of Brian Nelson from 1987 to 1989 and the accountability of State agencies in his case

27. Brian Nelson was recruited and handled by the FRU, a covert section of the Army which ran agents in Northern Ireland. Nelson's case provides perhaps the most striking illustration of the failures evident in the handling of some agents in Northern Ireland at the time. Serious concerns over the nature of the FRU's handling of him were raised by the then Attorney General, Sir Patrick Mayhew QC, in 1991. At his trial the following year, Nelson pleaded guilty to a number of serious criminal offences, including five conspiracies to murder.
28. Nelson had previously been sentenced to seven years' imprisonment for offences relating to the kidnapping and torture of a partially sighted man. He was released from prison in 1977, and was first recruited and run as a FRU agent from 1984 to 1985. During this period he played a pivotal role in the targeting and attempted murder of a Sinn Féin Councillor. Despite this background, and after living for a time in West Germany, Nelson was re-recruited by the FRU in 1987 and persuaded to move back to Northern Ireland. There he was tasked with re-infiltrating the UDA with a view to becoming their 'Intelligence Officer'. Although Nelson achieved this objective rapidly, there were clear warning signs

that should have raised serious questions about his suitability to be employed as an agent of the State.

29. The subsequent running of Brian Nelson as an Army agent is a matter which has caused me grave concern. The evidence suggests that following his re-recruitment he played some part in at least four murders and ten attempted murders. I am also satisfied that, with the knowledge and acquiescence of his FRU handlers, Nelson extensively updated and disseminated targeting material to other loyalist paramilitaries which they subsequently used in their efforts to carry out terrorist attacks. My overall assessment of Nelson is that he was motivated by a desire to see what he perceived to be 'legitimate' republican targets killed, and that his actions materially increased the targeting capacity of the UDA and thereby furthered their murderous objectives.
30. In the light of the contradictory explanations that have been offered over the intervening years, the accountability of the relevant State organisations for this situation is a complex matter that has required rigorous analysis of the evidence. It is clear that Nelson was re-infiltrated into the UDA and tasked to focus its targeting on what the FRU's Commanding Officer referred to as 'PIRA [Provisional IRA] activists'. The stated rationale for this tasking was that such targets would prove more difficult for the UDA to attack as it would take time to locate them, thus making it easier for the security forces to take the necessary counter-measures in order to save lives.
31. The evidence, however, demonstrates that such counter-measures were only very rarely taken in response to intelligence provided by Nelson. Indeed, I have found just three cases in which the security forces took action on the intelligence that he provided to seek to frustrate UDA attacks. In each instance there are indications in the intelligence documents to suggest that, in the absence of specific considerations relating to these cases, the attacks might otherwise have proceeded.
32. I am satisfied that Brian Nelson's desire to see republicans attacked was clearly apparent to the FRU throughout this period. I have also come to the view that, given the nature of the tasking he received from the FRU, Nelson was unlikely to have believed there was any distinction between his objective of targeting supposedly 'legitimate' republican targets on the one hand, and the objectives of the FRU on the other.
33. In this context, I was particularly concerned by the fact that, on occasions, Nelson's FRU handlers provided him with information that was subsequently used for targeting purposes. These actions are, in my view, indicative of handlers in some instances deliberately facilitating Nelson's targeting of PIRA members.
34. The reaction of the FRU to Brian Nelson's involvement in UDA attacks and murders was wholly unacceptable. One example was after the murder of Terence McDaid in May 1988 (a case of mistaken identity), when his handler sought to reassure a troubled Nelson by telling him that the victim was a member of PIRA. Another was after the UDA murdered James Pratt Craig (a notorious

loyalist believed by the UDA to have links with PIRA) in October 1988. Nelson was dismayed that his handlers had not celebrated the occasion with a drink. Despite initially expressing disapproval, one of Nelson's handlers later recorded that, had they known the details of his role in inciting the attack, a drink might have been appropriate.

35. However, I have concluded that accountability for what went wrong in the Nelson case did not rest solely with the FRU and their Commanding Officer. Procedural provisions were in place within the Army chain of command which should have enabled senior officers to supervise such cases, but these were not applied in relation to Brian Nelson. There was, therefore, a signal failure by the Army to ensure adequate supervision in this case.
36. I have also considered the position of the Security Service in relation to the Nelson case. It is clear that, on the two occasions when the Service became actively involved in discussions about the exploitation of his intelligence, their intervention was aimed at disrupting the UDA's plans. Following the efforts to frustrate the UDA's plan in May 1987, in which Nelson was deeply involved, to kill the then President of Sinn Féin, Gerry Adams, a senior Security Service officer sent a perceptive telegram. He warned that British Intelligence and the Government could face accusations of conspiracy to murder if such an attack was to be repeated and Nelson's involvement was to get into the public domain.
37. By the summer of 1988 the Security Service were aware that Nelson was motivated by a desire to see the UDA carry out attacks against 'justifiable' targets. Although this did serve to discourage the Service from seeking to run Nelson as their own agent, it failed to prompt any effort on their part to provide a greater degree of guidance to the FRU in handling the case. Whilst I agree with Justice Cory's view that there is no evidence to demonstrate collusive acts on the part of the Security Service in relation to the Nelson case, I have reached the conclusion that the Service failed to carry out their advisory and co-ordinating duties adequately in relation to Nelson and the FRU.
38. In terms of accountability, however, the most serious issue of all related to the failure of the RUC SB to respond to Nelson's intelligence. The RUC at this time enjoyed a primacy over other agencies in the exploitation of intelligence from all sources to protect individuals under threat.
39. On this specific issue I have found what I have termed to be a fundamental 'accountability gap'. This accountability gap was created by the separate positions taken up by the FRU and the RUC SB in their attempts to explain why intelligence was not acted on. The FRU maintained that all intelligence relating to threats to life reported by Nelson was passed to the RUC SB, who were expected to act on it. The RUC SB, on the other hand, have insisted that the FRU did not provide them with the necessary information to enable them to prevent attacks. In any event, some RUC SB officers implied that Nelson was an ineffective and low-level agent whose intelligence could, therefore, be ignored.

40. Neither position, in my view, is sustainable on the available evidence. The overall pattern of the passage of intelligence corresponds far more closely with the position put forward by the FRU than with that of the RUC SB. In almost all of the relevant murders or attempted murders that I have reviewed, it was clear that the FRU passed intelligence to the RUC SB prior to the attack indicating that the individual concerned was under threat. Nevertheless, I have also concluded that the FRU should have been aware that the RUC SB were taking no action on the bulk of the intelligence being supplied to them. Taken as a whole, an extraordinary state of affairs was created in which both the Army and the RUC SB had prior notice of a series of planned UDA assassinations, yet nothing was done by the RUC to seek to prevent these attacks.

The responsibilities of the RUC and their handling of threat intelligence

41. References in my Report to ‘threat intelligence’ refer to information received by the authorities indicating that the life of an individual was under threat. In view of the RUC’s failure to take action as a result of specific intelligence provided by Brian Nelson, I have examined more generally the approach that the RUC took towards threat intelligence.
42. During the period 1987–89, the RUC SB’s Threat Book for the Greater Belfast area recorded 730 instances of republican paramilitary threats to targeted individuals, with just 36 recorded instances of threats by loyalists. During this period, republicans were responsible for 55% of the murders in the Belfast area and loyalists for 45% of the murders, although I recognise that, in practice, levels of violence from republicans were proportionately higher than this statistic alone conveys. Nevertheless, I am satisfied that there was a seriously disproportionate focus by the RUC on acting upon threat intelligence that related to individuals who were being targeted by republican paramilitary groups.
43. This pattern was not, in my view, driven by an inherently sectarian bias. It needs to be understood with reference to two key contextual considerations. The first is that the RUC SB were averse to providing warnings to those (from any community) who were considered to be ‘untrustworthy’ and who might, therefore, have decided to publicise the fact that there was a threat to their life. If this happened, the RUC SB feared that their intelligence ‘source’ would be endangered. By contrast, if members of the security forces were, for example, targeted by PIRA, the RUC SB may have trusted them to receive warnings without publicising them.
44. My extensive research into the contemporary material leads me to the view that, when certain individuals were targeted, the reaction of the RUC SB was also influenced to a significant extent by whether or not the individual under threat could be ‘traced’ as a paramilitary on either side of the sectarian divide. This theme is evident in documents from throughout the period, but is perhaps most graphically demonstrated by the handling of earlier threat intelligence reports relating to another solicitor, Oliver Kelly, whom the RUC believed had links to

paramilitaries. It was clear to me that steps were often not taken to secure the protection of those who were considered to be (as referred to in one intelligence document) “*a thorn in the side*” of the security forces during this period of the Troubles.

The flow of information from members of the security forces to loyalists

45. I also considered the scale and nature of the assistance being provided to the UDA by members of the security forces during the late 1980s. It is clear that there were extensive ‘leaks’ of security force information to the UDA and other loyalist paramilitary groups.
46. Many stalwart individuals served in the security forces during this time and my conclusion should not be taken to impugn the reputation of the majority of RUC and Ulster Defence Regiment (UDR) officers, who served with distinction during what was an extraordinarily violent period. Nevertheless, it is clear that some individuals within those organisations provided assistance to loyalist paramilitaries in instances where they shared a common desire to see republican paramilitaries killed. Such leaks were not institutional nor systemic, though they could certainly be described as widespread.
47. Briefing provided to Government Ministers during this period tended to suggest that such leaks related only to a small number of ‘rogue’ individuals who provided loyalists with ‘low-level’ montage photographs held by the security forces. However, those briefings were inconsistent with the evidence that a very large volume of information was being passed by some members of the security forces to loyalist paramilitaries, including reported leaks of highly sensitive information.
48. I have examined a sample of intelligence, graded as reliable, relating mainly to security force leaks to the UDA in the Greater Belfast area. This showed that between January 1987 and September 1989 there were 270 separate instances of leaks. The so-called ‘intelligence dump’ that was developed by Brian Nelson, together with the reporting that he provided to his FRU handlers, demonstrated that a very large quantity of information of security force origin was provided to the UDA, and that the UDA cultivated and continued to maintain a number of security force ‘contacts’.
49. In 1985 the Security Service assessed that 85% of the UDA’s ‘intelligence’ originated from sources within the security forces. I am satisfied that this proportion would have remained largely unchanged by February 1989, the time of Patrick Finucane’s murder. During this period, the UDA were heavily reliant on the flow of security force leaks to enable them to identify republican targets. This meant that many UDA attacks could be traced back to assistance initially provided by one of their security force contacts. Although some limited action was taken by the authorities to combat these leaks, my overall view is that, prior to the commencement of the Stevens I Investigation in September 1989, such efforts were inadequate given the scale of the problem.

The murder of Patrick Finucane

50. In producing this full public account, I cannot subscribe to the view expressed in some quarters that the murder of Patrick Finucane can be explained solely by reference to the actions of agents of the State. It is clear that Mr Finucane was the victim of a particularly violent UDA gang which played a central part in planning and executing his brutal murder. Nevertheless, this does not detract in any way from the key roles that known agents of the State played in it.
51. In that regard, I have concluded that two agents who were at the time in the pay of agencies of the State were involved in Patrick Finucane's murder, together with another who was to become an agent of the State after his involvement in that murder became known to the agency that later employed him.

The handling of previous threats to the life of Patrick Finucane

52. Before analysing the murder of Patrick Finucane, I decided that it would be instructive to consider two previous UDA conspiracies to murder him and the responses of the Security Service and the RUC SB to these plans.
53. During the first such conspiracy, in 1981, the Security Service and Secret Intelligence Service's Irish Joint Section (IJS) received intelligence indicating that the UDA had gathered information on Patrick Finucane and may have been planning to attack him. They shared that intelligence with the Head of the RUC SB, who assessed the threat as "*very real and imminent*". IJS and RUC SB officers discussed a number of different potential responses to this threat. Startlingly, the discussions even included a proposal, initially made by a source, to carry out a 'mock attack' on Patrick Finucane's home in order to cause him to flee; this proposal, however, was ruled out as an extremely dangerous course of action.
54. In the event, notwithstanding the apparent seriousness of the threat to Patrick Finucane's life, the decision was taken by the RUC SB, supported by the IJS, to take no action to warn or otherwise protect him because to do so could compromise an agent from whom the intelligence derived. In view of the imminence of the threat, this approach was, in my view, wholly inconsistent with a State's obligations under Article 2 of the European Convention on Human Rights (ECHR) to take appropriate steps to protect the lives of its citizens.
55. Some years later, in 1985, the Security Service again received intelligence indicating that Patrick Finucane was considered to be a "*priority*" target by a senior UDA figure. This information was shared with the RUC SB, but there is no evidence that any action was taken to warn or otherwise seek to protect him.
56. In terms of causation, the handling of these two previous threats to Patrick Finucane's life cannot be said to have led to his murder in 1989. However, the response of the intelligence agencies upon learning of these threats does raise serious concerns. Primary responsibility for these failings must lie with the RUC

SB, though I am also critical of the role played by the Security Service, which supported the RUC SB's decision to take no action in 1981, and appear to have made no attempt to prompt them into taking any action in 1985.

The theft of a UDR gun in 1987

57. The first identifiable action by an employee of the State that contributed directly to the murder of Patrick Finucane came in August 1987. A Colour Sergeant of the UDR stole weapons from Palace Barracks, County Down, and sold them to Kenneth Barrett, a UDA member who in 2004 pleaded guilty to Patrick Finucane's murder. The weapons stolen included a 9mm Browning pistol that was subsequently used in the murder. The Colour Sergeant was himself convicted in 1988 for his role in the theft.

The failure to take action against the West Belfast UDA

58. The intensive work on this case carried out by the Stevens III Investigation has meant that the other key UDA suspects involved in Patrick Finucane's murder have been identified. Regrettably, however, given the passage of time, there has been insufficient admissible evidence to prosecute any of this group of individuals.
59. Nevertheless, I was able to trace the involvement of that particular gang through a series of murders and attacks by the West Belfast UDA during the year prior to Patrick Finucane's murder. I have seen the significant amount of intelligence that the RUC SB received at the time linking those individuals to the attacks, at least some of which was passed to the RUC Criminal Investigation Department (CID). Whilst the intelligence was not of the kind that would have been admissible in evidence for the purpose of bringing criminal charges, in my view it could have enabled the police to identify suspects and thereby develop evidential leads. Arrests could also have been highly effective in disrupting the plans of those paramilitaries to carry out imminent attacks. Indeed, the gathering of intelligence to effect arrests was cited by the Commanding Officer of the FRU as one of the key reasons for running Brian Nelson as an agent in the heart of the UDA.
60. The evidence clearly shows that the RUC had failed to take action against this gang in relation to a series of attacks they carried out over the year preceding Patrick Finucane's murder. For example, none of the four individuals reliably linked to the murder of Terence McDaid in May 1988 was arrested in connection with that attack. Similarly, none of the six who were linked to the Gerard Slane's murder in September 1988 was arrested in connection with the killing. Indeed, two of the key ringleaders of this group were not arrested at all during the period between May 1987 (the point at which Nelson returned to Belfast) and February 1989, despite Nelson having provided extensive intelligence about their terrorist activities.

61. Subject to what I say below, the record of the RUC in arresting and bringing charges against loyalist terrorists across Northern Ireland as a whole during this period withstands scrutiny and was, indeed, disproportionately better than their record against republican terrorists. Nevertheless, their response to the West Belfast UDA during the period 1987–89 does stand out in stark contrast to that general pattern. It is clear to me that such action as the RUC took to investigate and disrupt the gang who went on to murder Patrick Finucane was grossly inadequate.

Security Service propaganda initiatives

62. I have examined in depth the Security Service propaganda initiatives that were conducted in Northern Ireland during the 1980s. Those initiatives were conceived to rebut republican propaganda and also had as objectives the exposure and ‘unnerving’ of republican paramilitary figures. I have established that, although the focus of the initiatives was on republican paramilitaries, Patrick Finucane came to be included in them prior to his murder.
63. Given the background to these initiatives, and in the sort of circumstances which then prevailed in Northern Ireland, the use of such propaganda could, unless it was very carefully controlled, have had manifestly undesirable results. Intelligence documents show that senior officers of the Security Service later – rightly, in my view – terminated the initiatives after recognising that they had been on “*dangerous ground*”. It is a matter of significant concern to me that no political clearance was sought or obtained for the Service’s involvement in these initiatives.
64. The effect of the propaganda relating to Patrick Finucane was to identify him with the activities of his clients. In my view this propaganda breached basic principles of the criminal justice system, namely, that lawyers should be allowed to carry out their duties to their clients without intimidation, and without the inference being made that a lawyer supports their client’s objectives.
65. Although I am satisfied that there was no intention that the propaganda initiatives should incite loyalists to attack Patrick Finucane, they could undoubtedly have served to further legitimise him as a potential target for loyalist paramilitaries. The fact that the propaganda could have had such an effect was, in my view, a consequence that should have been foreseen by the Security Service at the time.

Comments made by Douglas Hogg MP

66. I have also examined the comments made by the then Parliamentary Under Secretary at the Home Office, Douglas Hogg MP, just four weeks prior to Patrick Finucane’s murder. During a House of Commons debate on 17 January 1989, Mr Hogg stated that there were a number of solicitors in Northern Ireland who were “*unduly sympathetic to the cause of the IRA*”. Seamus Mallon, a Social Democratic and Labour Party (SDLP) MP, responded to these comments during

the debate by stating that, as a result of the Minister's statement, lawyers in Northern Ireland would become "*targets for assassins' bullets*".

67. Douglas Hogg's comments followed an oral briefing provided to him by the Chief Constable and other senior officers of the RUC in Belfast on 24 November 1988. At that briefing, Mr Hogg was told that some solicitors were "*effectively in the pockets of terrorists*". On 13 January 1989, Mr Hogg was provided with 'profiles' of Patrick Finucane and Oliver Kelly produced by the RUC. The material provided to Mr Hogg did not, in my view, substantiate a claim that either of those solicitors was 'effectively in the pockets of terrorists'. Having reviewed the background to this issue, I am satisfied that the RUC should have known that Mr Hogg intended to make the thrust of their briefing public in some form. I concur with the conclusion reached by Sir John Stevens in 2003 that the Minister was thereby compromised.
68. It is clear to me that Mr Hogg had no knowledge whatsoever of the threat to defence solicitors in Northern Ireland prior to making his statement. Further, I am satisfied that there is no basis for any claim that he intended his comments to provide a form of political encouragement for an attack on any solicitor. It is, however, clear that in the febrile and violent context of Belfast in 1989 loyalist paramilitaries did indeed pick up on the comments that the Minister made in Parliament. There are, therefore, grounds for believing that those comments did, albeit unwittingly on Mr Hogg's part, increase the vulnerability of defence solicitors such as Patrick Finucane practising in Northern Ireland at the time.

The handling of the 1988 threat intelligence relating to Patrick Finucane

69. The Security Service received intelligence in December 1988 indicating that a meeting of UDA military commanders was going to discuss plans to kill three solicitors. Although he was not referred to by name, it was clear, in my view, that one of the solicitors under threat at that time was Patrick Finucane.
70. Had the Security Service properly pursued this threat intelligence with the RUC SB, I believe that there would have been a documentary record of such action having been taken. However, no such record exists. The handling of this threat intelligence by the Security Service has caused me particular concern in view of their propaganda initiatives that I have referred to above. Having become involved in those initiatives, which painted Patrick Finucane as a PIRA figure, there was, in my view, an even greater obligation on the Service to take appropriate action on any threat intelligence that they subsequently received.

The alleged involvement of RUC officers in the murder

71. I have considered a number of allegations relating to the possible involvement of RUC officers in encouraging and facilitating the murder of Patrick Finucane.

72. Allegations have been made in the reports of a number of non-governmental organisations that RUC officers issued threats in relation to Patrick Finucane when speaking privately to some of his clients accused of terrorist offences. However, in view of the uncorroborated nature of these allegations and the questionable reliability of the individuals who reported the threats, I do not feel that the evidence on this issue substantiates these specific allegations. I have also come to the view that, even if such threats had been made, they were unlikely to have caused Patrick Finucane's murder since it is inconceivable that his clients would have communicated these threats to loyalist paramilitaries.
73. The critical issue, in my view, was to determine whether RUC officers had been involved in inciting loyalists in custody to attack Patrick Finucane. Allegations that RUC officers had incited loyalists in this manner were first expressed privately by the Ambassador of the Government of Ireland to the Cabinet Secretary on 13 February 1989, the day after Patrick Finucane's murder.
74. Having considered the evidence on this issue closely, I believe, on the balance of probabilities, that an RUC officer or officers did propose Patrick Finucane (along with at least one other man) as a UDA target when speaking to a loyalist paramilitary, who I refer to throughout my Report as L/03, in RUC Castlereagh on either 8 or 9 December 1988. In the absence of any video or audio recording, or direct admissions from those involved, the evidence is not capable of indicating which specific officer or officers may have been responsible for this incitement.
75. I have also considered the allegations made by Kenneth Barrett who, as I have described, subsequently pleaded guilty to his involvement in Patrick Finucane's murder. Barrett maintained that an RUC officer provided the UDA with information about Patrick Finucane which encouraged the group to attack him. As regards the broad allegations that Barrett made to RUC officers who were seeking to recruit him as an agent in October 1991 – namely, that the UDA received 'intelligence' about Patrick Finucane from a police source – I am persuaded that they are essentially accurate. However, although Barrett was intimately involved in the murder of Mr Finucane, I came to the view that he did not have the detailed level of knowledge about the identity of the UDA's police 'contact' that, when speaking to BBC Panorama journalists many years later, he was to claim to have had.
76. I also examined the role of the then 'Chairman' of the UDA, Thomas 'Tucker' Lyttle, and the nature of his relationship with RUC officers. I am satisfied that Lyttle was aware of the UDA's plan to murder Patrick Finucane, although he may not have been involved in the operational planning of the attack.
77. Lyttle alleged to the BBC journalist John Ware that he had discussed the targeting of Patrick Finucane with an RUC SB officer, who had in effect provided tacit approval for the UDA to carry out the attack. I was unable to adequately test the veracity of this allegation as Lyttle is now deceased. I do not, however, discount the possibility that such a discussion took place. A wider examination of Lyttle's role did cause me serious concerns about the nature of his RUC 'contacts' and access to sensitive information. I believe that an RUC SB 'contact' did inform

Lyttle of the identity of a loyalist who was passing information to PIRA. This resulted in the UDA kidnapping, interrogating and expelling that person from Northern Ireland in November 1988.

78. I believe that on 16 February 1989, four days after Patrick Finucane's murder, Lyttle gained access to sensitive RUC intelligence about PIRA's Belfast Brigade, including the terrorist activity of Patrick Finucane's brother, Seamus Finucane. The overall impression I formed was that the nature of Lyttle's contact with some RUC officers provided him with an entirely improper degree of protection and assistance in his role as UDA Chairman and the so-called 'Brigadier' for the West Belfast UDA during this period.

The involvement of State agents in the murder

79. A central feature of my Review was to establish the level and degree of involvement that agents of the State had in Patrick Finucane's murder. I examined the role that the FRU's agent, Brian Nelson, had in the murder. It is clear to me that, during the course of Sir John Stevens' previous investigations, Nelson had always significantly downplayed the true extent of his involvement in the conspiracy.
80. By his own admission, Brian Nelson was asked by one of the key loyalist figures behind the murder plot, whom I shall refer to as L/28, to target Patrick Finucane. Although Nelson claimed not to have subsequently conducted that requested targeting, I am satisfied that he did.
81. Nelson produced and stored in his intelligence dump what were termed 'Personality cards' ('P cards') on individuals about whom he was gathering targeting information. The 'P cards' were then used by the UDA for the purpose of attacking those targets. I believe it is likely that Nelson produced a 'P card' relating to Patrick Finucane which he may have disseminated himself to other loyalist paramilitaries, although it is also possible that they could have taken it directly from his intelligence dump.
82. I also believe that, prior to the murder, Nelson carried out a reconnaissance ('recce'), on the Finucanes' home in North Belfast. Such 'recces' were carried out in order to gather information which would subsequently assist a 'hit team' to attack an individual.
83. I am sure that Nelson passed a photograph of Patrick Finucane to L/28 and Kenneth Barrett on Tuesday 7 February 1989, five days before the murder took place. It was a published photograph depicting Patrick Finucane with a client, Patrick McGeown, outside a court. Nelson subsequently claimed that he was duped into handing over the photograph, but I do not accept that suggestion. I believe that he consciously handed it over in the knowledge that the UDA would use it to assist their targeting of Patrick Finucane. Considering all the evidence regarding his involvement cumulatively, I am satisfied that Nelson played an important part in the murder.

84. Given that Nelson was a FRU agent, I also considered in detail whether he informed his FRU handlers about the role he played in targeting Patrick Finucane. The evidence on this question is complex but, nevertheless, I am satisfied that it points towards a clear conclusion that Nelson did not inform his handlers about his involvement in that respect. It follows, therefore, that in my view the FRU did not have foreknowledge of the conspiracy within the UDA to murder Patrick Finucane.
85. It is important to position these findings in the context of my wider examination of Brian Nelson's role. In many cases it would not be reasonable to hold a State agency accountable for the actions of its agent in circumstances where the agent had concealed their activities from their handlers or were otherwise acting without authority. In Nelson's case, however, I considered that there were a number of important factors that must be taken into account.
86. Amongst those factors, it was clear to the FRU from at least June 1988 onwards that Nelson was prepared to withhold information from his handlers if he felt that he was carrying out 'justifiable' targeting. I also took into account the broader pattern of his conduct prior to February 1989 and the fact that the FRU re-infiltrated him into the UDA in circumstances in which he might otherwise not have re-involved himself in terrorist activity.
87. These considerations all lead me to the conclusion that, in being tasked by the FRU to target 'PIRA activists' for the UDA, Nelson would, to all intents and purposes, properly be considered to be acting in a position equivalent to an employee of the Ministry of Defence. It follows, therefore, that the Army must bear a degree of responsibility for Brian Nelson's targeting activity during 1987–89, including that of Patrick Finucane. This must be so irrespective of the nature of the information that he failed to impart to his FRU handlers in that case and some others.

The involvement of the RUC SB agent William Stobie in the murder

88. William Stobie was a loyalist paramilitary who was recruited as an agent by the RUC SB in February 1988. My Report outlines a number of criticisms relating to his recruitment and handling. Following his recruitment, Stobie's possible involvement in a murder committed by the UDA in November 1987 ceased to be pursued by the authorities. Although he was subsequently handled and paid by the RUC SB, Stobie often appears to have received and distributed weapons for use in UDA attacks without reference to his handlers. Apart from a single instance, I have seen no evidence to indicate that the RUC SB exploited the intelligence that he provided to them prior to February 1989 to frustrate loyalist terrorist activity.
89. Prior to Patrick Finucane's murder, William Stobie was holding two 9mm Browning pistols for the UDA in addition to other weaponry. On 6 February 1989 he handed over a Heckler & Koch pistol to L/03. Later that evening he was instructed by

another loyalist, L/20, to provide a 9mm Browning pistol for use in an imminent attack on a “*top PIRA man*”. I am satisfied that Stobie handed over the 9mm Browning to a UDA hit team on Sunday 12 February 1989 and that this gun was subsequently used to murder Patrick Finucane. I do not, however, believe that Stobie himself knew that Patrick Finucane was to be the target of the attack.

90. I am satisfied that it should have been clear to the RUC SB from the threat intelligence that Stobie provided to them that the UDA were about to mount an imminent attack and that L/20 was a key figure in this plot. Despite the range of options that would have been available to the RUC SB to disrupt the planned attack – as discussed in more detail in the Report – it is clear that they took no action whatsoever to act on the threat intelligence.
91. It is possible that Stobie, as he has claimed in some of his accounts, informed his handlers on 12 February 1989 – shortly before the murder took place – that he had handed over the weapon to the hit team. The evidence on this issue is inconclusive, but I did reach the conclusion that, from the evening of 9 February 1989, it was entirely foreseeable by the RUC SB that Stobie would shortly hand over a 9mm Browning pistol for use in an imminent UDA attack. They were also aware of the identity of a key figure in the operation, the UDA Commander L/20. In this regard I concur with Sir John Stevens’ view that proper exploitation of William Stobie’s intelligence prior to the attack could have prevented the murder of Patrick Finucane on 12 February.

The investigation into the murder

92. The European Court of Human Rights found in 2003 that the UK Government had breached its procedural obligations under Article 2 of the ECHR by failing to carry out an adequate official investigation into the murder. Additional material that was not available to the Court further highlights the importance of this finding. There was, for example, no investigative follow-up action in response to two credible intelligence reports that RUC officers had been congratulating loyalists held in custody for the UDA having carried out the murder.
93. The significance of the RUC SB’s failure to act on William Stobie’s intelligence provided prior to the murder becomes the greater when considered in conjunction with the information that he supplied after it took place. I am satisfied that he told his handlers that he had been asked to collect a 9mm Browning pistol from L/20 on 15 February and that he did subsequently collect it. This clearly provided the RUC SB with a potential opportunity to recover the weapon that was probably one of those used to murder Patrick Finucane and to arrest one of the UDA ringleaders responsible for the attack. The RUC SB never revealed this critical information regarding the probable murder weapon to the RUC CID murder investigation team.
94. It is clear that highly relevant intelligence was withheld from the CID murder investigation team, though it must also be acknowledged that the CID team did not exploit some of the intelligence that it had. This undoubtedly had a significant

impact in preventing attempts to bring Patrick Finucane's murderers to justice. Key UDA suspects such as L/20 and L/28 were not investigated or arrested until the Stevens III Investigation in 1999, over ten years after the murder. The failure of the RUC to ensure an adequate investigation into the murder of Patrick Finucane is particularly significant when considered alongside the wider inadequacy of the action taken against the West Belfast UDA prior to the murder.

The recruitment of Kenneth Barrett in 1991

95. Kenneth Barrett has admitted to being the man responsible for driving two UDA gunmen to Patrick Finucane's home on 12 February 1989. He pleaded guilty to his part in the murder in 2004. He had been linked to it by reliable intelligence that the RUC SB had received as early as 16 February 1989, but he was not arrested until the Stevens III Investigation began ten years later in 1999.
96. At a meeting on 3 October 1991, Barrett told two RUC CID officers and an RUC SB officer that he had been involved in the murder. However, he added a caveat to this admission by stating that he was talking 'hypothetically'.
97. It is clear that, following this 'admission', the RUC CID officers wanted to pursue Barrett in order to build an evidence-based case to charge him with Patrick Finucane's murder. However, the decision of the RUC SB, taken at Superintendent level, was to recruit Barrett as an agent. The murder investigation against him was effectively then dropped. Despite being so deeply implicated in the murder, Barrett became a paid agent of the State, working for the RUC SB from that point.
98. The 'admission' that Barrett had made to the three RUC officers on 3 October 1991 was recorded covertly on a tape held by the RUC SB. This tape recording could have represented strong evidence of Barrett's involvement in the murder, subject to a judge at a trial using his discretion to exclude the evidence in the event of a successful argument being raised over its legal admissibility.
99. By the time of the Stevens III Investigation, however, this tape containing the 'admission' had disappeared. It transpired that the tape provided to the investigators was of a subsequent conversation in which Barrett did not repeat his previous admission to involvement in Patrick Finucane's murder. I am satisfied that the disappearance of the original tape with Barrett's 'admission' to the murder was another deliberate act designed to obstruct the investigation into the murder of Patrick Finucane.

The obstruction of the Stevens I Investigation

100. The approach of the Army and the RUC SB to the Stevens I Investigation into security force 'leaks' is particularly instructive in illustrating the attitude taken towards tackling serious allegations of collusion.

101. Both the Army and the RUC SB consciously failed to provide Sir John Stevens with important material relevant to his criminal investigation. I do not accept the Army's position that, in failing to provide information to the Stevens Investigation, it was acting in accordance with instructions issued by the RUC Chief Constable to the General Officer Commanding in Northern Ireland that the Army was to deny Stevens access to any intelligence information. The Army, in my view, clearly had its own agenda in seeking to protect its agent, Brian Nelson. This protection even extended to advising Nelson on how to resist police interrogation in the event that he was arrested by the Stevens team.
102. In my view, the fact that senior Army officers deliberately lied to criminal investigators by informing them that they did not run agents in Northern Ireland was an attempt to deflect the Stevens Investigation from learning of the existence of Brian Nelson. Indeed, the very existence of the FRU was hidden from Sir John Stevens until he decided to arrest Brian Nelson. The evening before his impending arrest, Nelson fled to the mainland. When a new date was decided upon to effect his arrest, an unexplained fire broke out at the Stevens team's headquarters.
103. It is, however, also clear that the RUC SB too were responsible for seriously obstructing the investigation. They withheld significant quantities of information, including Army and Security Service material that was in their possession. There is also evidence to suggest that the RUC SB sought to direct the Stevens Investigation towards examining security force 'leaks' from the UDR and concealed information indicating that a similarly large number of leaks had emanated from RUC sources. Although the RUC SB were aware that the FRU had possession of Brian Nelson's intelligence dump from September 1989, SB officers were later uniformly to claim to have had no knowledge whatsoever that Nelson or the FRU possessed such material.
104. This extensive obstruction resulted in an extraordinary situation in which important evidence in a major criminal investigation remained concealed in an Army office for nearly four months.

The prosecution of Brian Nelson

105. I have also considered in detail the response of Government Ministers and the RUC to the proposed prosecution of Brian Nelson. In Volume II of this Report I have released an extensive set of Cabinet-level correspondence relating to this issue.
106. The Director of Public Prosecutions for Northern Ireland (DPP(NI)) and the Attorney General, Sir Patrick Mayhew, deserve significant credit for withstanding considerable political pressure designed to ensure that Brian Nelson was not prosecuted. That pressure arose during the course of the Shawcross exercise that was conducted in relation to Brian Nelson's case, under the established convention whereby Government Ministers can draw to the attention of the Attorney General any public interest considerations which may arise in relation

to possible prosecution proceedings. The Secretary of State for Defence, the Secretary of State for Northern Ireland and senior Government officials all argued strongly that the prosecution would not be in the public interest. It is clear that, had their views prevailed, an agent of the State who had actively promoted and facilitated a series of terrorist attacks would have escaped justice.

107. It is clear to me that the Army and Ministry of Defence (MoD) officials provided the Secretary of State for Defence with highly misleading and, in parts, factually inaccurate advice about the FRU's handling of Brian Nelson. As a direct result of this advice, the submissions sent by the Secretary of State for Defence to the Attorney General, and by extension to the DPP(NI), were seriously misleading. When the inaccurate information that the Army and the MoD had supplied was exposed by the Attorney General, the MoD nevertheless refused to re-examine its position and failed, despite the wishes of the then Secretary of State for Defence, to ensure that an investigation was subsequently carried out as to why Nelson's intelligence had not been used to prevent UDA attacks. The documentary evidence also shows that senior RUC officers provided contradictory and, in parts, highly misleading submissions to the DPP(NI).

Allegations that Government Ministers sanctioned collusive activity

108. As mentioned above and elsewhere in my Report, I am critical of the failure by successive Governments to put in place an infrastructure underpinning the conduct of intelligence agents and handlers, and the manner in which Ministers made representations contending that Brian Nelson should not be prosecuted. However, I should note that I have found no evidence whatsoever to suggest that any Government Minister had foreknowledge of Patrick Finucane's murder, nor that they were they subsequently informed of any intelligence that any agency of the State had received about the threat to his life. Similarly, there is no evidence at all that Government Ministers had any knowledge at the material time of Brian Nelson's targeting activity, nor that they in any way encouraged or directed any form of collusive activity with the UDA.

Lessons for the future

109. It was not part of my remit to make recommendations to the UK Government. However, given the nature of my Report, I have reflected on the key lessons that can be learned for the future.
110. In many respects Northern Ireland has changed dramatically since 1989. The violent, vengeful context of the late 1980s in Belfast is, hopefully, part of the past and never to return.
111. The machinery of the State that was activated to deal with the Troubles has now changed significantly. Many of the organisations mentioned in my Report – the RUC SB, the FRU, the UDR – no longer exist. The British Army no longer patrols

the streets of Northern Ireland. Policing and justice powers have been devolved to the power-sharing Northern Ireland Executive. There is no suggestion that lawyers in Northern Ireland today are intimidated by the authorities or provided with inadequate protection by the State.

112. There are, nevertheless, some broad themes that may still have relevance to the world of intelligence-gathering. I have not concluded that the running of agents within terrorist groups is an illegitimate or unnecessary activity. On the contrary, it is clear that the proper use of such agents goes to the very heart of tackling terrorism. The principal lesson to be learned from my Report, however, is that agent-running must be carried out within a rigorous framework. The system itself must be so structured as to ensure adequate oversight and accountability. Structures to ensure accountability are essential in cases where one organisation passes its intelligence to another organisation which then becomes responsible for its exploitation.
113. It is essential that the involvement of agents in serious criminal offences can always be reviewed and investigated and that allegations of collusion with terrorist groups are rigorously pursued. Perhaps the most obvious and significant lesson of all, however, is that it should not take over 23 years to properly examine, unravel and publish a full account of collusion in the murder of a solicitor that took place in the United Kingdom.

Overall assessment

114. In establishing this Review, the Government accepted that there had been collusion in the murder of Patrick Finucane, and indeed apologised for this. In analysing what is meant by collusion, I preferred to adopt the narrower definition used by Lord MacLean in the Billy Wright Inquiry Report, rather than the one adopted by Justice Cory in his Collusion Inquiry Report. Nevertheless, even by reference to that narrower definition, it is clear for the reasons I outline in this Report that the threshold for a finding of collusion is met in this case.
115. Overall, I am left in significant doubt as to whether Patrick Finucane would have been murdered by the UDA in February 1989 had it not been for the different strands of involvement by elements of the State. The significance is not so much, as Sir John Stevens concluded in 2003, that the murder could have been prevented, though I entirely concur with this finding. The real importance, in my view, is that a series of positive actions by employees of the State actively furthered and facilitated his murder and that, in the aftermath of the murder, there was a relentless attempt to defeat the ends of justice.
116. My Review of the evidence relating to Patrick Finucane's case has left me in no doubt that agents of the State were involved in carrying out serious violations of human rights up to and including murder. However, despite the different strands of involvement by elements of the State, I am satisfied that they were not linked to an over-arching State conspiracy to murder Patrick Finucane. Nevertheless, each of the facets of the collusion that were manifest in his case – the passage

of information from members of the security forces to the UDA, the failure to act on threat intelligence, the participation of State agents in the murder and the subsequent failure to investigate and arrest key members of the West Belfast UDA – can each be explained by the wider thematic issues which I have examined as part of this Review.

117. In spite of the gravity of my findings, I must also stress that it would be a serious mistake for this Report to be used to promote or reinforce a particular narrative of any of the groups involved in the Troubles in Northern Ireland. My remit has, by its nature, involved only an examination of the actions of the British State and its agents, and loyalist terrorist organisations. I have no doubt, however, that PIRA was the single greatest source of violence during this period and that a holistic account of events of the late 1980s in Northern Ireland would reveal the full calculating brutality of that terrorist group. The abiding impression of this period in Northern Ireland must be of an extremely dark and violent time in which a lawyer could so callously and tragically be murdered as a result of discharging his professional legal duties.

Chapter 1: Background to this Review

Introduction

1.1 The Review was established to produce a full public account of any involvement by the Army, the Royal Ulster Constabulary (RUC), the Security Service or other UK Government body in the murder of Patrick Finucane.

1.2 On 12 October 2011, on the day of my appointment to conduct this Review, the Prime Minister, the Rt Hon David Cameron MP, made the following comments in the House of Commons:

“I profoundly believe that the right thing for the Finucane family, for Northern Ireland and for everyone in the United Kingdom is ... for the British Government to do the really important thing, which is to open up and tell the truth about what happened 22 years ago. Frank acknowledgement of what went wrong, an apology for what happened – that is what is required.”

1.3 The Prime Minister’s comments were followed by an Oral Statement by the then Secretary of State for Northern Ireland, the Rt Hon Owen Paterson MP, who said:

“The Government accept the clear conclusions of Lord Stevens and Judge Cory that there was collusion. I want to reiterate the Government’s apology in the House today. The Government are deeply sorry for what happened. Despite the clear conclusions of previous investigations and reports, there is still only limited information in the public domain. That is why my right honourable friend the Prime Minister and I have committed to establishing a further process to ensure that the truth is revealed. Accepting collusion is not sufficient in itself. The public now need to know the extent and nature of that collusion.”

1.4 The references in the Secretary of State’s statement to the “*clear conclusions of Lord Stevens and Judge Cory*” are to the separate investigations into the circumstances touching on Patrick Finucane’s murder which Lord (formerly Sir John) Stevens, and former Justice Peter Cory (of the Supreme Court of Canada) have previously undertaken. I have drawn heavily on their respective investigations in the course of my Review and, in the interests of consistency, and intending them no discourtesy, I shall refer to them throughout my Report as Sir John Stevens and Justice Cory respectively. My Terms of Reference are quite distinct from theirs, and were stated as follows:

“Drawing from the extensive investigations that have already taken place, to produce a full public account of any involvement by the Army, the Royal Ulster Constabulary, the Security Service or other UK Government body in the murder of Patrick Finucane.

The Review will have full access to the Stevens archive and all Government papers, including any Ministry of Defence, Security Service, Home Office, Cabinet Office or Northern Ireland Office files that you believe are relevant. The account should be provided to the Secretary of State for Northern Ireland by December 2012, for the purpose of its publication.”

- 1.5 These Terms of Reference have to be read together with what both the Prime Minister and the Secretary of State for Northern Ireland said in Parliament, namely that the Government wished to apologise for the murder of Patrick Finucane because of the conclusions with regard to collusion found by Sir John Stevens and Justice Cory.
- 1.6 However, as Justice Cory makes plain in the foreword to his Collusion Inquiry Report:
- “... my findings are provisional only and cannot be taken to be final determinations of any matter. It is right that this point should be emphasised at the outset, in fairness to the individuals referred to ...”¹*
- 1.7 I feel obliged therefore to have this qualification in mind as I approach my Terms of Reference and the apology made on behalf of Her Majesty’s Government.
- 1.8 According to the Government, the collusion that falls to be investigated is that between the security forces and loyalist paramilitaries in Northern Ireland, and further, whether the murder of Patrick Finucane on 12 February 1989 was the result of such collusion.
- 1.9 In this Review I look at the murder of Patrick Finucane through the activities of three men, all of whom I find had a hand in his murder. Two of them were paid agents of the State and one became an agent of the State after his involvement in the murder became known.
- 1.10 At the outset of this Introduction I must make mention of the security forces of the State with which this Review is principally concerned. Those principal agencies were: first, the Army’s classified intelligence section, the Force Research Unit (FRU); second, the Special Branch of the Royal Ulster Constabulary (RUC SB); and third, the Security Service. These agencies very successfully infiltrated agents into paramilitary organisations in Northern Ireland during the Troubles, and have all been accused by others of being implicated in the murder of Patrick Finucane.

Interpretation of my Terms of Reference

- 1.11 At the outset of this Review I decided that I should take a broad approach to my Terms of Reference. To enable me to draw conclusions on State involvement in the murder of Patrick Finucane, I have considered at length the context to this killing.

¹ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, Foreword

- 1.12 In doing so, I am acutely conscious that, exceptionally, I have included in this Report an extensive amount of detail relating to highly sensitive matters such as agent-handling and intelligence-gathering. I have done so to ensure that I fulfil the remit given to me by both the Prime Minister and the Secretary of State for Northern Ireland to produce a full public account of the matters they asked me to review.
- 1.13 However, the Government has made clear that the fact that such material has been included in my Report will not be treated as a precedent for releasing this type of information in the future. In this regard, I note that my position is analogous to that of the former Cabinet Secretary, Sir Robin Butler, who, also exceptionally, included an extensive amount of material from assessments compiled by the Joint Intelligence Committee in his 2004 'Review of Intelligence on Weapons of Mass Destruction'.²
- 1.14 Further, as was the case with the Reports previously produced by Justice Cory and Sir John Stevens, my Report identifies certain persons as having been agents of the State. Again, I have done so exceptionally, having regard to my remit to produce a full public account and bearing in mind that, to some extent, the role that those persons had in the events in question is already in the public domain due to proceedings that have taken place in open court. Likewise, the Government has clearly stated that this should not be taken to imply any alteration to its long-standing position that it will neither confirm nor deny whether a particular person is, or has been, an agent of the State. I fully recognise that this principle finds strong support in the relevant case law and it is, in my view, essential that it be consistently maintained given the State's international obligations under Article 2 of the European Convention on Human Rights (ECHR).

Definition of collusion

- 1.15 In producing this public account of any involvement by the Army, the RUC, the Security Service or any other UK Government body in the murder of Patrick Finucane, my Terms of Reference require me to draw from the extensive investigations that have already taken place. In accordance with the Secretary of State for Northern Ireland's statement to the House of Commons, I have also been tasked to consider specifically the nature and extent of collusion in the murder of Patrick Finucane.
- 1.16 I set out later in this chapter the various previous investigations to which I have had regard in the course of my Review. Principal amongst these are the Report of Sir John Stevens' third investigation (the 'Overview and Recommendations' of which was published on 17 April 2003) and the Report of Justice Cory, published on 1 April 2004. Whilst the former looked at wider issues in Northern Ireland, the latter was more specifically focused on the murder of Patrick Finucane.

² House of Commons Return to an Address, 14 July 2004, *Review of Intelligence on Weapons of Mass Destruction: Report of a Committee of Privy Counsellors*, para 12

1.17 In his third Report, Sir John Stevens stated that:

*“My enquiries have highlighted collusion, the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, and the extreme of agents being involved in murder. These serious acts and omissions have meant that people have been killed or seriously injured.”*³

1.18 In that Report Sir John Stevens provided the following explanation of the term ‘collusion’:

*“Collusion is evidenced in many ways. This ranges from wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.”*⁴

1.19 The issue of collusion formed the focus of Justice Cory’s Report into the murder of Patrick Finucane. In that report, he set out his definition of collusion, commencing by listing synonyms of the verb ‘to collude’ and then looking at the dictionary definitions. The synonyms he listed were:

“... to conspire; to connive; to collaborate; to plot; and to scheme.”

1.20 He then noted the dictionary definitions of those synonyms as follows:

“The verb ‘connive’ is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride; see for example the Oxford Compact Thesaurus Second Edition 2001.

Similarly the Webster dictionary defines the verb collude in this way: to connive with another: conspire, plot.

It defines the verb connive

1. *... to pretend ignorance or unawareness of something one ought morally, or officially or legally to oppose;*
to fail to take action against a known wrongdoing or misbehaviour – usually used with connive at the violation of a law.
2. (a) *to be indulgent, tolerant or secretly in favour or sympathy;*
(b) *wink at youthful follies;*
(c) *to cooperate secretly: to have a secret understanding.”*⁵

1.21 Justice Cory then went on to say:

“Because of the necessity for public confidence in the army and police, the definition of collusion must be reasonably broad when it is applied to actions of these agencies. This is to say that army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents or supplying information to assist them in their wrongful

³ Stevens III Investigation, *Overview and Recommendations*, 17 April 2003, para 1.3

⁴ *Ibid.*, para 4.7

⁵ *Cory Collusion Inquiry Report*, 1 April 2004, paras 1.35–1.38

acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in these important agencies.

In determining whether there are indications of state collusion in the murder of Patrick Finucane, it is important to look at the issue from two perspectives. First, it must be seen whether the documents indicate that the action or inaction of Government agencies might have directly contributed to the killing of Patrick Finucane by the Ulster Defence Association (UDA). Secondly it is necessary to examine collusive acts which may have indirectly contributed to the killing, by generally facilitating the terrorist activities of the UDA ... Both perspectives will be considered in determining whether the evidence indicates that there have been acts of collusion by Government agencies.”⁶

- 1.22 Justice Cory’s Report concluded that there was “*strong evidence that collusive acts were committed by the Army (FRU), the RUC SB and the Security Service*”.⁷ His conclusion and the finding of collusion by Sir John Stevens have been accepted by the Government. Nevertheless, the Government have stated that the public need to know the “*nature and extent of that collusion*”.⁸ Accordingly, in order to discharge my Terms of Reference, I must first consider what is meant by collusion.
- 1.23 In doing so I bear in mind that there is no definitive definition of collusion. This has been noted by the previous Police Ombudsman for Northern Ireland who has released a number of reports into possible collusion and police misconduct since the publication of Justice Cory’s Report. However, although the Ombudsman appears to have adopted a variable approach, in most cases the definition of collusion has been broadly structured around Justice Cory’s approach.⁹ The variable approach of the previous Police Ombudsman to the definition of collusion was the subject of a detailed critique by the Committee of Administration of Justice in a report published in 2011.¹⁰
- 1.24 In coming to my own approach to the definition of collusion I have had regard not only to Justice Cory’s definition but also to the other definitions used by tribunals that have examined the issue. According to the ‘Report of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings’, there were three areas in which there may have been ‘collusion’ in relation to those attacks, namely inspiration, participation and assistance.

⁶ Ibid., paras 1.39–1.40

⁷ Ibid., para 1.293

⁸ Announcement by the Secretary of State for Northern Ireland, Owen Paterson MP (see Hansard, HC Deb, 12 October 2011, vol 533, col 335)

⁹ Public Statements by the Police Ombudsman for Northern Ireland relating to:

- (i) the bombing of McGurk’s Bar, Belfast (21 February 2011);
- (ii) the RUC investigation of Father James Chesney (24 August 2010); and
- (iii) the death of Raymond McCord Junior (22 January 2007).

¹⁰ Committee for the Administration of Justice, *Human Rights and Dealing with Historic Cases – A Review of the Office of the Police Ombudsman for Northern Ireland*, June 2011, pp.19–25

1.25 The Smithwick Tribunal of Inquiry was set up by the Irish Government as a result of Justice Cory's report into the deaths of two RUC officers in 1989. On 3 March 2006 the Chairman, Judge Peter Smithwick, made the following reference to his approach to the definition of collusion:

*"... the issue of collusion will be examined in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition, I intend to examine whether anybody deliberately ignored a matter, turned a blind eye to it or pretended ignorance or unawareness of something one ought morally, legally or officially to oppose."*¹¹

1.26 The Report of the Rosemary Nelson Inquiry published in May 2011 did not set out a definition of collusion. However, the Secretary of State for Northern Ireland's response to the Report made clear that the Government believed that it had been demonstrated that there had been no collusion.

1.27 The Report of the Billy Wright Inquiry published in September 2010 did set out a definition of collusion and noted the Inquiry panel's concerns with the approach adopted by Justice Cory. The Report stated that the panel had been "*concerned throughout the Inquiry by the width of the meaning applied by Judge Cory*" and went on to say:

*"For our part we consider that the essence of collusion is an agreement or arrangement between individuals or organisations, including government departments, to achieve an unlawful or improper purpose. The purpose may also be fraudulent or underhand."*¹²

1.28 It is clear that the definition of collusion is a complex and contested issue. Moreover, it is now an issue that has become the subject of considerable political debate in Northern Ireland. I am mindful of the need not to draw an unduly restrictive definition of collusion that could have the effect of reducing the scrutiny applied to agencies of the State. However, I do find force in the concerns of the Billy Wright Inquiry panel that the definition applied by Justice Cory could be considered to be too broad.

1.29 Accordingly, I have adopted a working definition of collusion that is more in keeping with that adopted by the Billy Wright Inquiry panel. I do believe, as Judge Smithwick has said in relation to his Tribunal, that omissions by State agencies must be considered alongside positive acts when drawing a definition of collusion. It is, however, important to stress that, in order to fall within the ambit of collusion, such omissions must be classified as deliberate and not merely represent examples of incompetence or inefficiency.

1.30 My own working definition, whilst not purporting to be definitive, is one I consider appropriate in relation to the allegations made and for the purposes of this particular case. I consider collusion to involve:

¹¹ Cited within the Opening Statement of the Smithwick Tribunal, 7 June 2011

¹² *Billy Wright Inquiry Report*, September 2010, p. 9 at para 1.33

- (i) agreements, arrangements or actions intended to achieve unlawful, improper, fraudulent or underhand objectives; and
- (ii) deliberately turning a blind eye or deliberately ignoring improper or unlawful activity.

Methodology

- 1.31 In drawing my conclusions I have been extremely mindful of the need, irrespective of the highly contentious nature of the case, to base my findings solely on an objective analysis of the evidence, or irresistible inferences merited by that evidence. Over the years since the murder of Patrick Finucane, rumour, suspicion and gossip with little foundation have flourished. To come to grips with the truth necessarily involves rejecting baseless allegations, however often repeated and emotionally expressed.
- 1.32 Despite the fact that on the day of my appointment both the Prime Minister and the then Secretary of State for Northern Ireland informed the House of Commons that the Government accepted that there had been collusion in the murder of Patrick Finucane, I have felt it right to re-examine all the evidence considered by my predecessors, and their conclusions, in the light of new material that has become available to me. Justice Cory – who had expressed his findings as provisional – and Sir John Stevens were united in their view that there had been such collusion. I felt it right to satisfy myself that their findings in that regard were soundly based in the light of the entirety of the evidence now before the Review.

The sources of evidence and my approach to it

- 1.33 As a result of the three investigations carried out by Sir John Stevens, I am the beneficiary of some 12,000 witness statements, 32,000 documents and, in all, over 1 million pages of material. Not only do I have statements from key witnesses to draw on, I also have the advantage of contemporaneous intelligence records, and the transcripts of interviews carried out by the highly efficient Stevens Investigation team. I have thus been able to compare the witness statements of key individuals with earlier or subsequent statements made by the same witness, to compare descriptions of the same incident as dealt with by different witnesses, and to examine – where applicable – any tape-recorded questioning that has taken place.
- 1.34 To fulfil my remit to produce a full public account, I also felt it important to examine additional documents to ensure that the structural apparatus of the State at the time was fully scrutinised. My Review accordingly made a series of requests for information to the Security Service, the Ministry of Defence (MoD) and the Police Service of Northern Ireland (PSNI), and received a large number of documents concerning several issues that were of critical importance to my work.

- 1.35 I also sought extensive disclosure from other UK Government Departments, including the records of relevant Cabinet-level discussions and correspondence, minutes of the Joint Intelligence Committee and Security Policy Meetings chaired by the Secretary of State for Northern Ireland. My Review also corresponded with the Secret Intelligence Service and the Government Communications Headquarters (GCHQ), though it transpired that these organisations in fact had no additional material relevant to my remit.
- 1.36 In view of the serious obstruction of Sir John Stevens' criminal investigations that occurred, as described in this Report, it is important to acknowledge that I have received the full and unequivocal co-operation of all relevant Government Departments and Agencies in carrying out my work. Although I had no statutory powers of compulsion, I was given access to all the evidence that I sought, including highly sensitive intelligence files.
- 1.37 I have therefore had the advantage of seeing and analysing a significant amount of material that was not available to Sir John Stevens and Justice Cory. This has served to throw a flood of light on certain events that are crucial to my findings. In many instances, I have had to re-evaluate the evidence they had previously scrutinised. On occasions, after testing the witness statements produced from the Stevens archive against other material made available to me, I have been able to put aside the evidence of a witness on a particular point when it has clearly been contradicted.
- 1.38 However, my remit has been fundamentally different to that of Sir John. His investigation was, by its nature, a criminal investigation necessarily focusing on the FRU and RUC SB documents most relevant to the alleged collusion.
- 1.39 I have borne in mind throughout that intelligence agents and their handlers have of necessity to deal in deceit, duplicity and subterfuge. In pursuit of the truth reviewers such as myself have to enter a murky world of uncertainty, cover stories and cover-ups, of misinformation and accounts re-formatted. I am acutely aware that things said, representations made and records kept may well not reflect the truth, and that records not made when one expects them to have been made may speak volumes and undermine an 'official' version of the truth. There are those who may fear the exposure of the truth and who may, for a variety of reasons, engage in dissembling, distorting or embellishing the account of activities in which they were involved.
- 1.40 I should also say that, over the years, the controversy that Patrick Finucane's murder caused has resulted in numerous media articles, TV programmes, books and general commentary about it. Many of these accounts rely on anonymous sources, whether within loyalist groups or State agencies. However, I decided at the outset of the Review that I would not take into account such 'evidence' unless I could independently establish the identity of the sources from which it came and meaningfully test their veracity against the large volume of intelligence material that has been made available to me. I have received much helpful background information from some of the authors of such material, but journalists are

understandably unwilling to reveal the identity or background of their sources. Accordingly, I have felt it impossible to take into account unverifiable media reporting as part of this Review.

1.41 This has necessarily meant discarding much of the more speculative media commentary, though there have been some important exceptions. The BBC's Panorama programme, for example, carried out some extremely diligent investigatory journalism to produce several valuable documentaries about this case over the years. I am extremely grateful to John Ware, who provided me with important contemporaneous notes of his conversations with Brian Nelson and Thomas 'Tucker' Lyttle. Two other journalists, Ed Moloney and Neil Mulholland, also feature prominently in parts of my Report.

1.42 I am happy to say that in my excavation of the truth as a result of additional evidence that has surfaced, in many critical aspects my conclusions are at one with those of Sir John Stevens and Justice Cory. In other respects my findings may be seen to be more robust than theirs. Where that is the case, the obvious reason is that our Terms of Reference differ. In particular, Sir John Stevens' investigation was, by its nature, a criminal investigation necessarily focusing on FRU and RUC SB documents most relevant to the alleged collusion. Sometimes, however, it is because I have had access to material that was either not available to them or which only surfaced once their tasks had been completed.

1.43 Finally, I wish to stress that any conclusion I have come to and any inferences that I have drawn from the evidence are mine and mine alone.

Oral evidence and written submissions

1.44 Although the Government established this Review as a document-based process, I decided that it was necessary to interview key individuals in order to fulfil my remit. I was also conscious of the need to provide a mechanism through which such key individuals or organisations named in the report (and potentially subject to criticism) could make oral or written submissions. Consequently I had a number of meetings as part of the Review and received written submissions from others whom I did not personally meet. I also directed a series of detailed questions to the relevant Government Departments and Agencies, and was much assisted by their responses.

1.45 It is important to reiterate that, in addition to this new evidence, I had access to the huge volume of witness statements and transcripts of interviews conducted during the course of Sir John Stevens' first, second and third investigations. This enabled me to take account of an enormous quantity of oral and written evidence in producing this report.

1.46 Generally, I sought to concentrate requests for information on more senior figures within the appropriate organisations. I also decided that it would not be worthwhile to seek to gather evidence from loyalist paramilitaries. These groupings have shown no willingness whatsoever to engage in a truth recovery process in Northern Ireland. In common with the approach that appears to have

been taken by the Billy Wright and Rosemary Nelson inquiries, I felt there was little prospect of such individuals giving truthful accounts of their past activities, and that they would therefore be of little value to me in my search for the truth.

1.47 I have outlined below a full list of the meetings that I had during the course of the Review and the written submissions that I received. Some individuals are referred to only by the cipher that the Review allocated to them, having regard to Article 2 of the ECHR and/or national security considerations, as more fully explained later in this chapter.

1.48 Oral evidence was received from the following:

- Lord Stevens of Kirkwhelpington
- Anthony Langdon, former senior Home Office civil servant
- G/07, a senior Security Service officer
- A/05, formerly Commanding Officer of the FRU
- Vincent McFadden, former Detective Chief Superintendent, Metropolitan Police Service
- R/14, a former senior RUC SB officer
- R/15, a former senior RUC SB officer
- R/16, a former senior RUC SB officer
- Blair Wallace, former RUC Deputy Chief Constable
- An Assistant Chief Constable of the PSNI
- Professor Richard English.

I also sought to meet with one of Brian Nelson's former handlers (A/13), though in the event this was not to be possible due to medical reasons pertaining to the handler.

Written submissions were received from the following:

- A/05, former Commanding Officer of the FRU
- Lord Stevens of Kirkwhelpington
- General Sir John Waters, former General Officer Commanding (GOC), Northern Ireland
- Sir Hugh Annesley, former Chief Constable, RUC
- Rt Hon Douglas Hogg QC, now Viscount Hailsham
- G/07, a senior Security Service officer
- The family of Gerald Higgins
- Professor Richard English
- John Ware, former BBC journalist
- The PSNI
- The MoD
- The Security Service.

1.49 My priority at the start of this Review was to ensure that I met with the Finucane family and involved them in this process. Regrettably, however, after an exchange of correspondence, they decided not to meet with me and to pursue instead their objective of seeking a public inquiry.

1.50 I should also note that the passage of time has meant that my Review was deprived of potentially important evidence because documents have been destroyed or witnesses have died since the events in question. In particular, I would certainly have wished to meet at least seven additional witnesses, all of whom are now sadly deceased. These witnesses include two former senior Security Service officers, a former RUC Assistant Chief Constable, one of Brian Nelson's former handlers (A/10), one of William Stobie's former handlers (R/05) and the two agents, Brian Nelson and William Stobie.

Liability and the rules of evidence

1.51 It is important to emphasise that my Report represents a full public account of what I believe to have been the role of agents of the State in the murder of Patrick Finucane. In accordance with my Letter of Appointment, it should not be taken to establish the civil or criminal liability of any individual or organisation. The establishment of such liability is not a matter for an independent review or inquiry. Nor am I empowered to order any financial settlement consequent upon my findings.

1.52 As this Review is not establishing civil or criminal liability, it follows that I am not bound by the rules of evidence that would apply in relation to a civil or criminal process. I am conscious that the Director of Public Prosecutions for Northern Ireland (DPP(NI)) considered the evidence resulting from Sir John Stevens' third investigation and determined that no prosecutions should result. I emphasise, however, that the nature of my remit is fundamentally different to that of the DPP(NI). I have not sought to establish whether the evidence passes the threshold of the test for criminal prosecution. I have, as a result, been able to take into account evidence that would have been deemed to be inadmissible in criminal proceedings. It will be readily understood that a significant quantity of intelligence material falls into this category.

1.53 I have not adopted a uniform standard of proof, which would in itself tend to imply a finding of criminal or civil liability. Instead, I have adopted a flexible approach and have indicated, where appropriate, the degree to which I am persuaded by credible evidence. Although I am not bound by strict rules of evidence, I have nevertheless tested the material before me against established facts. I have also sought to look for strong supporting evidence where I have been confronted with an account from a source that I considered I should treat with caution.

Disclosure

1.54 In a press release by the Review on 10 November 2011, I committed myself to publishing documents, including original intelligence reports, alongside my public

account. I made this commitment because I believed that in such a controversial case it would be insufficient simply to make detailed findings. To ensure public confidence in such findings, I consider that the underlying material must also be published, even where this includes highly classified intelligence material.

1.55 The Review has liaised with Government Departments and Agencies regarding the declassification and publication of relevant documents. As part of this process, I identified the key documentation relating to Patrick Finucane’s murder and have published this material in Volume II of this Report.

Anonymity

1.56 Both during the course of Sir John Stevens’ investigations and in Justice Cory’s Report, certain individuals were not identified by name. Given the subject matter of the material that this Review has to deal with, I too should set out the methodology I have adopted regarding the naming of such individuals.

1.57 As noted above, my Terms of Reference require me to produce “*a full public account*” of any State involvement in the murder of Patrick Finucane. In discharging this duty I am required to have regard to the right to life of individuals under Article 2 of the ECHR and to give due consideration to the protection of national security. Further, as has been the case with a number of other reviews and public inquiries, my Report has been subject to an Article 2 and national security check, commissioned by the Secretary of State, prior to publication.

1.58 I have had regard to Strasbourg jurisprudence,¹³ under which Article 2 imposes a positive obligation on contracting States to take certain steps towards the prevention of the loss of life of individuals within its jurisdiction. This positive obligation arises when the risk is “real and immediate”,¹⁴ namely a risk that is “objectively verified” and “present and continuing”.¹⁵ It is an obligation which is not easily engaged, the threshold of “real and immediate risk” being a high one.¹⁶

1.59 I have also had regard to the principle of proportionality. I am not obliged under Article 2 of the ECHR to satisfy an absolute standard requiring the risk to be averted. Rather, the standard is based on reasonableness which brings in all the circumstances of the case, the ease or difficulty of taking precautions and the resources available.¹⁷

1.60 It is with these principles in mind that I have made the following decisions regarding whether or not individuals referred to in my Report should be named.

1.61 I have taken the view that, in general, all the senior figures in the State institutions should be named. For the most part, their identity is already widely known or easily discoverable. To this extent, anonymising them in the Report would serve little purpose. Further, I see this as an aspect of my remit to produce a full public

¹³ As expounded in *Osman v United Kingdom* (1998) 20 EHRR 245, paras 115–116

¹⁴ *Re Officer L (Northern Ireland)* [2007] UKHL 36

¹⁵ *Re W’s Application* [2004] as per Weatherup J

¹⁶ *Re Officer L (Northern Ireland)* [2007] UKHL 36, para 20

¹⁷ *Ibid.*, para 21

account. The only exception is that for obvious operational and national security reasons some individuals engaged in intelligence matters must necessarily not be named.

- 1.62 With regard to those individuals who held lower ranks or administrative roles, I have adopted the same approach that was taken in the Report of the Rosemary Nelson Inquiry. That is to say, I have taken the view that what is of interest is the way in which these individuals discharged their duties in the particular posts in which they were employed. As such, it is the rank or post they held, or the duties in which they were engaged, that is of significance and not their name or personal details.
- 1.63 This is also a pragmatic decision, based on the principles of proportionality and reasonableness. I have focused my efforts and resources on the facts of the case, the extensive documentation and my remit of producing a full public account of any involvement by the Army, the RUC, the Security Service or any other UK Government body in the murder of Patrick Finucane. To become overburdened in assessing risk to individuals whom it is sufficient to name only in terms of their role or rank would, in my view, detract unnecessarily from my central task.
- 1.64 The naming of certain deceased persons has been an area of sensitivity in the past. I have taken the view that the names of such persons are generally widely known or easily discoverable and, therefore, that it is fitting that they are named in accordance with my remit of giving a full public account. However, where possible, relatives have been fully informed in advance that the deceased individuals will be named in the Report.
- 1.65 The naming of living individuals with actual or alleged paramilitary connections is more problematic. In some cases the names are widely known or easily discoverable. Further, where applicable, I have taken into account that the fact of past actual or alleged paramilitary involvement is not necessarily an indication that the high threshold of real and immediate risk would be met to warrant not naming such persons.
- 1.66 However, generally speaking, these are not public figures whose names are a matter of record and stated in official documents, and I am alert to the continuing security situation in Northern Ireland. I am obliged to consider the Article 2 rights of these individuals and, in order to make an informed assessment of the risk of naming them, risk assessments would be required for each individual, and possibly submissions from the individuals themselves as to their particular circumstances. Adopting a pragmatic approach, and bearing in mind my remit to give a full public account of *State* involvement in the murder of Patrick Finucane, I have taken the view that it would not be a sensible use of my time or resources to engage in obtaining such individual risk assessments.
- 1.67 In the main, therefore, I have referred to such persons by cipher. I do not consider that this in any way detracts from the findings I make nor the fulfilment of my Terms of Reference. However, I have made some exceptions where, for example, the connection of some persons to the matters I have been asked to review has

been the subject of media reporting, or has been made public in the course of court proceedings or public inquiries, or where persons have themselves chosen to reveal their identities and roles through published interviews or memoirs.

1.68 I have also made an exception in the case of persons whose names are widely in the public domain by virtue of their occupations, such as Members of Parliament, journalists, lawyers and members of the judiciary and some members of the Stevens Investigation team.

1.69 In cases where I have decided that a person should not be named I have allocated them a cipher comprising a prefix letter indicating the broad category to which they belong and a number within that category. The categories are as follows:

Letter	Category of person
A	Army personnel
G	Government Department/Agency personnel
L	Loyalists
R	RUC personnel
T	Targeted persons

Terminology

1.70 I must also briefly mention the terminology used throughout this Report. I have often interchangeably used the words 'killing', 'death' and 'murder' but do not intend to imply any greater or lesser degree of culpability by my use of these terms. Similarly, in order to avoid repetition, the words 'terrorist' and 'paramilitary' have been used interchangeably. I have referred to the Ulster Defence Association (UDA) throughout, even where violent acts were claimed by the Ulster Freedom Fighters (UFF). It quickly became apparent to me that the notion of a separate UFF was in fact a fiction, though that is not to say that certain members of the UDA were not significantly more militant and violent than others.

1.71 Where I have used expressions such as "I conclude that ..." or "I am satisfied that ...", it is because my findings are underpinned by what I regard as credible evidence or because I am driven to an inescapable inference that does not appear to allow for a rational alternative. However, as I note above, I use the term 'evidence' in relation to the sources of information I have before me and do not mean to imply that such material would necessarily be admissible in either civil or criminal proceedings.

Previous investigations and the Judgment in *Finucane v The United Kingdom*

1.72 My Terms of Reference direct me to draw from the extensive investigations into the murder of Patrick Finucane that have already taken place. These are summarised below.

The first Stevens Investigation (Stevens I)

1.73 I have been provided with full access to the archive of the three investigations undertaken by Sir John Stevens starting in September 1989.

1.74 I set out below Sir John Stevens' Terms of Reference relating to each of those three investigations, from which it will be seen that only the second and third investigations were directed specifically towards Patrick Finucane's murder. Whilst the first investigation was of a wider-ranging nature, I have included it in my Review to the extent that it led to the disclosure of Brian Nelson's involvement in criminal acts.

1.75 On 20 September 1989 the Chief Constable of the RUC wrote to Sir John Stevens, the then Deputy Chief Constable of the Cambridge Constabulary, appointing him to investigate alleged leaks of information by the security forces in Northern Ireland. The letter set out the Terms of Reference of the investigation (Stevens I) as follows:

"To investigate the alleged leak of information to Loyalist terrorist groups as disclosed by the television reporter, Mr Chris Moore, and allegedly associated with the murder of Mr John Anthony Loughlin Maginn.

To investigate the alleged disappearance of confidential material from Ballykinler Army Camp on or about 1st September 1989.

To investigate the disappearance of photographs of alleged PIRA [Provisional Irish Republican Army] terrorists from Dunmurray Police Station on or about 11th August.

In consultation with [the Chief Constable of the RUC], to investigate any associated matters directly relevant to the above that come to life in the course of your enquiry.

To make relevant recommendations regarding these aspects."

The prosecution of Brian Nelson

1.76 The FRU agent Brian Nelson was arrested during the course of Stevens I and charged with a total of 35 offences.

1.77 Nelson appeared before Belfast Crown Court on 22 January 1992, when he pleaded guilty to a number of these offences, including five counts of conspiracy to murder. The case was adjourned until 29 January when defending Counsel

called A/05, the former Commanding Officer of the FRU, to give evidence in mitigation. Nelson appeared again before the Court on 3 February, when he was given the following sentences of imprisonment, all to be served concurrently:

- ten years for each of the five offences of conspiracy to commit murder;
- four years for each of two offences of collecting terrorist information;
- three years for each of the twelve counts of aiding, abetting, counselling and procuring others to possess or collect terrorist information; and
- six years for one count of possession of a firearm (a sub-machine gun) with intent to endanger life.

1.78 I consider the prosecution of Nelson at length in Chapter 24 of this Report.

The second Stevens Investigation (Stevens II)

1.79 I have not found a record of any self-contained Terms of Reference having been given to Sir John Stevens regarding his second investigation (Stevens II). However, it seems to have been brought about by a combination of events.

1.80 The first of these was the disclosure to the Crown Solicitor's Office by Nelson's trial solicitor that if civil proceedings were to be brought against Nelson by Geraldine Finucane, Patrick Finucane's widow, he might feel compelled to give evidence which would include a number of serious allegations against Crown Servants. Those allegations were set out in a lengthy document which I shall refer to throughout this Report as Nelson's 'journal'.¹⁸

1.81 That disclosure resulted in the DPP(NI) giving a Direction to the RUC Chief Constable on 2 April 1993 to investigate the allegations made in Nelson's 'journal'. In a letter to the Chief Constable dated 18 March 1994 submitting his Report into those additional allegations, Sir John Stevens summarised them as follows:

- "1. After Nelson took over as the UDA's intelligence officer his intelligence material was constantly updated by the army.*
- 2. Someone he refers to as 'the boss' ... gave him instructions on how to blow up a fuel dump in Cork.*
- 3. His handler provided him with an address in connection with the McDaid murder.*
- 4. Throughout his time in the UDA information was fed to him by the army.*
- 5. Prominent people assisted the UDA.*
- 6. As soon as Finucane's name was mentioned to him he passed on the information to his handler."*¹⁹

¹⁸ Letter from the MoD to the RUC, 5 April 1993

¹⁹ Letter from John Stevens to the Chief Constable, submitting his report into the additional allegations concerning Nelson, which refers to the above Direction (albeit he states its date to be 1 April 1993), 18 March 1994

1.82 It appears that the Terms of Reference for Stevens II were then expanded as a result of the Panorama programme ‘Dirty War’, broadcast in June 1992. The DPP(NI) gave a further interim Direction to the Chief Constable on 3 June 1994, which referred to the following allegations made by Panorama:

“1. Nelson was targeting the IRA Belfast commander of operations and ‘to help them plan the killing the gunman asked Nelson to take a photograph of the house. In his journal Nelson says his handlers got the Army to take the photograph. They did not want their agent getting caught. A handler then traced [i.e. copied] the photograph for Nelson. By doing this he had given practical assistance to the murder gang.’

2. Nelson stated that his handlers gave him the address of 3 persons whom the IRA were planning to kill.

3. Nelson checked the registration number of Maskey’s car with a handler during the currency of the conspiracy to murder Maskey.”²⁰

1.83 Noting that “[a]n additional report has now been received and considered”, and that Nelson had been interviewed in respect of the above matters, the interim further Direction instructed the Chief Constable that Nelson’s handlers should be interviewed in respect of those allegations.

1.84 Third, a letter dated 22 December 1994 from Sir John Stevens to the DPP(NI) suggests that at a meeting on 6 December 1994 his Terms of Reference had been enlarged again in relation to a “*CRUCIBLE computer record for P J FINUCANE*” containing “*antecedent history on FINUCANE, including general information about friends, relatives and associates*” but which made “*no references ... to the targeting of FINUCANE prior to the murder, nor are there any further leads in relation to evidence against any person*”.

The British Irish Rights Watch and Langdon Reports

1.85 On 12 February 1999 (the tenth anniversary of Patrick Finucane’s murder), British Irish Rights Watch (BIRW), a human rights campaign organisation, delivered to the British and Irish Governments, and to the United Nations’ Special Rapporteur on the Independence of Judges and Lawyers, a confidential report, ‘*Deadly Intelligence: State Involvement in Loyalist Murder in Northern Ireland*’. An accompanying press release stated that:

“In summary, the report alleges that through its secret Force Research Unit (FRU), a branch of army intelligence, the state sought out loyalist Brian Nelson and infiltrated him into the Ulster Defence Association, which carried out its campaign of murder under the flag of convenience of the Ulster Freedom Fighters (UFF). FRU used Nelson to enhance the loyalists’ intelligence on people it was targeting for murder, and that intelligence rapidly spread through other loyalist paramilitary groups.

²⁰ DPP(NI) interim Direction to Chief Constable, 3 June 1994

The report examines in depth the murder of three innocent victims of this deadly enterprise: Patrick Finucane, Terence McDaid, and Gerard Slane.”²¹

1.86 The BIRW Report was to have two consequences. First, the Northern Ireland Office asked Anthony Langdon, a retired Home Office senior civil servant, to prepare a report for the then Secretary of State for Northern Ireland, the Rt Hon Mo Mowlam MP, to enable her to take a view on the Patrick Finucane case. Second, it was to lead Sir John Stevens to undertake a third investigation.

1.87 In a meeting I had with Mr Langdon during the course of the Review, he told me that he had been greatly assisted by material provided to him by the RUC Chief Constable and the Security Service’s office in Northern Ireland. The former comprised information obtained during the course of the Stevens II Investigation. He also took into consideration the BIRW report and the Blleloch Report (discussed in Chapter 4). Mr Langdon duly presented his report to the Secretary of State in mid-1999.

The third Stevens Investigation (Stevens III)

1.88 In the light of the BIRW Report, the then RUC Chief Constable, Sir Ronnie Flanagan, commissioned Sir John Stevens as follows:

“... not only to conduct the investigation I originally sought on behalf of the DPP into the document presented to the Secretary of State for Northern Ireland by British/Irish Rights Watch, but also to review the investigation of the murder of Patrick Finucane in its entirety.”²²

1.89 In his ‘Overview and Recommendations’ relating to this third investigation, Sir John Stevens stated:

“The significance of the role played by an RUC informant William Stobie in events surrounding the murder of Patrick Finucane led to two principal, further matters being added to my remit. Firstly I undertook to re-investigate the murder in 1987 of a young student Brian Adam Lambert and secondly to examine certain issues surrounding the handling of agents.”²³

1.90 The handling of agents at this time is central to my Review, and will be discussed in considerable detail in Chapter 4.

The prosecution of William Stobie

1.91 William Stobie was a loyalist who had handled weapons for the UDA. At the time of Patrick Finucane’s murder he was also working as an agent of the RUC SB. I discuss Stobie’s involvement in the murder in more detail in Chapter 22.

1.92 In June 1990 Stobie contacted a journalist, Neil Mulholland, and provided him with an account of his activities in the UDA and as an RUC SB agent. Later that

²¹ BIRW website publication, February 1999

²² Letter from Sir Ronnie Flanagan to Sir John Stevens, 13 May 1999

²³ Stevens III Investigation, *Overview and Recommendations*, 17 April 2003, para 1.6

year Mulholland approached the police regarding these confessions, and Stobie was arrested and interviewed at Castlereagh Police Station. Whether because he was a journalist and did not wish to be seen to divulge the name of his source, Mulholland refused to sign a witness statement at that stage. The consequence was that no proceedings were brought against Stobie at that time.

- 1.93 Stobie was arrested again in June 1999 and charged with conspiracy to murder Brian Adam Lambert and with the murder of Patrick Finucane. These cases appeared to rest largely on the evidence of Neil Mulholland who had by then signed a witness statement. However, at Stobie's trial Mulholland declined to testify due to ill health, and in November 2001 a verdict of not guilty was entered. Two weeks later Stobie was murdered by loyalist paramilitaries.

The Cory Collusion Inquiry

- 1.94 In August 2001 the British and Irish Governments issued a statement which formed the basis of the 'Weston Park Agreement', by which the two Governments agreed that:

"[C]ertain cases from the past remain a source of grave public concern, particularly those giving rise to serious allegations of collusion by the security forces in each of our jurisdictions. Both Governments will therefore appoint a judge of international standing from outside both jurisdictions to undertake a thorough investigation of allegations of collusion in the cases ...

*If the appointed judge considers that in any case this has not provided a sufficient basis on which to establish the facts, he or she can report to this effect with recommendations as to what further action should be taken. In the event that a Public Inquiry is recommended in any case, the relevant Government will implement that recommendation."*²⁴

- 1.95 Patrick Finucane was one of the cases to be investigated in accordance with the Weston Park Agreement.

- 1.96 In April 2004 Justice Cory produced his Report relating to Patrick Finucane's murder. In his Foreword, he made clear that he had been given "*the preliminary role of assessing whether there is a case to be answered as to possible collusion, in a wide sense*". However, he did come to the following provisional conclusion:

*"[T]here is strong evidence that collusive acts were committed by the Army (FRU), the RUC SB and the Security Service. I am satisfied that there is a need for a public inquiry."*²⁵

- 1.97 It is well known that Mrs Finucane and other members of the family were, and remain, extremely disappointed with the Government's decision to establish this Review rather than a public inquiry. Indeed, they commenced proceedings to seek a judicial review of that decision which, at the date of publication of this Report, have yet to be finally determined. As the mere recipient of the commission

²⁴ *Implementation of the Good Friday Agreement*, 1 August 2001, paras 18–19

²⁵ *Cory Collusion Inquiry Report*, 1 April 2004, para 1.293

I was given, I have had no involvement in the judicial review proceedings, and I have accordingly continued with my Review in the absence of any court order that I should desist.

The European Court of Human Rights case

- 1.98 In July 1994 Geraldine Finucane applied to the European Court of Human Rights alleging that, because her husband's death had occurred in circumstances giving rise to suspicions of collusion between his killers and the security forces, the Government was under an obligation under the ECHR to mount an independent, effective, prompt and open investigation into the murder. She argued that it had failed to do so and was therefore in violation of Article 2 of the ECHR, which states that "*Everyone's right to life shall be protected by law.*"²⁶
- 1.99 In 2003 the Court found in Mrs Finucane's favour, with the Judges holding that the inquest into Patrick Finucane's death and the subsequent Stevens Investigations did not individually or cumulatively satisfy the requirements of Article 2.²⁷ The Court's findings are discussed in detail in Chapter 23.

Director of Public Prosecutions (Northern Ireland)

- 1.100 In June 2007 the DPP(NI) released the reasons for his decision on potential prosecutions ensuing from the findings of Stevens III, stating that:
- "The Test for Prosecution is met where the Director is satisfied that the available and admissible evidence is sufficient to provide a reasonable prospect of conviction and prosecution is required in the public interest."*²⁸
- 1.101 The DPP(NI) concluded that the evidence in respect of criminal proceedings against FRU or RUC officers in connection with the murder of Patrick Finucane was insufficient to meet this test.²⁹
- 1.102 As indicated above, an abundance of material relating to the prosecutions of Brian Nelson and William Stobie, and indeed of numerous others who were charged with criminal offences arising out of Sir John Stevens' three investigations, has been made available to me and was most helpful in my understanding of the complex issues involved. The extensive Shawcross exercise that took place to ascertain where the public interest lay in relation to any decision as to whether to prosecute Brian Nelson, which I consider in detail in Chapter 24, was particularly helpful. However, I did not see it as any part of my remit to examine the DPP(NI)'s decisions as to whether or not to bring such proceedings or, as sometimes happened, to discontinue them. Indeed, to have done so would have run counter to the clear direction in my Letter of Appointment that I was to have no remit to establish criminal liability.

²⁶ European Convention on Human Rights, Art. 2(1)

²⁷ *Finucane v The United Kingdom* (Application No. 29178/95), 1 July 2003

²⁸ *Statement by the Director of Public Prosecutions for Northern Ireland in Relation to Decisions as to Prosecution arising out of the Stevens III Investigation*, p. 5, para 10

²⁹ *Ibid.*, p. 6, para 16

The right to life

- 1.103 Prior to the Human Rights Act 1998, which incorporated the ECHR into domestic law, the Government had a duty to protect the lives of its citizens, both at common law and under Article 2 of the ECHR, which had been ratified by the United Kingdom in 1951. Since 1953, courts and public authorities in the United Kingdom have been bound in international law to ensure that Convention rights are not breached.
- 1.104 Article 2 constitutes one of the most important rights in the Convention, from which no derogation is possible even in times of war or public emergency, save in respect of deaths resulting from lawful acts of war (Article 15(2)). As Lord Bridge of Harwich has stated, “*The most fundamental of all human rights is the individual’s right to life.*”³⁰
- 1.105 Article 2 of the ECHR in essence imposes three duties on the state. First, there is the duty not to take a person’s life intentionally. Second, there is a positive duty to take all reasonable steps to protect a person’s right to life. This duty requires the putting in place of effective criminal law provisions and a law enforcement machinery, and also requires a State to take preventative operational measures which might reasonably be expected to safeguard the life of an individual when the authorities know, or ought to be aware, of a real risk to life to that individual from the criminal acts of a third party.³¹ This positive obligation arises only when the risk is real and immediate, but it arises irrespective of whether the danger posed is to a member of an illegal paramilitary organisation, or to an agent of the State discharging his lawful functions.
- 1.106 Third, the concept that “*everyone’s right to life shall be protected by law*” imposes a procedural obligation on States to ensure that there will be an independent and effective investigation where it appears that agents of the State may have been implicated in killing. As noted earlier in this chapter, this was recognised by the Judges of the European Court of Human Rights in finding that the various investigations into Patrick Finucane’s death were not sufficiently independent or effective.³²
- 1.107 The murder of Patrick Finucane engages, to a varying degree, all aspects of Article 2 outlined above. As part of my Review I have considered the direct role of agents of the State in the murder. The issue of whether State entities knew that Mr Finucane’s life was at real risk, and if so what, if any, steps they took, also falls for detailed consideration.
- 1.108 Finally, the European Court, in the case of *Finucane v The United Kingdom*, has already considered the issue of independent and effective investigation, finding that in this respect Article 2 has been breached.

³⁰ *R v Secretary of State for the Home Department, ex parte Buqdaycay* [1987] AC 514, 351

³¹ *Osman v UK* (2000) 34 EHRR 245

³² Note that there is also recent case law on this issue: *Re McCaughey* [2011] UKSC 20

- 1.109 Respect for Article 2 lies at the heart of the rule of law. British Governments have continued to stress that the security forces operated in Northern Ireland to maintain the rule of law. If this is to mean more than a rhetorical flourish, it must be seen to manifest itself wherever wrongdoing by State officials is suspected or exposed. Times of violence put the institutions of the State to the test. The duty of a State is to strive to protect its citizens from the consequences of such violence on the one hand, whilst on the other not falling into the temptation to take that perilous step from legal to illegal conduct on the basis that exceptional circumstances warrant exceptional remedies. The State must be expected to operate to a higher standard than those operated by paramilitaries.
- 1.110 In the light of obligations flowing from both domestic and international law, the UK authorities were presented with a fundamental dilemma during the Troubles in Northern Ireland. They were required on the one hand to have regard to the paramount duty of a State to protect the life of its citizens, including its own military and law enforcement personnel, and on the other, as terrorists were essentially categorised as ordinary criminals, to have minimum resort to the use of lethal force, save in lawful self-defence, in dealing with paramilitary terrorists of any creed. However, the ground rules of counter-terrorism strategy must be that the Army and the security forces conduct all counter-terrorism operations within the law.

PART 1: THE CONTEXT TO THE MURDER OF PATRICK FINUCANE

Chapter 2: The historical and political context

- 2.1 The course of the Northern Ireland Troubles, whilst still highly controversial, has been extensively studied and debated. In this chapter I outline the historical, political and security context to the events that I am reviewing.
- 2.2 Professor Richard English, the Bishop Wardlaw Professor of Politics at the University of St Andrews, acted as the Historical Adviser to my Review. I met Professor English to discuss my work on several occasions and considered a detailed background report which he submitted on the historical and political context to this case. This chapter draws heavily from Professor English's extremely valuable contribution.

The Northern Ireland Troubles

- 2.3 Although the violence in Northern Ireland was of a lower intensity than in many other conflicts, the human costs of the Troubles were enormous. In a comparatively small geographical area, over 3,000 people were killed during the course of the conflict. Using the respected 'Lost Lives' publication, Figure 1 below shows the responsibility for deaths during the Troubles.

Figure 1: Responsibility for deaths during the Troubles

Groups	No. of deaths	% of total
IRA	1,768	47.5
Other republicans	384	10.3
Republican total	2,152	57.8
UDA	431	11.6
UVF	550	14.8
Other loyalists	131	3.5
Loyalist total	1,112	29.9
Army	62	6.5
RUC	51	1.4
Other security force	254	6.8
Security forces total	367	9.9

- 2.4 By the late 1980s, Northern Ireland had been mired in two decades of sustained and often brutal violence. The already pronounced sectarian divide between the largely Protestant unionist majority and the largely Catholic nationalist minority had been exacerbated by the conflict. A series of attempts in the 1970s to find a political solution – including direct talks between the UK Government and the Provisional Irish Republican Army (PIRA) in 1972 and an attempt at a power-sharing arrangement in the mid-1970s – all ultimately failed.

- 2.5 The 1980s was the only decade of the Troubles which saw unbroken violence without any ceasefires being called by the paramilitary groups. As Professor English noted in his report:

“Political violence in Northern Ireland had – by early 1989, when Mr Finucane was murdered – become habitual, self-sustaining and vicious, albeit at considerably lower levels than had been prevalent in the earlier years of the post-1969 conflict.”¹

- 2.6 The situation in Northern Ireland must have seemed bleak during the 1980s, with the prospects of peace, on the face of it, little changed by end of the decade. For the purpose of this Review, I will focus on some of the key historical and political themes of the late 1980s. I start with a key contextual event in the form of the 1985 Anglo-Irish Agreement. I then consider the positions of the three groupings central to my Review: the security forces; loyalist paramilitaries; and the legal profession. It is also necessary to provide an overview of the pattern of violence in the late 1980s.

The Anglo-Irish Agreement

- 2.7 The signing of the 1985 Anglo-Irish Agreement was a key event in setting the political context to the events of the late 1980s in Northern Ireland. Professor English gave the following account of the Agreement:

“Co-signed on 15 November 1985 in Hillsborough, County Down, by UK Prime Minister Margaret Thatcher and Republic of Ireland Taoiseach Garret FitzGerald, the deal provides necessary background to late-1980s loyalism and state responses to it in terms of political and also operational context. For the Hillsborough agreement profoundly changed the political setting for Northern Ireland. While it affirmed that Northern Ireland’s status would not be altered without the consent of the majority there (and recognised ‘that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland’), it also set up an inter-governmental conference (by means of which London and Dublin would address a wide range of matters in relation to the north), and it pledged the two governments to work on issues of security, human rights, communal identities and reconciliation; and it reflected their shared preference for some kind of devolved political arrangement in the north. In other words, the Republic of Ireland was now to have an on-going, consultative role in the affairs of Northern Ireland, and could genuinely claim to represent northern minority interests.”²

- 2.8 The signing of the Anglo-Irish Agreement prompted a furious backlash from the majority unionist population:

¹ Report of Professor English to the Review, p. 1

² Ibid., p. 7

“It is hard, perhaps, now quite to recreate the degree of horror and shock which unionists and loyalists felt at the perceived betrayal embodied in the Anglo-Irish Agreement, both in terms of its implications (for increasing Dublin authority in Northern Ireland, and the permanent presence of Irish officials near Belfast at an Anglo-Irish Secretariat), and in terms of the secretive manner in which it was constructed, with nationalists having been involved in its gestation while unionists were excluded. This November 1985 development did provide a vital context in terms of unionist and loyalist political response in the late-1980s, and in terms of state engagement with unionism and loyalism.”³

- 2.9 Some hardline unionists already on the edge of constitutional politics effectively abandoned it, with the post-Agreement era seeing the emergence of groups such as Ulster Resistance and the Ulster Clubs, both of which were willing to use violent means if necessary to counteract the perceived threat from Dublin. Members of Ulster Resistance would later play a crucial role in repeated attempts to import arms into Northern Ireland, some of which were successful.
- 2.10 The Agreement was partly designed in order to strengthen the position of the constitutional nationalist party, the Social Democratic and Labour Party (SDLP), against Sinn Féin. The British Prime Minister, the Rt Hon Margaret Thatcher MP, also placed a high priority on the Irish Government’s commitment to increase security measures against the IRA.
- 2.11 Given that the Agreement also underpinned the consent principle – under which the majority in Northern Ireland could decide its constitutional future – it might be thought that this represented a strategic defeat for Irish republicanism. In practice, as Professor English highlighted in his report to the Review, republicans stridently criticised the partitionist basis of the Agreement whilst simultaneously welcoming the ‘concessions’ within the Agreement which they saw as the direct result of republican campaigning.
- 2.12 In summary, therefore, whilst aspects of the Agreement would ultimately form the basis for parts of the Good Friday Agreement 13 years later, by the late 1980s it seemed to many in Northern Ireland as though this was merely another political initiative that had failed to bring the hoped-for peace. This period saw some political figures take tentative steps to open up dialogue with paramilitary groups to explore the potential for peace. The British and Irish Governments opened up channels of communication with republicans through intermediaries, whilst the SDLP leader John Hume took part in publicised talks with the President of Sinn Féin, Gerry Adams.
- 2.13 I turn now to consider the position in the late 1980s of the three main groupings relevant to my Review: the security forces; loyalist paramilitaries; and the legal profession.

³ Ibid., pp. 3–4

The security forces

- 2.14 The security forces were charged with seeking to tackle violence in Northern Ireland during the Troubles and faced grave dangers throughout this period in seeking to discharge their duties. Some 509 members of the locally recruited Royal Ulster Constabulary (RUC) or Ulster Defence Regiment (UDR) (later the Royal Irish Regiment) were killed, whilst 503 members of the regular British Army also lost their lives. Tens of thousands were injured, some of whom faced horrific life-long disabilities. Many officers in the RUC or the UDR were forced to move home as a result of the paramilitary threat against them and their families. In view of the grave danger that they faced, members of the security forces had to be constantly vigilant to protect themselves and their families from the risk of terrorist attack.
- 2.15 The nature of the UK Government's security strategy shifted during the course of the Troubles. From 1976 onwards, the UK Government instituted a policy of 'police primacy' in the context of a general change in security strategy towards 'Ulsterisation'. Professor English noted in his report that:
- "... in broad terms, police primacy offered numerous advantages – the police were professionally much better suited than the Army to policing, and they also had more intimate local knowledge and what might be termed an Ulster vocationalism. In other words, many of those in the RUC had grown up acculturated to an ongoing battle between unionism and nationalism in Ulster, and were committed to this in more than merely professional career terms – it was a true vocation."*⁴
- 2.16 Professor English also outlined the effect that the policy of Ulsterisation had in heightening the localised and often sectarian dynamic of the conflict. He noted how:
- "... the reduction in the role of the mainstream British Army involved an increase in the relative role of the locally-recruited Ulster Defence Regiment (UDR) and so there emerged an infrequently highlighted but very important development: with policy primacy and Ulsterization, the internal, Northern Irish dynamics of the conflict were highlighted, since the war was very much now one between Irish nationalists and republicans on the one side and Ulster unionists and loyalists on the other (with the RUC and UDR representing the main face of the state in taking on Irish republican paramilitaries). This undoubtedly angered republicans, who preferred to cast the conflict as one between Ireland and Britain."*⁵
- 2.17 In the context of a policy of 'Ulsterisation', the impact of the Anglo-Irish Agreement on the security forces was considerable. The RUC, in particular, had to uphold law and order during a period in which many in the majority unionist community protested vigorously against what they saw as a betrayal by the State. Police

⁴ Ibid., p. 22

⁵ Ibid.

officers – already under severe threat from republican paramilitaries – found themselves under attack from some in the loyalist community. Professor English described this dynamic as follows:

“After 1985 and the Anglo-Irish Agreement, some policing activity (for example, regarding the policing of loyalist parades) had generated deep enmity between the RUC and paramilitary loyalism. In March–April 1986, for example, the banning of an Apprentice Boys’ march in Portadown prompted sharp encounters between loyalists and the RUC, with many policemen being injured amid serious rioting, and over a hundred plastic bullets being fired by the RUC. Similar clashes were to occur in ensuing months in similar circumstances. By May 1986, it was already being reported that there had been hundreds of instances of intimidation against the RUC by loyalists in the wake of the Anglo-Irish Agreement, again underlining the degree to which friction, rather than cosiness, was frequently evident in the RUC–loyalist relationship during this period. Over five hundred police homes were attacked and over a hundred police families were forced to move as a result of such intimidation.”⁶

The UDA and loyalism in the late 1980s

2.18 The Ulster Defence Association (UDA) were a paramilitary organisation that had originally sprung up in Protestant areas of Northern Ireland during the violent conflict of the early 1970s. Organised loyalist violence had preceded the establishment of the UDA, with the paramilitary Ulster Volunteer Force (UVF) having killed three Catholics in sectarian attacks in Belfast in 1966, several years before the violent confrontations of 1969 led to the deployment of the British Army to Northern Ireland.

2.19 In his report for my Review, Professor English gave the following broad background account of the UDA:

“The UDA was an aggressively loyalist paramilitary organization, founded in 1971, effectively then as a gathering together of local loyalist vigilante or defence groups which had sprouted up as inter-communal violence overran Northern Ireland at the start of the Troubles. Fiercely committed to retaining the Union of Great Britain and Northern Ireland, and prepared to use violence in pursuit of this aim, they were the largest loyalist paramilitary group in Ulster, and were responsible for 414 killings between 1971 and 2001. Deeply hostile towards Irish republicanism and Irish nationalism, and especially towards republican paramilitaries and their politicians and associates, the UDA carried out frequently sectarian violence, often of a very gruesome nature. But it is important to recognise that their blood-stained campaign was expressly political. At the heart of Northern Ireland’s Troubles was an essentially Clausewitzian argument: that you had to make the war more painful for your enemy than it would be for them to give you what you wanted ...

⁶ Ibid., p. 19

The UDA was initially a large-scale grouping. In the early-1970s, it drew in many people within working-class Protestant areas; it played a major role in demolishing the 1974 power-sharing experiment in Northern Ireland when it helped to orchestrate a loyalist strike in opposition to that venture (which was perceived as giving far too much power to Dublin and to Irish nationalists, and as generating the unwelcome dynamic towards a united Ireland). The UDA claimed to be aiming to defend Protestant areas from republican attack, to be using violence against republicans and their nationalist support communities in order to defeat republicanism, and to be prepared to use violence to prevent any future or threatened expulsion of Northern Ireland from the UK state. The organization at times exhibited a strong sense of a distinctively Ulster identity, complementing its fundamental loyalty to UK state membership.”⁷

2.20 The pattern of UDA violence during the Troubles varied significantly. The number of murders committed by the group peaked in 1972 at 71 before declining to a point where only one person was killed by the UDA in 1982. The years after the Anglo-Irish Agreement, however, saw a rise in loyalist violence, with 30 people killed by the UDA during the period 1987–89.⁸

2.21 Initially at least, loyalist paramilitaries did not play as prominent a part in the backlash against the Anglo-Irish Agreement as had first been feared. However, the sense of betrayal did endure and, as the PIRA campaign intensified in the late 1980s, loyalist paramilitaries too increased their levels of violence. The increase in loyalist violence in the late 1980s was a prelude to a sharp rise in loyalist violence in the early 1990s, fuelled by the rise of younger, more militant loyalist paramilitaries, greater access to weaponry, an increased willingness to target civilians in overtly sectarian attacks, and a retaliatory dynamic in the aftermath of PIRA atrocities. In August 1992 the UDA were finally proscribed by the UK Government as a terrorist group, though its rate of killing actually subsequently increased to a peak of 31 murders in 1993.⁹

2.22 Thus an important overall contextual point for my Review is that the UDA in the late 1980s was operating in an environment in which loyalist sentiment was turning increasingly militant. Professor English summarised the position as follows:

“... the loyalism which was faced in the late-1980s at the time of the Finucane killing was a revived one, stimulated to some degree by fears of UK state betrayal, and by a sense that more aggressive loyalist action was needed to protect Northern Ireland’s place in the UK from the republican enemy and from UK pusillanimity.”¹⁰

2.23 In addition to the political context in which the UDA operated, it is also important to provide a broad outline of the structure and activities of the UDA during this period. By the late 1980s the UDA were involved in a wide range of activities,

⁷ Ibid., p. 5

⁸ Statistics from David McKittrick et al., *Lost Lives*, Mainstream Publishing, 2004, p. 1553, Table 2

⁹ Ibid.

¹⁰ Ibid., p. 8

including terrorism, racketeering, drug dealing, robbery, fraud, 'prisoner support' networks, and the production of its own magazines and publications. For some loyalists, membership of the UDA seems to have involved little more than paying membership fees, attending meetings and drinking in favoured bars and clubs. However, a hardcore of UDA members were actively engaged in planning and carrying out acts of terrorism.

2.24 The UDA structure was divided into six geographical areas during the late 1980s (Londonderry, South-East Antrim, North Belfast, East Belfast, West Belfast and South Belfast).¹¹ Each geographical area was commanded by a UDA 'Brigadier' and sometimes also had a designated 'Military Commander', 'Intelligence Officer' and 'Quartermaster'. The six UDA Brigadiers formed an 'Inner Council', which held meetings that were sometimes also attended by other leading UDA figures. In practice, however, the degree of central control exercised by the Inner Council was limited: the Brigadiers supposedly in command of their areas sometimes had little influence over the younger gangs.

2.25 In West Belfast, the UDA were further sub-divided into 'Coys' and the Woodvale Defence Association (WDA). In practice, these structures were loose and highly changeable. Factors such as personality clashes and criminal activities sometimes dictated alliances within the UDA to a greater extent than the 'military' structure. Internal power struggles and feuds were a feature of the UDA throughout the late 1980s. Such power struggles resulted in the ousting of the UDA's 'Chairman' in March 1988 and the murder of James Pratt Craig in October 1988 (see Chapter 7).

The legal profession

2.26 In the context of a prolonged and localised armed conflict, the legal profession in Northern Ireland was placed in a precarious and unenviable position. The rule of law in Northern Ireland was under extraordinary strain during the late 1980s. Armed terrorist groups were conducting concerted and determined campaigns to overthrow the entire legal system. There was a fierce ongoing debate about the extent to which the legal framework in place in Northern Ireland either, as many nationalists contended, undermined human rights and due process through various emergency counter-terrorism provisions or alternatively, as many unionists argued, was insufficiently tough to enable the State to protect its citizens from terrorist atrocities.

2.27 In this context, those solicitors, prosecutors and judges seeking to administer and uphold the rule of law were working under difficult and dangerous conditions. The threat against defence solicitors representing individuals suspected of being republican paramilitaries was severe and will be outlined in detail in this report. The murder of Patrick Finucane was, however, in many respects a new departure because it was the first time during the Troubles that loyalist paramilitaries had murdered a practising lawyer.

¹¹ There was also a 'mid-Ulster' unit of some kind operational at times during this period

2.28 Up until 1989, the greatest single threat faced by the legal profession came from PIRA. At least 18 republican paramilitary attacks were carried out against individuals working in the prosecutorial and judicial system, which resulted in the murder of two magistrates, two county court judges, a member of the DPP(NI)'s office, and Lord Justice Gibson and his wife.¹² Judicial figures were seen by republicans as representatives of the State and were, therefore, targeted. On 7 December 1983, the IRA also murdered Edgar Graham, a rising unionist politician who was a law lecturer and barrister, at Queen's University, Belfast.

The pattern of violence during the late 1980s

2.29 It is difficult in a report of this nature to capture the full horror of the violence in Northern Ireland in the late 1980s. Whilst still much lower than in the early 1970s, the level of violence increased significantly during the period 1987–89.

2.30 Statistics alone can never give a full appreciation of the impact of the violence in such a concentrated area. However, it is worth recording that 66 people were killed as a result of the Troubles in 1986, whilst in the following years the numbers killed rose significantly. Some 106 people died in 1987 as a result of the violence; 105 in 1988; and 81 in 1989.

2.31 As I have already noted, loyalist paramilitary violence increased in the years following the Anglo-Irish Agreement. However, the greatest factor behind the increase in violence was a spike in IRA attacks after the successful importation of arms from Libya in the mid-1980s. PIRA killed 37 people in 1986, increasing to 58 in 1987, 66 in 1988 and 53 in 1989.¹³ These years saw some particularly horrific atrocities. In November 1987 PIRA bombed a Remembrance Sunday service in Enniskillen, County Fermanagh, killing 11 people. In June 1988 they killed six soldiers who had participated in a charity marathon in Lisburn, County Armagh.

2.32 Alongside the spike in PIRA violence came a series of organisational setbacks, including the killing of civilians at Enniskillen and elsewhere and the loss of experienced operators shot by the security forces. A feature of these years was a more pronounced intelligence-led, military response to identified PIRA operations. Professor English noted in his report for my Review that:

“... while the state was engaged on one front in trying to produce fruitful dialogue with paramilitaries, it simultaneously deployed more hard-edged, security-based responses too, and saw these different strands of approach as complementary rather than contradictory.”¹⁴

2.33 So whilst the controversies relating to the actions of State forces in the 1970s often related to the shooting of unarmed civilians (Bloody Sunday being the most notorious example), by the 1980s – in the context of an increasingly intelligence-led security response – political controversy centred on the security

¹² C. Blair, *Judicial Appointments: Research Report 5*, Criminal Justice Review of Northern Ireland, HMSO, 2000

¹³ David McKittrick et al., *Lost Lives*, p. 1553, Table 2

¹⁴ Report of Professor English to the Review, p. 10

forces shooting known terrorists in disputed circumstances. The shooting of eight members of PIRA at Loughgall, County Tyrone by the Special Air Service (SAS) on 8 May 1987 was the largest single loss of life suffered by PIRA during the conflict.

- 2.34 Professor English noted that the intelligence-led deployment of the SAS in this way, when combined with PIRA ‘mistakes’, had a significant long-term impact:

“Certainly, the IRA were having some real difficulties in the late 1980s, with twenty-six of their members dying violently during 1987–88, and with the Provos themselves unintentionally and self-damagingly killing twenty-seven civilians during the same period. They were losing important material (as with the seizure of 150 tons of ammunition and arms on the Eksund off the French coast in November 1987, or the huge arms find by the authorities at Five Fingers Strand in County Donegal in January 1988), and all of these developments were constraining the IRA’s capacity to prosecute their armed struggle with desired effect. There is no doubt that this state constraining (not defeating, but significant constraining) of the IRA played a major role in leading the republican leadership to opt for a different path forward, and to engage with the politics of the peace process in Northern Ireland.”¹⁵

- 2.35 Alongside the broad trends in the conflict, it is important in the context of the events that I am reviewing to highlight a series of high-profile, connected killings during the course of 1988. The events of March 1988 had a particularly traumatic impact. First, on 6 March 1988, the SAS shot three members of PIRA, Mairead Farrell, Danny McCann and Sean Savage, in Gibraltar. Ten days later, as the funerals of the three were being held in Milltown cemetery in West Belfast, the loyalist, Michael Stone, attacked the mourners using hand grenades and weapons. Three people were killed, including a member of the IRA, Caoimhín Mac Brádaigh.

- 2.36 On 19 March 1988, two Army corporals drove into the funeral procession for Caoimhín Mac Brádaigh in Andersonstown, West Belfast. Believing themselves to be under attack from loyalists, the crowd dragged the soldiers from the car. The IRA subsequently drove the men to nearby waste ground and shot them. The photograph of Father Alec Reid administering the last rites over the stripped and beaten body of Corporal David Howes became one of the most harrowing and iconic images of the Troubles.

- 2.37 This series of deaths subsequently gave rise to some highly emotive court cases, which thrust the legal advocates of those involved into the public spotlight. The well-known solicitor Paddy McGrory represented the families of those killed in Gibraltar at the inquest into the deaths. Patrick Finucane represented Patrick McGeown when he was accused of involvement in the murders of Corporals Howes and Woods.

¹⁵ Ibid., p. 15

- 2.38 As was a feature of the Northern Ireland Troubles, these events fuelled further retaliatory violence. As I outline in this report, Paddy McGrory, Patrick McGeown and Patrick Finucane all subsequently became targets for loyalist paramilitaries. The IRA used one of the guns taken from Michael Stone during the Milltown cemetery attacks to murder a UDR Lance Corporal in front of his family on 2 August 1988, and an RUC officer on 13 September 1990.

Overview

- 2.39 The murder of Patrick Finucane on 12 February 1989 can only be properly understood by an appreciation of the context of the violence of the late 1980s in Northern Ireland. As Professor English noted in his report for my Review:

“... the sectarian, visceral emotions involved in the Northern Ireland Troubles – on all sides: republican paramilitaries, loyalist paramilitaries, state forces – do need to be factored into assessments. If there was collusion by the state in the killing of Mr Finucane, or obstruction in the process of convicting those responsible for his death, then such actions occurred within a febrile, vengeful context – a context which would offer no justification for such egregious acts, but which has to be taken into consideration when assessing the likelihood of their occurrence.”¹⁶

¹⁶ Ibid., p. 24

Chapter 3: Intelligence structures

- 3.1 There can be no attempt to do justice to my mandate without an understanding of the structure of the intelligence community in Northern Ireland at the material time. In this chapter, therefore, I consider how this network of structures and the senior individuals within them operated, how they co-ordinated their efforts in fighting terrorism, and the nature of the working relationships between the different agencies.

The structure and roles of the intelligence agencies

- 3.2 The intelligence networks in Northern Ireland were developed piecemeal over a number of years, often in response to specific events during the Troubles. A Security Service briefing paper drafted in September 2002 described the historical background of the intelligence structures as follows:

“The complex intelligence machinery in Northern Ireland was grown out of the history of security emergencies and the different, complementary and supportive roles played in them over the years by the intelligence agencies and security forces.”¹

- 3.3 Throughout the period of direct rule after 1972, the Secretary of State for Northern Ireland had constitutional responsibility for the administration of law and order in Northern Ireland. The Northern Ireland Office (NIO) advised Government Ministers on security policy issues, including legal and resourcing issues and information strategy.
- 3.4 The Secretary of State was supported in his responsibilities by the NIO's Permanent Secretary and by three primary security advisers, namely:
- the Chief Constable of the Royal Ulster Constabulary (RUC) who, in accordance with the principle of 'police primacy', had overall responsibility for dealing with all forms of crime, including terrorist crime and, therefore, security operations;
 - the General Officer Commanding (GOC) Northern Ireland, who provided military support to meet the requests of the RUC, from the resources allocated to him by the Ministry of Defence; and
 - the Director and Co-ordinator of Intelligence (DCI), a senior officer of the Security Service, who was the Secretary of State's principal intelligence adviser. I consider his role and functions in more detail at paragraph 3.29 below.

¹ Security Service, *The Intelligence Organisation in Northern Ireland*, 30 September 2002

- 3.5 I deal with the RUC, the Army and the Security Service in turn below, before considering the mechanisms in place to direct and co-ordinate the activities of these organisations.

The Royal Ulster Constabulary

- 3.6 On 25 March 1976, the then Secretary of State for Northern Ireland, the Rt Hon Merlyn Rees, set out the UK Government's policy of 'police primacy'. This policy in effect gave the RUC the lead responsibility for tackling the threat of terrorism in Northern Ireland.
- 3.7 Within the RUC it was the Special Branch (SB) which had the lead responsibility for gathering and exploiting intelligence on republican and loyalist terrorist activity in Northern Ireland. The SB also gathered intelligence on espionage, other serious crime and threats posed to public order throughout Northern Ireland, deploying a wide range of intelligence-gathering assets, including surveillance and a significant number of human agents.
- 3.8 The structure of the RUC SB was sub-divided into regions, with agent-handlers attached to specific RUC stations. Although the sub-divisions of the RUC SB in practice had a degree of autonomy, each handler and unit ultimately reported into the Special Branch Headquarters (SB HQ).
- 3.9 Units within the SB HQ were responsible for the assessment and dissemination of intelligence. Section E3A dealt with republican terrorism whilst another, E3B, dealt with loyalist terrorism. In the late 1980s E3B consisted of around five officers supervised by a Chief Inspector. The officers worked on daily and weekly intelligence assessments, and on the dissemination of intelligence reports.² There was an Intelligence Collation Section (ICS) within the SB HQ but this unit generally worked only on republican terrorism.
- 3.10 It is apparent that the E3B section was in practice limited in its ability to assess intelligence relating to loyalist terrorism. A Security Service report commissioned by the Chief Constable in December 1988 concluded that E3B "*has neither the time, resources or a sufficient data base to collate and analyse intelligence*".³
- 3.11 The RUC SB were of critical importance in the sphere of intelligence and ran the majority of agents in all terrorist groups. They ran registered agents and received information from individuals known as 'casual contacts'. Registered agents were given a reference number and a code name. They were usually met fairly frequently by their handlers and given a regular financial payment, along with the possibility of reward payments for particularly valuable intelligence. There were performance-related reviews of registered agents.
- 3.12 The system for casual contacts was more informal. There appears to have been, in theory, an understanding that a 'contact' would become a registered agent if they were judged to be suitable after the third meeting with their prospective handlers.

² Security Service report on E3 commissioned by the RUC Chief Constable, 1988

³ *Ibid.*, para 29

- 3.13 SB agent-handlers reported into the RUC Source Unit, which was headed by a Detective Chief Inspector. The Source Unit debriefed agent-handlers after they had met with a source. Written debrief forms were produced which outlined the intelligence received from the agent. Brief notes were made in the Daily Intelligence Book of the information received from the agent.
- 3.14 The intelligence received from an agent was subsequently summarised in an RUC document known as an SB50. These were typically brief summaries of the intelligence received from an agent and were often produced in very guarded fashion in order to protect the identity of the source. SB50s designed for onward transmission to other agencies were transcribed into an intelligence document known as a RIRAC.

The British Army

- 3.15 The Army acted in support of the RUC and was involved in many aspects of intelligence. The critical area of intelligence-gathering relevant to my Review is the Army's recruitment and handling of agents. The Force Research Unit (FRU) were a covert Army agent-running unit formed in 1982. The Army had run agents in Northern Ireland for many years, though responsibility had previously rested with separate Brigade Research Units.
- 3.16 In his 1990 statement to Stevens I, the FRU's former Commanding Officer, A/05, explained the FRU's role as follows:
- "The secret role of the FRU is to obtain intelligence from secretly penetrating terrorist organisations in Northern Ireland by recruiting and running agents and informants. This role is vital to counter terrorist operations because only the 'inside knowledge' provided by agents can lead to a true understanding of the terrorists and their intention."*⁴
- 3.17 The FRU's structure consisted of an HQ and four regional units: North Detachment, West Detachment, East Detachment and South Detachment. Brian Nelson was run from the East Detachment FRU, which covered the Greater Belfast area. Each Detachment employed agent-handlers and an Officer Commanding (OC), who normally held the rank of Captain. The OC of each Detachment reported to the FRU's Commanding Officer (CO). An Operations Officer deputised for the CO and had specific responsibilities for certain areas of operations.
- 3.18 The CO in turn reported to the Commander Land Forces (CLF) and the GOC. The Chief of the G2 Intelligence Section was responsible for the Field Intelligence Fund which financed FRU operations.
- 3.19 In a 1988 Directive titled 'Perestroika', the FRU'S CO directed a reorganisation of the Unit in order to make it an "*independent unit*" within the Army intelligence structures.⁵ The Directive outlined the systems for the reporting of intelligence within the FRU; job descriptions for different roles; and a series of moves

⁴Statement of A/05, 9 October 1990

⁵CO FRU Directive 1/88, 1 July 1988

necessary to establish the independence of the FRU. The changes included agent case files being moved from the offices of the Security Service's Assistant Secretary Political (ASP) to the FRU HQ.

- 3.20 The FRU ran agents in republican terrorist organisations, though Brian Nelson was their only agent in Protestant paramilitary groups. The FRU produced two main types of intelligence document recording the intelligence provided by an agent: a Contact Form (CF) and a Military Intelligence Source Report (MISR).
- 3.21 The CFs included a great deal of detail about a meeting between a handler and an agent and were circulated internally within Army structures. The MISR was a summary of the intelligence received that was transmitted to the RUC SB and, when appropriate, to Security Service personnel.

The Security Service

- 3.22 The remit of the Security Service, as expressed in a Directive from the Home Secretary to its Director General in 1952, was responsibility for the investigation and countering of threats to UK interests – at home or abroad – from espionage, subversion and sabotage.
- 3.23 Following the establishment of direct rule in Northern Ireland in 1972, there was a requirement from the NIO for an increased supply of intelligence. This led to the establishment of an Irish Joint Section (IJS) by the Security Service and the Secret Intelligence Service (SIS) for the control of both Services' agent-running operations and for the distribution of the resulting intelligence. The IJS was managed from London.
- 3.24 This was shortly followed by a further reorganisation to associate the intelligence machine closely with the Secretary of State, who had by then become constitutionally responsible for the direction of Northern Irish affairs. The post of Director of Intelligence was abolished and a new one of DCI created to co-ordinate the intelligence machinery.
- 3.25 In April 1984, the IJS was wound up. The Security Service became solely responsible for its Belfast station and created a new section, F8, in London which assumed management responsibility.⁶ The F8 Section was a part of the FX Branch of the Service in London, which became responsible for dealing with counter-terrorism. In 1988, FX Branch became G Branch and F8 was renamed as G8.⁷ In 1990, Irish counter-terrorism was transferred to a new T Branch.⁸
- 3.26 The Security Service were also represented by officers assigned to the RUC HQ at Knock and the Assistant Secretary Political who was assigned to the Army HQ (the role of the latter post is explored in some detail later in this Report).

⁶ Christopher Andrew, *Defence of the Realm: The Authorized History of MI5*, Allen Lane, 2009, p. 700

⁷ *Ibid.*, pp. 745–746

⁸ *Ibid.*, p. 772

- 3.27 The Security Service ran a comparatively small number of agents within republican and loyalist terrorist groups in Northern Ireland. The Service also played a considerable role in providing operational support for various technical means of intelligence-gathering. Security Service agent-handlers would produce Contact Notes of meetings with agents.
- 3.28 The Assessments Group was the section responsible for receiving intelligence relating to Northern Ireland from the RUC SB, the Security Service and the FRU, and using it to produce intelligence reports and assessments for the intelligence community and the UK Government. Security Service officer G/07 provided me with the following description of the production and dissemination of intelligence by the Assessments Group:

“AsGp [Assessments Group] produced strategic intelligence reports and assessments known as Northern Ireland Intelligence Reports (NIIRs). They were based on intelligence reporting from the RUC, Army and the Security Service and the texts were represented as an agreed line between AsGp and the originating organisation. NIIRs were disseminated across the agencies and to policy makers in Whitehall and NI, with the list of recipients depending on the content of each report and the particular requirements of the customer. NIIRs containing high level, strategic intelligence were the means by which Ministers received regular updates on terrorist developments. It was not usual for Ministers to receive briefings on specific cases.”⁹

- 3.29 The DCI was responsible under the Permanent Under Secretary of the NIO for delivering high-level policy direction and advice relating to intelligence activity in Northern Ireland, and for providing support on intelligence matters to the Secretary of State for Northern Ireland and the Minister’s two other principal security advisers, the Chief Constable of the RUC and the GOC. The DCI had no operational responsibilities, but was concerned with the provision of an intelligence-reporting service to Ministers and officials in the NIO and in Whitehall, principally through reports prepared by his staff in the Assessments Group.

Co-ordination of the intelligence machinery

- 3.30 In addition to the post of the DCI, a complex variety of committees and postings came into existence in order to co-ordinate the work of the intelligence agencies. The following co-ordinating committees are of particular relevance to my Review.

Security Policy Meetings

- 3.31 The Security Policy Meetings (SPMs) were attended by the Secretary of State for Northern Ireland and his principal security advisers: the DCI, the Chief Constable, the GOC and the NIO Permanent Secretary. These meetings typically occurred every month and involved a review of paramilitary activity and intentions, and covered relevant security issues requiring resolution. It should be noted that

⁹Written statement of G/07, 27 September 2012, para 6

these meetings were high-level discussions of security policy at a strategic level; they did not generally cover operational issues such as agent recruitment and handling.

The Intelligence Review Committee

- 3.32 The Intelligence Review Committee (IRC) met monthly until mid-1988, after which it met on a weekly basis. It was chaired by the DCI and comprised senior representatives of the RUC, the Army and other agencies. The IRC reviewed the intelligence effort against both republican and loyalist paramilitaries.

The Targeting Policy Committee

- 3.33 The Targeting Policy Committee (TPC) was chaired by the Assistant DCI and attended by, amongst others, the Assistant Chief of Staff of the Army's Intelligence Section (ACOS G2), CO FRU and the Deputy Head of Special Branch. The Committee considered which particular terrorist groups or geographical areas in Northern Ireland required greater intelligence coverage. The Committee then sought to co-ordinate attempts to obtain new sources of intelligence in these groups or areas.

The Tasking and Co-ordinating Group

- 3.34 The Tasking and Co-ordinating Group (TCG) was a permanent unit under SB command and formed part of the SB regional structure. The focus of the TCG was the exploitation of intelligence to frustrate terrorist groups. They brought together the RUC SB intelligence and operational resources from the RUC and the Army to mount counter-terrorism operations. This included, for example, exploiting intelligence by means of covert surveillance or the use of overt Army or police units.
- 3.35 The TCG received information from all three organisations involved in intelligence-gathering in Northern Ireland and from a variety of technical sources. They made decisions on the prioritisation of covert resources to exploit intelligence and the manner in which such resources would be deployed. Unlike the other relevant bodies, which kept minutes of meetings and deliberations, statements to the Stevens Investigation by officers working in the TCG suggested that their records were generally destroyed after a short time.

The All-Source Intelligence Cell

- 3.36 The All-Source Intelligence Cell was established in 1988 in order to improve the sharing of intelligence between the three agencies operating in Northern Ireland. Army, RUC and Security Service officers were based in the Cell and, in theory, had access to the intelligence produced by all the agencies. My Report touches on the question of how effectively (or otherwise) this structure worked in the Nelson case.

The Joint Intelligence Committee

- 3.37 The minutes of the Joint Intelligence Committee (JIC) disclosed to my Review suggest that the Committee, which was located in London, focused primarily on the terrorist threat in Great Britain and in continental Europe during the late 1980s.

The relationship between the intelligence agencies

- 3.38 It is clear that the complex structural relationship between the three main intelligence organisations resulted in a considerable degree of strain within the intelligence system in Northern Ireland. The statements I have read and the submissions made to my Review suggest that the relationship between the RUC SB and Army intelligence was a difficult one throughout the 1980s. RUC SB officers consistently expressed the view that there was no need for the Army to run agents in Northern Ireland.

- 3.39 R/15 told me that he “*never thought there was a need for the military to have its own intelligence gathering structure*”. He also pointed to the difference between the police and military mindsets, which could “*lead to arguments as to what was or was not achievable and allowable under the extant criminal law*”. R/15 did, however, feel that there was a productive relationship overall between the FRU and the SB.¹⁰ A former senior RUC officer told me that, when he was involved in intelligence-related work in the late 1970s and early 1980s, he had a “*difficult relationship with the FRU*”.¹¹

- 3.40 The Army, on the other hand, saw an ongoing need for a unit to run agents separately from the RUC SB. The former CO of the FRU, A/05, told me in his oral evidence that:

“... there are many people who became agents or informants in Northern Ireland, who would not work for the RUC, because of the perceived bias of that organisation, sectarian bias.

And that is why the army felt, and HQNI [Headquarters Northern Ireland] felt that it was necessary to have an organisation that could garner these people who wanted to assist, but weren't prepared [to work for] ... the RUC.”¹²

- 3.41 Government documents show that the structure and co-ordination of the intelligence network was a source of continuing high-level discussion and concern during the late 1980s. In August 1988, for example, the disagreements between the Army and the RUC were evident when the Prime Minister was being briefed following a Provisional Irish Republican Army (PIRA) bomb attack in County Tyrone which killed eight soldiers. The meeting was attended by Secretary of State for Defence Tom King, the Chief of the General Staff (CGS), the GOC,

¹⁰ Note of meeting with former RUC officers, 25 July 2012, para 44

¹¹ *Ibid.*, para 41

¹² Transcript of meeting with A/05, 7 September 2012, p. 4

the Chief Constable and a number of others. The note of the meeting taken by the Prime Minister's Office on 20 August 1988 recorded the CGS commenting as follows:

*"... intelligence was very badly organised. There was no common data base, insufficient coordination, and insufficiently rapid use of the raw data. This view was not shared by the Chief Constable. In elaborating the point the CGS agreed that action at brigade level and below was generally acceptable but the problems were both higher up, and inherent in the organisation. They included the fact that there were three agencies handling sources, and that there was insufficient interchange of information. The Prime Minister was very concerned that this situation appeared to exist, and it was agreed that very early meetings would take place between the Chief Constable and the GOC to consider what more could be done."*¹³

3.42 Further meetings appear to have been held to stress the need for greater co-ordination of intelligence. A note from the Prime Minister's Office to the NIO dated 24 August 1988 included the comment that better co-ordination of intelligence *"is not an organisational matter, but a question of trust between those concerned, which can only be gained by working together"*.¹⁴

3.43 The case of the Army agent Brian Nelson is explored in detail in my Report and it is worth highlighting here the extent to which it exposed the uneasy relationships between the three main organisations involved with intelligence-gathering in Northern Ireland. The Army expressed concerns about its relationship with the Security Service as well as with the RUC SB. In a note to the GOC, the then ACOS G2 even claimed that:

*"The current DCI is well versed in these rivalries [between the agencies], and would lose no sleep at the removal of the Army's most effective source running unit [the FRU]."*¹⁵

3.44 It appears that the Security Service may have felt restricted in their ability to engage with the FRU in view of the state of the relationship between the Army and the RUC. In a memo dated 15 August 1991, a Security Service officer recorded that:

*"There is ... some restraint on developing the T Branch relationship with the FRU much further. The liaison has to be conducted with some delicacy in order to protect T8's steadily improving close operational relationship with the RUC."*¹⁶

3.45 The former senior RUC officers I met during this Review generally felt that the relationship between the RUC SB and the Security Service was a much more harmonious one. R/15 described the relationship to me as *"fairly seamless"*, and former RUC Deputy Chief Constable Blair Wallace felt that the Service was a

¹³ Note of meeting with the Prime Minister, 20 August 1988

¹⁴ Prime Minister's Office note to the NIO, 24 August 1988

¹⁵ Undated note, *Intelligence in N Ireland* [see Volume II, pp. 298–301]

¹⁶ Security Service, Director T Branch to Director General, 15 August 1991

“valuable source of help for SB as a developing organisation”.¹⁷ However, G/07’s evidence to my Review suggested that from the Security Service’s perspective the relationship between the Service and the SB shared some of the strains of the relationship between the SB and the FRU. He explained that:

“I think in broad terms, the RUC ... were content to exploit the intelligence which others were able to give them. But by and large, they were pretty antipathetic to the presence, as they saw it, of the Johnny-come-latelies of the service; the military who came in for two years and then left. They weren’t in the front line as they saw it.”¹⁸

Overview

- 3.46 It will be apparent from this chapter that the structure of the intelligence effort in Northern Ireland was highly complex and involved a variety of organisations, sections and committees that had evolved piecemeal over a number of years. Three different organisations, each with their own culture and management structure, ran agents in Northern Ireland. A number of committees of varying effectiveness sprang up to provide co-ordination.
- 3.47 It has been clear to me throughout this Review that there was a lack of clarity about the respective roles and relationships of each of the main organisations involved in the intelligence sphere. This confusion was exacerbated by institutional rivalry between different organisations and parts of the intelligence community. In the late 1980s this rivalry was most apparent in the strained relationship between the RUC SB and Army intelligence.
- 3.48 The challenge of co-ordination also needs to be understood in the context of a strong ethos within all parts of the intelligence community that emphasised the ‘need to know’ principle. Structural complexity, inter-agency rivalry and the (perhaps inevitable) culture of secrecy meant that the sharing of information and effective pooling of resources proved extremely difficult during this period.

¹⁷ Note of meeting with former RUC officers, 25 July 2012, para 46

¹⁸ Transcript of meeting with G/07, 28 September 2012, p. 65

Chapter 4: Agent-handling

4.1 The handling and activities of agents in the late 1980s in Northern Ireland is central to the work of my Review. However, before dealing with the role that agents had in the murder of Patrick Finucane, it is essential to understand the framework within which agents and their handlers operated.

4.2 In considering this issue, I start from the position that the creation of intelligence-gathering systems and the recruitment of agents in, or infiltration of agents into, terrorist groups has long been recognised in all Western democracies as a legitimate means of tackling terrorism. The specific intelligence that can be provided by human agents can prove highly effective in helping the State to disrupt terrorist organisations and is often, in a social and political sense, far preferable to the imposition of blanket security measures which would impact negatively on the entire population. As Professor English noted in his report for my Review:

“Broadly speaking, the centre of gravity among most western European scholars would be that a primarily militarized response to terrorism is likely to be ambiguous and even counter-productive in its effects. So the subsequent decision to move in Northern Ireland towards police-led and intelligence-based counter-terrorism in itself fits with what most scholars would tend to consider best practice ... a reliance on intelligence gathering and ... the penetration of terrorist organizations with agents and informers is established practice in effective counter-terrorism across the world.”¹

4.3 When examining the Troubles, I am satisfied that the running of agents in terrorist organisations was one of the most effective methods by which the security forces could frustrate terrorist activity and save lives. The work of the intelligence agencies in running agents played a significant role, in my view, in containing terrorist activity to such an extent that all paramilitary groups began to realise that their aims were unachievable by violent means.

4.4 The most valuable agents during the Troubles were undoubtedly those positioned deep within the terrorist groups themselves. As A/05, the former Commanding Officer of the Force Research Unit (FRU), put it when I met him during this Review:

“... you cannot report on a terrorist organisation or any paramilitary organisation, unless you have someone at the centre of things. You cannot report properly on them if you simply have an agent who happens to be a drinking companion of a terrorist. That is not going to get you anywhere.”²

¹ Report of Professor English to the Review, p. 12

² Transcript of meeting with A/05, 7 September 2012, p. 10

4.5 The penetration of an agent into the very heart of a terrorist group inevitably involved the agent concerned becoming involved in criminal activity to some degree. Indeed, the very act of joining a proscribed organisation was a criminal offence. Security Service officer G/07 described to me the following example of the necessary involvement of an agent in ostensibly criminal activity in order to enable intelligence to be gathered:

“... an agent’s minor involvement in a conspiracy to possess weapons might be the only realistic means of obtaining sufficient intelligence about the plot to identify the conspirators and disrupt their plans.”³

4.6 It is clear to me that the running of agents in Northern Ireland during the Troubles required these individuals to be heavily involved in activity that could, *prima facie*, amount to serious criminal acts. It was necessary, for example, for an agent to participate in discussions about individuals that a paramilitary group intended to murder, in order to gather intelligence through which such attacks could be prevented by the security forces. The active involvement of an agent in giving advice and providing information in such discussions did, on the one hand, have the potential to amount to participation in a conspiracy to murder but, on the other hand, represented in many cases the only possible means by which such conspiracies could be thwarted. No agent could choose to opt out of such discussions without drawing immediate suspicion and thereby exposing themselves to potential interrogation and execution.

4.7 I accept that any effective intelligence-gathering operation against terrorist groups required the use of human agents positioned within those organisations and that this necessarily meant that such agents would become enmeshed in terrorist-related conspiratorial activity. However, it strikes me as self-evident that the implementation of such an inherently difficult task as penetrating terrorist groups with agents would require the development of a detailed legal and policy framework, though I am fully conscious of how difficult drawing up such a framework would be.

Agent-handling guidelines

4.8 In Northern Ireland the penetration of terrorist organisations by agents was developed over a number of years to meet the intelligence requirements of the political and security situation. Throughout the Troubles the management of agents was not governed by statute but by non-statutory guidance and direction.

4.9 Case law provided some limited guidance. For example, it was reasonably clear that to allow an agent to act as an agent provocateur was never permissible, a principle summed up in the words of the then Lord Chief Justice, Lord Parker:

“Whilst the police are entitled to make use of information concerning an offence already laid on, and while, with a view to mitigating the consequences of the proposed offence, e.g. to protect the proposed victim, it may be perfectly

³Written statement of G/07, 27 September 2012, para 20

proper for the police to encourage the informer to take part in the offence, or indeed for the police officer himself to do so, the police must never use an informer to encourage another to commit an offence which he would not otherwise commit.”⁴

- 4.10 Further, there was a significant body of opinion which suggested that someone who participated in a crime with the intention of frustrating that crime would not be guilty as a secondary party. This is a view expressed in legal textbooks⁵ and in Halsbury’s Laws:

“It is doubtful whether a police officer, or a person acting under the directions of the police, who aids, abets, counsels or procures the commission of a crime for the purpose of detecting offenders and bringing them to justice, thereby becomes a secondary party to the crime.”⁶

- 4.11 This approach was supported, in the context of an offence of conspiracy, in a decision of the House of Lords in which Lord Bridge stated the following:

“There remains the important question whether a person who has agreed that a course of conduct will be pursued which, if pursued as agreed, will necessarily amount to or involve the commission of an offence, is guilty of statutory conspiracy irrespective of his intention – I have no hesitation in answering the ... question in the negative.”⁷

- 4.12 However, it would be wrong to characterise even this approach as ‘settled case law’. In relation to a request for advice from Counsel on 18 October 1990, a note from the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) recorded the following account of the case law relating to the *mens rea* (guilty mind) of accessories to crime:

“... the cases to be taken account of are frequently characterised by a looseness of terminology, by incomplete exposition of the law and by judicial uncertainty about underlying theory.

The matter becomes even more complex where the ‘accessory’ is a police informer or agent.”⁸

- 4.13 The complexity is apparent when one considers the situation of an agent who participates in a crime not with the object of frustrating that particular incident, but with the intention of maintaining his cover, in order to help the security forces generally or to permit them to prevent a subsequent crime.

- 4.14 It is evident that the complexities of agent-handling, and the reality of the diverse situations that agents would inevitably be placed in, went far beyond the guidance provided by case law. Thus whilst certain parameters and guidelines could be extrapolated from case law and legal texts, it was both insufficiently

⁴ *R v Birtles* (1969) 2 ALL ER 1131

⁵ Glanville Williams, *Textbook of Criminal Law*, second edition, p. 442

⁶ Halsbury’s Laws of England, Fourth Edition, Vol II(1). This was the relevant edition available at the time of Patrick Finucane’s murder.

⁷ *R v Anderson* (1986) 82 Cr. App. R 27

⁸ DPP(NI) note, 18 October 1990

clear and insufficiently comprehensive to provide detailed guidance for either an agent or an agent-handler. I turn now to consider the non-statutory guidance and direction in place at the time.

Guidance applicable to the Royal Ulster Constabulary

4.15 The only guidance in place relating to the use of informants by the police at the time of Patrick Finucane's murder was contained in a Home Office Circular, the 'Consolidated Circular to the Police on Crime and Kindred Matters'⁹ ('the Guidelines'). Although the Guidelines were issued in 1986, they were essentially unchanged from previous guidance first issued in 1969.¹⁰ However, the RUC did not apply either circular in Northern Ireland as they regarded them as inadequate for dealing with terrorist-related crime.

4.16 A letter dated 21 January 1987 from the RUC to the Northern Ireland Office (NIO) summarised the position as follows:

*"[The Guidelines] take no cognizance at all of the special problems relating to Northern Ireland. They were, of course, drawn up to deal with 'ordinary' criminals in a mainland context, rather than for coping with terrorists. Given our special situation the restrictions placed upon us by virtue of the guidelines are unrealistic if we are to continue paramilitary penetration/source protection."*¹¹

4.17 A paper subsequently prepared by the RUC for submission to the NIO in February 1988 set out a detailed analysis of the position, which they summarised as follows:

"At present Special Branch in common with other branches throughout the United Kingdom, has available to it only one set of guidelines upon which to base its information gathering procedures and to conduct reactive operations based on the information received. Those guidelines are set out in the Home Office Consolidated Circular on Crime Kindred (sic) Matters. They were originally drafted in 1969. In essence the guidelines seek to set parameters within which the police can determine the degree and extent to which informants are to be used in the investigation and detection of crime and the prosecution of criminals before the courts.

By and large they have been successful in this respect and they continue to meet the needs of the police in dealing with ordinary crime as no apparent difficulty is experienced in adhering to the principles expressed therein.

*However, major problems do arise when it comes to the application of the guidelines to the terrorist scene, for here it rapidly becomes apparent that strict adherence to the guidelines would result in a far from comprehensive or effective intelligence network ever being recognised."*¹²

⁹ Home Office Circular 35/1986

¹⁰ Home Office Circular *Informants who Take Part in Crime*, 97/1969

¹¹ Letter from the RUC to the NIO, 21 January 1987

¹² RUC commentary on the *Home Office Guidelines on the Use of Informants*, 11 February 1988

Guidance applicable to the Army in Northern Ireland

- 4.18 The FRU were formed on 4 January 1982, when all levels of Army human intelligence source-handling in Northern Ireland were amalgamated into one unit. They were established as the sole Army agency in the Province responsible for recruiting and running agents.
- 4.19 The Commanding Officer (CO) of the FRU in February 1989 was A/05. In a statement provided to the Stevens Investigation dated 9 October 1990, he stated that:
- “The Command and Control arrangements for the FRU and the general policy in relation to military agent handling is covered in the [Commander Land Forces]’s directive of 25 Jul 86 and accompanying instructions dated 25 Jul 86.”¹³*
- 4.20 The starting point for the way in which the Army conducted agent-handling operations in Northern Ireland, therefore, is the ‘Directive for the Force Research Unit (Northern Ireland)’ promulgated by Major General A S Jeapes, Commander Land Forces, on 26 July 1986.¹⁴
- 4.21 The aim of this Directive, which stated that it was to be read in conjunction with the ‘Instructions for Source Control and Handling in Northern Ireland’ dated 25 July 1986,¹⁵ was to (a) “confirm the command and control arrangements for the FRU”, and (b) “amplify and bring up to date certain procedures for the handling of sources”. It included the following paragraphs:
- “Concept of Operations*
- 4. The FRU is to continue to complement existing intelligence gathering agencies by acquiring, within Northern Ireland, from human sources, intelligence related to terrorist activities in Ulster. No research operation is to be carried out which does not conform to this Directive or to the Instructions for Source Handling, without prior authority of Commander Land Forces (CLF).*
- 5. All operations are to be conducted within the Law and members of the FRU remain subject to Military and Civilian Law at all times.”¹⁶*
- 4.22 The accompanying Instructions, under the heading ‘Concept of Source Handling Operations’, stated the following:
- “3. The responsibility for Army source handling operations in the Province is vested in the Force Research Unit (FRU). The FRU is to continue to complement existing intelligence gathering agencies by acquiring from human sources within Northern Ireland intelligence related to terrorist activities. Army source handling operations are to be carefully coordinated with the RUC SB. The primary aim of such operations is to be the penetration of terrorist groups.”¹⁷*

¹³ Statement of A/05, 9 October 1990

¹⁴ Directive for the Force Research Unit (Northern Ireland), 26 July 1986

¹⁵ Instructions for Source Control and Handling in Northern Ireland, 25 July 1986

¹⁶ Directive for the Force Research Unit (Northern Ireland), 26 July 1986, paras 4–5

¹⁷ Instructions for Source Control and Handling in Northern Ireland, 25 July 1986

- 4.23 Under the heading ‘Command and Control’, appended at Annex A to the Instructions, it is stated that:

“It is unlawful for any person to authorise an illegal act. Where there is any possibility of a source becoming involved in criminality or an area of political sensitivity, ACOS G2 [Assistant Chief of Staff of the Intelligence Section] is to be informed, through CO FRU, so that preventative measures can be taken.”¹⁸

- 4.24 In a statement that A/05 provided to the Stevens III Investigation in 2002, he noted the “*apparent contradiction*” between the ‘Concept of Operations’ applicable to the FRU and the requirements of the Instructions:

“The FRU ran agents who were active members of the Provisional IRA (‘PIRA’). The FRU ran Brian Nelson who became an active Protestant Paramilitary. This was in line with the Instruction [in the Directive] to penetrate terrorist organisations but might be said to breach the Instruction that research operations be conducted within the law, since membership of the PIRA and some Protestant paramilitary organisations (including the UFF) was proscribed. The apparent contradiction marks not only my period of command but also those who preceded it and those subsequent to it.

As I understood it this apparent contradiction was acknowledged by all intelligence gathering operations within Northern Ireland. I believed that the Instructions and Directive were to be given a meaning which made sense of the apparent contradiction. I understood that the Instructions and the Directive permitted operations essential to intelligence gathering to be pursued even if prima facie unlawful (such as encouraging an agent to become a member of a proscribed organisation) but that any involvement by an agent in a crime should only be permitted or condoned if the agent’s intention was to ensure, by that involvement, that the commission of a substantive offence would be prevented. In this way I believed that the agent himself would not be criminally liable since his intention and mental state was to uphold the law and prevent crime.”¹⁹

- 4.25 It is clear, moreover, that the Home Office Guidelines had no application to the Army. In the same statement A/05 went on to state the position as follows:

“The practical application of the Instructions and Directive ... is a vexed and complex question. I drew attention to this at Brian Nelson’s sentencing hearing where I stated: ‘There are no laid down guidelines that are applicable to the situation in Northern Ireland where we are talking about infiltrating terrorist organisations’. The only detailed practical guide was the Home Office Guidelines contained in Home Office Circular No. 97/1969 (“the Guidelines”), which were in place at the time for England and Wales. The Army Concept of Operations was directed by the Directive and Instructions and not by these Guidelines to which no reference was made. The Guidelines were directed

¹⁸ Ibid., Annex A

¹⁹ Statement of A/05, 2 December 2002

at the police and were certainly not drafted in contemplation of the terrorist situation in Northern Ireland (or even with Northern Ireland in mind bearing in mind the constitutional position in 1969).” [Emphasis added]²⁰

4.26 The position is confirmed by the minutes of an interdepartmental meeting that took place on 22 January 1993, which noted that:

“... before 1990 the Army had not been aware of any guidelines for agent handling, while the RUC still operated under the 1968 rules for participating informants precisely because of the doubt surrounding the later ones.”²¹

4.27 Indeed, there is no mention of the Guidelines in any Directive or Instructions to the FRU until an updated ‘Directive for the Force Research Unit (Northern Ireland)’ was introduced in February 1991. This included the following additional provision:

“Legal Aspects

13. It is unlawful for any person to authorise an illegal act. The conduct of source handling operations, where the source is likely to be involved in terrorist crime, is to comply with Guidelines published by the RUC. In all cases ACOS G2 is to be informed of the circumstances and must endorse future action. SO1 Legal is to provide advice and guidance to CO FRU on the legal implications of Research Operations, when requested to do so.”²²

4.28 An internal brief paper to ACOS G2 dated 9 March 1992 relating to the Command and Control (C2) arrangements for Joint Support Group (JSG) (the successor to the FRU) noted (under the heading ‘Guidelines for Agent Handling’) that:

“Although not strictly a C2 issue, you may wish to be reminded of the guidelines for source handling issued by the Home Office. The only extant guidelines were issued in approximately 1960 [sic] and are quite inadequate and unworkable in terms of the JSG operation. JSG currently work within the spirit of a new and un-ratified set of draft guidelines for the recruitment and running of agents.”²³

4.29 It appears, therefore, that the reference to the ‘Guidelines published by the RUC’ in the 1991 Directive was to the proposed draft Guidelines produced by a Working Group chaired by the NIO.

4.30 As discussed later in this Report, the lack of acceptable guidelines relating to the use of agents in intelligence-gathering was plainly very much to the forefront of the representations regarding the public interest which the Ministry of Defence (MoD) made to the Attorney General in relation to Brian Nelson’s proposed prosecution. In a minute to the Attorney General dated 19 March 1991, the Secretary of State for Defence wrote:

²⁰ Ibid., para 33

²¹ Note of interdepartmental meeting on Agent Handling Guidelines, 22 January 1993

²² Directive for the Force Research Unit (Northern Ireland), February 1991

²³ JSG – Command and Control (C2) Arrangements, 9 March 1992, para 11

“We cannot expect to obtain valuable intelligence from agents who are not at the heart of the target organisation or group. We must establish proper guidelines for all those concerned. I believe that it is unacceptable that there are no clear legal rules of guidance to cover the specific circumstances of agent-running in the terrorist environment of Northern Ireland.”²⁴

Guidance applicable to the Security Service

4.31 I am informed by the Security Service that since at least February 1969, internal instructions relating to agent-running contemplated the possibility that agents or office contacts could be involved in criminal activity and, if so (and there was “a good case for continuing the contact”), the Director General was to be consulted. The Instruction went on to say:

“Such people sometimes ask us to intervene with the Police on their behalf. As a general rule we should not do so and certainly not without consulting the Legal Adviser and A.3.

If we learn that such a person has been charged with a criminal offence, whether or not we have broken off contact, the Legal Adviser should be informed.”²⁵

4.32 I am also informed that from 1978 onwards the substance of the above instruction was included in the Security Service’s ‘Manual of Investigation’.²⁶

4.33 The Home Office Guidelines were not issued to the Security Service. A minute dated 13 July 1989 from the then Director General indicated that the Security Service did not consider itself bound by those Guidelines as “... *there is already a mechanism for feeding the results of considerations in Northern Ireland into the Home Office*”.²⁷

4.34 Security Service records suggest that the Service Legal Adviser in practice provided regular advice and guidance on the legal implications of specific agent-running operations. This form of legal support and guidance does not appear to have been available to the FRU or the RUC Special Branch (RUC SB) in the 1980s.

Attempts to address the problem

4.35 It is clear from the above summary that there was no agreed agent-handling framework used by intelligence-gathering agencies in Northern Ireland in the late 1980s. My Review has established, however, that since at least 1987 there were concerted attempts, led by senior RUC officers, to address the problem and formulate new, agreed Guidelines.

²⁴ Minute, Secretary of State for Defence to Attorney General, 19 March 1991 [see Volume II, pp. 257–265]

²⁵ Internal Instruction from Director General, 26 February 1969

²⁶ Security Service, response to a request from the Review

²⁷ Minute, Security Service Director General to Deputy Director General, 13 July 1989

- 4.36 The first high-level meeting to discuss new Guidelines for Northern Ireland appears to have taken place between NIO officials and senior RUC officers on 13 March 1987. The Note for the Record of the meeting summarised the discussion as to the reasons why the Guidelines “... *were totally unrealistic/unworkable for dealing with terrorism*” as follows:

“The RUC were to a large part dependent on intelligence if they were to be successful in combatting [sic] terrorism. Such intelligence was obtained by placing/using informants in the middle ranks of terrorist groups. This meant they would have to become involved in terrorist activity and operate with a degree of immunity from prosecution. If cases came to court based partly on intelligence work, then it was necessary to protect the identity of the informant, which involved holding back unnecessary information. All this was technically in breach of the guidelines, with the DPP [Director of Public Prosecutions (for Northern Ireland)] having made it clear that the RUC were not to exceed those guidelines or the informants in question would be dealt with, together with their police handlers ...

What was required was for realistic guidelines to be devised which would allow intelligence work to continue without betraying the informants involved.”²⁸

- 4.37 The Note indicated that it was agreed at the meeting that “*as the first step the RUC should draw up for discussion with the NIO and Legal Advisers, draft proposed new guidelines*”.²⁹

- 4.38 It appears, however, that in reality the NIO was not overly enthusiastic towards the RUC’s initiative. An internal minute to the Permanent Under Secretary dated 18 May 1987 concluded as follows:

“As we may well wish to see a rather different method for reviewing the guidance, it will suit us if the process set in train by the RUC makes fairly slow progress. But it would not be wise to take any steps at this juncture to halt it; we should simply desist from hastening it.”³⁰

- 4.39 On 22 July 1987 the then Chief Constable of the RUC, Sir John Hermon, wrote to the NIO seeking confirmation that “*steps are being initiated to take action*”.³¹ The NIO’s response, dated 7 August 1987, included the following passages:

“I think there are really two distinct questions. First, is there any move afoot on the part of the Home Office to review the appropriateness of the guidelines as they apply across the whole of the country? Second, is there a case for a more specific review of the suitability of the guidelines for present conditions in Northern Ireland – and, if so, how should it be pursued?

²⁸ NIO Note for the Record of the meeting on 13 March 1987, paras 2–3

²⁹ Ibid.

³⁰ NIO submission, Deputy Under Secretary to Permanent Under Secretary, para 4, 18 May 1987

³¹ Letter, NIO Deputy Under Secretary to Permanent Under Secretary, 22 July 1987

As to the first, we keep closely in touch with the Home Office about these things and will continue to do so ... I have not heard any indications so far, however, that the Home Office have been asked officially to initiate a review or that they have any immediate plans to conduct one ...

As to the second, we would not wish to argue that it does not need to be addressed. On the contrary, we take the view that the [Stalker/]Sampson Report would be incomplete if it did not address that question ...

I suggest that the logical sequence is first to arrive at a clear and explicit police view of whether and in what way the guidelines need to be modified for local conditions; then to consider that view from the policy and legal viewpoints ...

We have been assuming ... that the first stage – to define the police view – would be catered for in the special inspection by Mr Charles McLachlan ... In other words that in the course of the inspection the RUC would make their views on the subject known to the inspection team, who would then add their own comments.”³²

4.40 A later submission to the Minister of State at the NIO, John Stanley MP, on 24 February 1988 attached a paper received from the RUC. As was noted in the covering minute, “[i]t leans rather more towards an analysis of the admitted problems than towards actual proposals”.³³

4.41 The RUC’s submission noted that the Stalker Report had accepted “*the limitations of the Home Office Guidelines on the use of informants in Northern Ireland*”³⁴ and that the McLachlan Report had found that those Guidelines “*must be regarded as obstructive and confusing in the dangerous task of defeating terrorism*”.³⁵ A detailed background paper by Assistant Chief Constable (ACC) Monahan analysed “*the gap between the demands placed on the intelligence sector and its legal capacity to achieve its objectives*”.³⁶

4.42 ACC Monahan’s paper concluded with the recommendation that:

“... the time has now come for a detailed and realistic examination of the role and function of the Intelligence Service in a protracted terrorist campaign in order to equip it for the work it must do.

Above all, clear precise guidelines as to the rights, duties and working practices of its members must be formulated along with proper legal and administrative safeguards, so that there are no grey areas in pursuit of their intelligence objectives and the prosecution of terrorists before the courts.”³⁷

³² Letter, A W Stephens, DUS NIO, to Sir John Hermon, Chief Constable RUC, 7 August 1987

³³ Internal minute, NIO, 24 February 1988, attaching RUC Submission *Guidelines on the use of terrorist informers*

³⁴ Report by Deputy Chief Constable John Stalker, Greater Manchester Police, relating to a ‘shoot to kill’ investigation, June 1986

³⁵ Thematic inspection of RUC SB to determine the implementation recommendations made in the Stalker/Sampson Report headed by HMIC Charles McLachlan in 1987

³⁶ Commentary on Home Office *Guidelines on the Use of Informants* by ACC Monahan, 11 February 1988

³⁷ *Ibid.*

- 4.43 On 3 March 1988 the NIO wrote to the Home Office on the subject of the Guidelines, noting that:

“... the Stalker/Sampson enquiry raised the question of the guidelines for the police in dealing with informants in terrorist cases. The subject was subsequently dealt with in some detail in the report of Mr Charles McLachlan, a member of Her Majesty’s Inspectorate of Constabulary [HMIC], on his special investigation of the RUC. The general thrust of the comments is that the existing Home Office Guidelines on Informants are not appropriate to police forces, particularly the RUC, in their counter terrorist operations.”³⁸

- 4.44 The letter (which was copied to the Attorney General’s Office, the Scottish Home and Health Department, the RUC and the Edinburgh Crown Office) acknowledged that the Guidelines were “*essentially aimed at ordinary decent crime, and in any case do not bind the RUC*”, in the light of which “*McLachlan suggested that those guidelines might in the longer term have to be reviewed for the UK as a whole, but that there was in any case urgency in developing guidelines for the RUC which would be appropriate*”. It also noted that at a recent meeting between the Home Secretary and the Secretary of State for Northern Ireland, Tom King, “*it was agreed that officials should carry matters forward*”.³⁹

- 4.45 On 22 March 1988, however, the NIO again wrote to the Home Office noting that “*the sense of the correspondence so far is that neither [the Home Office] nor [the Scottish Home and Health Department] are attracted by mounting a major exercise to produce new guidelines for the UK police force as a whole*”⁴⁰ and that, accordingly, the NIO would consider how matters could be moved forward.

- 4.46 Reverting to the RUC, a letter from the NIO dated 22 April 1988⁴¹ indicated that “*Ministers are fully seized of the problem*” but that “*the question is what we do about it*”.

- 4.47 NIO officials subsequently prepared an agreed note, which was sent to Ministers under a covering submission dated 27 April 1988. The note concluded that “*it was ... clear that some form of Ministerial intervention is necessary if any progress is to be made*”.⁴² The note included a passage setting out the views of Patrick Mayhew, the then Attorney General, contained in a letter dated 29 March 1988 from his office to the NIO, as follows:

“The Attorney General is most concerned that his Officials should not participate in the drawing up of guidelines which condone the commission of criminal offences. Moreover, in his view, participation in the drawing up of guidelines could improperly fetter the discretion of the prosecuting authorities in future cases.

³⁸ Letter from NIO to Home Office, 3 March 1988

³⁹ Ibid.

⁴⁰ Letter from NIO to Home Office, 22 March 1988

⁴¹ Letter from NIO to RUC, 22 April 1988

⁴² Internal submission, NIO, 27 April 1988

The crucial distinction in the Attorney's view is between a prosecuting authority being informed that an informant has participated in an offence, and on the other hand agreeing that in some circumstances an offence shall be committed. The discretion of the prosecutor may lead to a decision not to prosecute for an offence which has been committed. It can never be right for a prosecuting authority to acquiesce in a proposal that an offence shall be committed. Even the existing Home Office guidelines seem to condone the commission of criminal offences." [Emphasis in original]⁴³

The note added that the "*DPP(NI) was guided by this view*".⁴⁴

Further representations by the RUC and the Security Service

4.48 The documentary records show that senior RUC and Security Service officers made continued representations at the highest levels to seek the Government's backing for a solution to the issue of agent-handling guidelines. A note from the Prime Minister's Office to the NIO dated 13 May 1988 recorded that the Director General of the Security Service had raised with the Prime Minister the issue of the need for agent-handling guidelines.⁴⁵

4.49 An internal note from the Director General of the Security Service dated 1 September 1988 noted that, "*It looks as if we will have to press the NIO to get to grips with this problem, and they can be very slow moving*".⁴⁶ A further note from the Director General, dated 12 September 1988, stated that he had raised the issue with the Chief Constable and the NIO's Permanent Secretary.⁴⁷

4.50 Frustration within the RUC with what they perceived to be the slow rate of progress in addressing the situation is evident from a minute dated 27 June 1989 from Senior Assistant Chief Constable (SACC) Blair Wallace to the Chief Constable. The minute reiterated that the Stalker/Sampson and McLachan Reports had recognised the limitations of the Guidelines. The SACC went on to say:

"[The McLachlan Report] was completed in January 1988 and despite its recommendations and support for our views on the Guidelines, nothing appears to have been done to change them, forcing us to continue with a very unsatisfactory system, designed to deal with informants on ordinary crime in the late 1960s ...

Our dissatisfaction with the current system was discussed at a meeting with the then Minister of State for Northern Ireland, Mr John Stanley, on 8 April 1988 ... following which an exchange of letters took place between Senior Assistant Chief Constable 'C & E' [CID and SB] and NIO. These are the last correspondence on the subject.

⁴³ Letter from M L Saunders to NIO, 29 March 1988

⁴⁴ Ibid.

⁴⁵ Cabinet Office file, Anglo-Irish relations, Prime Minister's Office to Private Secretary NIO, 13 May 1988

⁴⁶ Security Service, Director General to Legal Adviser, 1 September 1988

⁴⁷ Security Service, Director General to Director G, 12 September 1988

This is a very ‘hot potato’ as far as the NIO are concerned. Their mainland colleagues wash their hands of the matter as it does not particularly concern them at the moment, and the legal people seem to be reticent, to say the least, to become involved in formulating a system, despite the fact that what actually goes on is known or assumed by many. Legally they are not being asked to condone the commission of a crime any more so than in the present Guidelines. The requirement is for recognition that informants on terrorist activities must be involved in criminality otherwise they would not be useful informants.”⁴⁸

4.51 SACC Wallace indicated that he had raised the matter once again with a subsequent Minister of State, Ian Stewart, on 11 April 1989 *“and was told that it had not been forgotten about ... [but] ... I have heard nothing since”*.⁴⁹

4.52 Information I have received from the Security Service indicates that the issue was a topic of informal discussion for some months between the Attorney General and the Security Service’s Legal Adviser. In a note dated 28 April 1989 recommending that the Home Office Guidelines be amended *“to allow effective but properly supervised use of agents in countering terrorism”*, the Legal Adviser summarised the problem as follows:

“... it can be argued that the Home Office Guidelines are undermined because, in order to run a terrorist agent so as to gather intelligence or evidence, they must be continually breached. If that is the case it is unacceptable in terms of law enforcement. The law enforcement authorities should not be put in such a position. The rights of the terrorists themselves to a fair trial should not be jeopardised by non-observance of the rules. Agents’ rights should not be put at risk by inadequate protection under the rules, particularly as to the disclosure of their identity.”⁵⁰

4.53 Following exchanges between Ministers and officials regarding how best to progress matters,⁵¹ and after seeking advice from the Security Service Legal Adviser,⁵² a further submission to Secretary of State dated 15 June 1989 invited him to agree that an interdepartmental working group be established under NIO chairmanship, in which there would be representatives of the Home Office, the Security Service and the RUC. It was proposed that the working group would *“undertake a step-by-step analysis of the way in which informants are handled now (in most cases outwith the guidelines) in order to see what sort of new ‘instructions’ would be helpful – and acceptable”* and *“go on to examine more complicated problems for which the remedy might have to be legislation”*.⁵³ The Secretary of State’s agreement to that recommendation is recorded in a minute dated 4 July 1989.⁵⁴

⁴⁸ Loose minute, SACC Wallace to Chief Constable, 27 June 1989

⁴⁹ Ibid.

⁵⁰ Note, *Terrorism – Participating informants and the Home Office Guidelines*, Security Service Legal Adviser, 28 April 1989

⁵¹ NIO Internal minutes of 3 May, 17 May, 7 July and 14 July 1988

⁵² Note, *Terrorism – Participating informants and the Home Office Guidelines*, Security Service Legal Adviser, 28 April 1989

⁵³ Submission to Secretary of State for Northern Ireland, 15 June 1989

⁵⁴ Minute, Secretary of State for Northern Ireland, 4 July 1989

The NIO Working Group meetings

4.54 The NIO Working Group met on 2 October 1989,⁵⁵ 9 November 1989⁵⁶ and 24 October 1990.⁵⁷ At its second meeting, the Working Group agreed that perhaps the best way forward would be for a new set of Guidelines to be produced.

4.55 The Working Group produced a set of draft Guidelines. They included the following provisions:

“4. The informant must be clearly instructed that his employment or continued employment as an informant does not carry with it immunity from criminal prosecution. In particular, he should be warned that he should not expect to avoid criminal proceedings if he is detected committing or having committed any physical assaults, or attacks on property causing serious damage, or acts of extortion. Moreover, no police officer will counsel, incite or procure the commission of such criminal offence. However, subject to paragraph 5 below an officer may employ a person as an informant whom he believes to be engaged in criminal activities, provided that, at the time of employing him he is satisfied that:

(a) the informant is likely to be able to provide information concerning offences involving a risk of death or injury to persons, serious damage to property, extortion, or offences connected with the financing of terrorism;

(b) the required information cannot readily be obtained by any other means; and

(c) the need for the information that may be obtained by the employment of that person as an informant justifies his employment notwithstanding the criminal activities on which he may be engaged;

5. The employment of an informant believed to be engaged in criminal activity must be specifically authorised by an officer not below the rank of Assistant Chief Constable. It must be regularly reviewed ...”⁵⁸

4.56 It is evident that these revised Guidelines did not, in fact, represent the tightly defined framework (coupled with rigorous regulation to prevent abuses) that was required to deal with the complexities of agent-handling in Northern Ireland. I do not, therefore, suggest that these Guidelines were a solution to the problem. Indeed, as the Solicitor General noted on 11 August 1992:

“... the thrust of para[graph] 4 appears to be ‘Don’t get caught!’ This is unpromising territory for Ministerial approval.”⁵⁹

⁵⁵ Minutes of NIO Working Group meeting held on 2 October 1989

⁵⁶ Minutes of NIO Working Group meeting held on 9 November 1989

⁵⁷ Minutes of NIO Working Group meeting held on 24 October 1990

⁵⁸ Working Group meeting, *Draft Guidelines for the Police on the Use of Informants in Terrorist Related Cases*, 9 November 1989

⁵⁹ Handwritten note, Solicitor General, 11 August 1992

4.57 The revised Guidelines did, however, at least represent an attempt to address the issue and built in some necessary safeguards such as the need for approval by an Assistant Chief Constable and regular reviews of agent participation in criminality. In itself the exercise of drawing up such Guidelines perhaps highlighted the extent to which the only real solution to the problem was legislation.

4.58 At the Working Group's third meeting on 24 October 1990 the minutes noted that the RUC Chief Constable had seen and approved the proposed draft Guidelines. It was agreed that the next step should be for the Secretary of State to consult other relevant Ministers but that:

“... it would be better to consult the Attorney after other Ministers had reached an agreed position ... Those to be consulted would include the Secretaries of State for Foreign and Commonwealth Affairs (given his responsibilities for [the Secret Intelligence Service]), the Home Office (because of his responsibility for the Security Service and police forces in England and Wales), Scotland (for the Scottish police forces) and Defence (since the Army in Northern Ireland were in a similar position to the RUC).”⁶⁰

4.59 On 12 December 1990, the Secretary of State for Northern Ireland wrote to the then Home Secretary, the Rt Hon Kenneth Baker MP, enclosing a copy of the new draft Guidelines produced by the Working Group.⁶¹ His letter summarised the current position as follows:

“It has long been tacitly acknowledged that the current Home Office Guidance on the use of participating informants was inappropriate in the current terrorist context in Northern Ireland. That Guidance was drafted in 1969, ie before the emergence of the current terrorist campaign, and it was therefore designed essentially for ‘ordinary’ crime. Although the so-called ‘Home Office Guidelines’ are not, of course, binding on the RUC in the absence of any other guidance, they have been adopted as a general yardstick for RUC operations, at least as far as non-terrorist crime is concerned. The RUC have strongly represented – and have been supported in this by ‘outsiders’ like Mr Stalker and the late Mr McLachlan – that a completely new set of Guidelines are required. They want Guidelines which would recognise the need to allow informants providing vital intelligence to take part in serious crime provided that certain criteria were met and under the strict supervision of a senior officer.”⁶²

4.60 Before the issues could be addressed at Ministerial level, however, the Nelson case came to the fore with his arrest on 12 January 1990 and subsequent trial just over two years later when he pleaded guilty to 20 terrorist-related offences (including five counts of conspiracy to commit murder), for which he was sentenced to ten years' imprisonment on 3 February 1992. In the light of the issues thrown up by his case, the then Secretary of State for Northern Ireland,

⁶⁰ Minutes of NIO Working Group meeting, 24 October 1990

⁶¹ Secretary of State for Northern Ireland to Home Secretary, 12 December 1990

⁶² Ibid.

Sir Patrick Mayhew (formerly the Attorney General), with the agreement of the other Ministers concerned, commissioned Sir John Blelloch, a former Permanent Secretary at the NIO, to conduct a review of agent-handling.

- 4.61 In the meantime I am informed by the Security Service that, although the Working Group's draft Guidelines had not been formally authorised by Ministers, the Service adopted them in January 1992 for their own use (including in relation to agent-running operations in Northern Ireland). By March 1992 those draft Guidelines had also been adopted by the JSG and the RUC, as noted in a Security Service supplemental brief which set out the position as follows:

*"The Security Service, JSG and RUC now use the Guidelines agreed by the NIO Working Group. The Guidelines have, however, been adapted in relation to the administrative controls to reflect those of each agency. The Guidelines are being reviewed by Blelloch and it is anticipated that he will deal with them in his report."*⁶³

- 4.62 By way of background the brief went on to explain:

*"The RUC, JSG and Security Service decided not to wait until the outcome of the Blelloch Review before informally adopting the Guidelines as some means of protection against the recurrence of a Nelson-type case."*⁶⁴

The Blelloch Review

- 4.63 Sir John Blelloch's 'Review of Agent Handling' began work in March 1992. His Terms of Reference were as follows:

*"Taking account of the Nelson case, to review the recruitment and handling of Army agents in Northern Ireland, and the arrangements for the transition of and feed back on the information the Agents provide. The Review should also take account of the practices and procedures of the Security Service and the Royal Ulster Constabulary Special Branch and, where appropriate, recommendations should also apply to them."*⁶⁵

- 4.64 Sir John's approach to the issue of guidance was summarised in an internal minute from the Security Service Legal Adviser dated 25 March 1992 as follows:

*"Blelloch has indicated that the Home Office Guidelines are unacceptable in a counter-terrorist context and that the NIO Working Group Guidelines are about as good as can be achieved. Blelloch has indicated that he would not wish to advocate different procedures (e.g following the American system) if they entailed legislation as he believed legislation would be politically unobtainable. Blelloch has also indicated that he is not sure that Ministers (particularly the Home Secretary) will approve the Guidelines for fear that that may involve them in allegations of conspiratorial criminality. He is, however, prepared to endorse the Guidelines in his report."*⁶⁶

⁶³ Minute, Security Service Legal Adviser, 25 March 1992

⁶⁴ Ibid.

⁶⁵ Terms of Reference for Sir John Blelloch's *Review of Agent Handling*

⁶⁶ Minute, Security Service Legal Adviser, 25 March 1992

4.65 Blleloch's Report was circulated by the then NIO Permanent Secretary, John Chilcot, on 15 July 1992.⁶⁷ Blleloch produced a range of recommendations for the better management and handling of agent activities in Northern Ireland. However, as he noted in the Report, the question of the guidance to be issued regarding the position under the criminal law of agents, their handlers and others engaged in the intelligence process was one that he was not able finally to resolve. He described the position as follows:

"It has long been acknowledged that the current Home Office Guidelines on the use of participating informants are inappropriate in the current terrorist context in Northern Ireland. The Guidelines were drafted in 1969 before the emergence of the current terrorist campaign and were accordingly designed essentially for dealing with 'ordinary' crime ...

These issues were raised both by Mr Stalker and subsequently by Mr McLachlan in their reports of 1987/1988. A NIO-led Working Party has since drawn up, in 1990, a revised set of draft Guidelines ... These have been seen and endorsed by the Chief Constable of the RUC but have not, as yet, received collective Ministerial approval. The Security Service have in the meantime for practical purposes been following them, as have the Army. The RUC in their somewhat different circumstances have not. There, for the moment, the matter rests.

The Nelson case has revived the issue. Source handlers and sources have both queried, as well they might, what, with Nelson in prison, their position now is and neither can at present be given a very satisfactory answer ... [T]here is something manifestly unsatisfactory about a situation in which people are expected by Government to undertake difficult and often very dangerous tasks without, as far they can see, any clear idea of the extent of the support they can expect if things go wrong.

Nothing has emerged in the context of this review of agent handling to suggest that the content of the [proposed] draft Guidelines ... should be revised: the problem is one of the status of the document, and, specifically, the extent of Ministerial approval. The need to clarify this status seems to the review team to be a matter of some urgency now, and, moreover, one that will not go away ..." [Emphasis in original]⁶⁸

4.66 Chilcot's letter of 15 July 1992 distributing the Blleloch Report also enclosed a copy of a minute from the then Secretary of State for Northern Ireland, Sir Patrick Mayhew. The minute endorsed the report but gave the following comment on the section regarding agent-handling guidelines:

"... I believe the position is more straightforward than the Report suggests.

... The starting point is that an agent may not, and may not be 'authorised' to, commit a criminal offence. A criminal offence, however, requires a criminal mind: for all practical purposes no offence will be committed by an agent

⁶⁷ Letter from John Chilcot to the Cabinet Secretary Sir Robin Butler, 15 July 1992

⁶⁸ Blleloch Report, paras 57–60

whose act is not accompanied by a criminal mind – that is to say, a mind desirous of the commission of the relevant offences.

Subject to the views of the Attorney General, I consider that, for example, the ostensible membership of a proscribed organisation acquired by an agent for the purpose of contributing to the prevention of the organisation’s objectives is not criminal in character. Similarly, an act that is relevant to the criminal law of attempt, is not criminal in character if it is done with the purpose of permitting the actor to participate in the subsequent frustration of the offence.”⁶⁹

4.67 Commenting on that suggestion in a minute dated 25 August 1992, the then Attorney General, Sir Nicholas Lyell QC, said:

“I recognise there is a serious argument, as you suggest in your minute, that someone who participates in a particular crime with the intention of actually frustrating that crime is not guilty as a secondary party. But even if that is right, and it must be recognised that the law in this area is not yet clearly developed, it would not assist the individual who participates in a crime not with the object of frustrating that particular incident but with the intention of maintaining his cover in order to help the Security Forces generally or to permit them to prevent a subsequent crime or to arrest those concerned after the event.

It may be that the courts would also recognise a more general defence for undercover agents based on considerations of expediency or necessity. But again the very existence of such a defence, let alone its precise scope, is uncertain and I see no way in which an informant could properly be told to rely on it.

Clear evidence of motive and intention may of course be highly relevant in the analysis of any potentially criminal conduct which comes to the notice of the prosecuting authorities in relation both to sufficiency of evidence and to consideration of the public interest. But it remains my firm view that this must be a matter for the prosecuting authorities after the event and in the light of all the circumstances. There cannot be a basis for the approval of guidelines which might be said to purport to condone in advance conduct which would properly be the subject of criminal proceedings.” [Emphasis added]⁷⁰

Action taken following the Blelloch Report

4.68 The response of the Government to the Blelloch Report was to establish an Interdepartmental Working Group under Chilcot’s chairmanship. This comprised representatives of the Security Service, the RUC, the MoD, the Home Office and the NIO. It held its first meeting on 11 December 1992.

⁶⁹ Minute, Secretary of State for Northern Ireland, Sir Patrick Mayhew, endorsing the Blelloch Report, 22 June 1992

⁷⁰ Minute, Attorney General to Secretary of State for Northern Ireland, 25 August 1992

- 4.69 Further insight into the Attorney General's perspective can be gained from the minutes of that meeting which noted, in relation to one of the options under consideration ("*Option 3: 1990 Guidelines to be approved by the Attorney General*"), that:

*"... the Attorney General could not approve any guideline which appeared to condone in advance the commission of serious criminal acts. Responding to the point that even were he brought to do it the pressure of the first difficult case would make his position intolerable ... [the Legal Secretary to the Law Officers] agreed and added that the Attorney did not believe that this option could be delivered."*⁷¹

- 4.70 Following the first meeting of the Interdepartmental Working Group, Chilcot wrote to members of the group attaching a first draft of a submission for Ministers "*as a basis for discussion*".⁷² The draft submission set out the problem under consideration, and summaries of Blelloch's possible ways of resolving it, responses to Blelloch, and the three broad options going forward (do nothing, non-statutory guidance or changing the law). The draft submission concluded as follows:

*"The difficulties of legislating on intelligence subjects are familiar. But it has been achieved more than once in recent years ... The alternatives of doing nothing, or of going down the non-statutory route, seem both unsatisfactory in practice and arguably unacceptable in principle over the long run."*⁷³

- 4.71 On 14 July 1993 Chilcot submitted a note to the Secretary of State setting out the conclusions of the Interdepartmental Working Group, which he summarised as follows:

"... the present situation is not satisfactory. The existing law appears to leave agents, handlers, and others involved in the intelligence process – including Ministers – unduly exposed. This has practical drawbacks (in terms of our ability to run agents, who are vital to our work against terrorism) as well as political and ethical ones.

*There is much that can, and should, be done on a non-statutory basis to improve matters. The Blelloch recommendations will help (although they are primarily directed to army agent handling, whilst the underlying problem affects all agencies). So will further elaboration of the existing schemes of guidance and regulation within agencies, based around a common core understanding both of the law and of best practice. Nonetheless, a stable and satisfactory way forward, which is fair to agents, handlers and the others could only (in the view of my group) be achieved by new legislation."*⁷⁴

⁷¹ Note of a meeting held on 11 December 1992

⁷² Letter, John Chilcot to the Home Office, 19 January 1993, and draft submission

⁷³ Draft submission to Sir John Blelloch's *Review of Agent Handling*, 19 January 1993

⁷⁴ Submission of John Chilcot to the Secretary of State, 14 July 1993

4.72 Thereafter the Cabinet sub-committee on Northern Ireland, under the Prime Minister's chairmanship, considered papers from the Secretary of State for Northern Ireland on 29 July and September 1993. An internal Home Office briefing note dated 1 September 1994 summarised the results of these discussions as follows:

"The Northern Ireland Secretary and the Attorney, with some support from the Defence Secretary, argued strongly that a statutory solution was necessary. The Prime Minister, the Foreign Secretary, the Home Secretary and the Chancellor of the Exchequer all expressed grave reservations about opening up such a sensitive area to Parliament when the slenderness of the Government's majority could not guarantee a satisfactory outcome.

*Formally the meetings were not conclusive in that the committee left open the possibility of legislation if further work by the NIO failed to identify a satisfactory non-statutory solution."*⁷⁵

4.73 The changing political landscape in Northern Ireland, however, appears to have diminished the impetus to resolve the problem. The briefing note goes on to comment that:

"The issue has not subsequently been referred back to Ministers though there have been occasional meetings of the NIO working group ... Given Ministers' declared view and the new context created by the Joint Declaration we have endorsed the NIO view that the issue is best played long. Moreover, some of the alarm in the immediate aftermath of the Nelson case has abated. The argument that increased uncertainty about the legality of particular operations would make agent recruitment and handling more difficult was probably overstated ...

*The PIRA announcement of a cessation of violence must increase the possibility that the policy issue will quietly be laid to rest unless the police and other agencies start to argue (as they have not yet done) that the law needs to be changed to buttress their covert operations against other forms of serious crime. The 1969 circular remains an embarrassment but the line will have to be that the police and each of the agencies rely primarily on their own internal (unpublished) guidelines and that they are, in addition, subject to the ultimate oversight of the prosecuting authorities and the courts."*⁷⁶

4.74 Sir Patrick Mayhew minuted the Prime Minister on 28 May 1995 with the following update on agent-handling:

"In my minute of 11 January I reported that the official Working Group on Agent Handling remained of the view that the shortcomings in the existing arrangements for running agents may satisfactorily be resolved only by legislation, but that the absence of a suitable legislative opportunity and the uncertainties over the peace process meant that the time was not yet right to take a final decision on the matter ...

⁷⁵ Briefing note on Agent-Handling, 1 September 1994

⁷⁶ Ibid.

With the [PIRA and loyalist] ceasefires in Northern Ireland continuing to hold, the need to resolve the issue will not be compelling, unless the situation deteriorates. I still consider that legislation is the only effective solution, as officials have been unable to produce any viable non-statutory proposals. However, I doubt there will be a suitable opportunity for legislation on this topic in this Parliament ... I suggest therefore that unless things change we simply continue to keep open the possibility of legislating ... on the issue when an opportunity arises.”⁷⁷

- 4.75 The necessary legislation was eventually passed (under a different administration) in the form of the Regulation of Investigatory Powers Act 2000 (RIPA).

The position of agent-running organisations in the late 1980s

- 4.76 It is apparent that the failure to develop an agreed framework for agent-handling in Northern Ireland in the late 1980s had a significant effect on the organisations responsible for intelligence-gathering.

- 4.77 In their submissions to my Review, those responsible for running agents in Northern Ireland consistently highlighted the lack of any adequate guidelines. A/05’s submission stated that the FRU ran agents “*without the proper legislative basis and guidance to which I believe we were entitled*”.⁷⁸ In his statement to the Stevens III Investigation, A/05 noted:

“I believe the wilful neglect in this matter lies with successive governments who despite calling for counter terrorist intelligence measures and reaping the political rewards of FRU’s work in Northern Ireland have ignored Blleloch and Chilcot and have deliberately failed to address the need for a more complete legal framework and more detailed guidelines.”⁷⁹

- 4.78 The retired senior RUC officers I met during this Review provided similar accounts. R/15 told me that he raised this specific issue when briefing the then Prime Minister in the late 1980s. The note of my meeting with former RUC officers records that:

“... when Margaret Thatcher asked R/15 whether there was anything else he needed to combat terrorism effectively, he had no hesitation in telling her that he regarded as essential a sound legislative basis on which intelligence operations could be conducted lawfully. In relation to the ... sources for which he was responsible at the time, he said that their management was made infinitely more difficult because they were operating in a grey area, and in the absence of a sound legal framework.”⁸⁰

- 4.79 R/15 provided the following account of his recollections as to how the UK Government handled the representations made by senior RUC officers:

⁷⁷ Minute, Sir Patrick Mayhew to the Prime Minister, 28 May 1995

⁷⁸ A/05, written submission to the Review, p. 35

⁷⁹ A/05, statement to Stevens III Investigation, 2002

⁸⁰ Note of meeting with former RUC officers, 25 July 2012, para 54

“The response was ... essentially that the issue was too difficult to handle, and that SB should continue as before. [R/15] said that there was a reluctance to give official recognition to what SB was doing, the effect of which would be to authorise agents of the State to allow informants to take part in activities that could lead to the commission of terrorist offences. [R/15] said that the gist that he took from the Government’s response was, in effect, ‘carry on with what you’re doing but don’t tell us the details’. This remained the attitude until around 2000 when the effect of the Human Rights Act 1998 (HRA) coming into force required the Regulation of Investigatory Powers Act 2000 (RIPA) to be passed to deal with the situation.”⁸¹

- 4.80 R/15 did not have access to the documentary records when providing his evidence to my Review, but his account is none the less strikingly consistent with the picture revealed by UK Government files. Blair Wallace described the UK Government as having lacked the “*political will*” to deal with this issue.⁸²
- 4.81 In its submission to my Review, the Police Service of Northern Ireland (PSNI) noted that “*the guidance open to police officers in the handling of sources was clearly inadequate and this fact was recognised internally in the police service and externally by Government and policy makers.*”⁸³ Security Service officer G/07 noted in his written statement that the implications of running agents involved in crime was “*a concern for all the relevant agencies*” and that the Service “*shared the RUC’s concerns and aims*” in relation to the guidance.⁸⁴
- 4.82 The result of this situation was that many of the agent-handlers interviewed by the Stevens I, II or III Investigations appeared to be unclear as to where the line was supposed to have been drawn with regard to agent participation in crime. It is apparent that FRU handlers in particular received no training on legal issues during their otherwise rigorous training prior to being sent to Northern Ireland.⁸⁵ The Blelloch Report also noted that there had been no dedicated legal adviser available to monitor and provide advice on FRU agent cases.⁸⁶ Similarly, although RUC SB officers undertook training and received supervision, I have not seen any evidence to suggest they were provided with training or briefing on the legal implications of agent-running. This is, however, not particularly surprising given the absence of a statutory framework on which to base any such training or guidance.
- 4.83 An example of the confusion and uncertainty at the time was provided to Sir John Blelloch by Lieutenant Colonel (Lt Col) A/16 (the probable author of the Nelson ‘Problem Areas’ document referred to in Chapter 7) in 1992. Blelloch was shown a Contact Form relating to the handling of a FRU agent within the Provisional Irish Republican Army (PIRA) in Northern Ireland. The agent concerned had reportedly been tasked by PIRA to carry out a shooting (though

⁸¹ Ibid., para 55

⁸² Ibid., para 58

⁸³ PSNI, written submission to the Review, 6 September 2012, para 13(5)

⁸⁴ G/07, written statement, 27 September 2012, para 22

⁸⁵ Blelloch Report, Volume 1

⁸⁶ Ibid.

this never ultimately happened) and, in view of this, the Officer Commanding of the relevant FRU Detachment commented that:

“... we must consider Source’s reported reaction, viz. that he agreed to pull the trigger. Was he right to do so? What choice did he have? And what should he have done had the operation gone ahead? That these questions cry to heaven for an answer – in the absence of any from Stormont or Whitehall – is all too well known, and was recently well underlined in open court [the Nelson case] ... In the event, I and the handler followed the ‘textbook’ line, by telling Source that he must never commit a crime and that, in all circumstances, he must warn us about intended terrorist action as soon as he could get to a telephone.”⁸⁷

- 4.84 Such a scenario seems to me likely to have arisen throughout the Troubles in Northern Ireland. It is significant, in my view, that agent-handlers and their managers were actively seeking guidance from Government as to the appropriate boundaries for agent-running at the time. It was manifestly not the case that agent-handlers were seeking to conceal the general nature of their activities from those in authority; on the contrary, they wanted the political leadership to provide a clear framework and direction.

Overview

- 4.85 As the running of agents lies at the heart of this Review, I have dealt with the history of the applicable guidance at some length.
- 4.86 It is absolutely clear that there was no adequate agent-handling guidance or direction whatsoever in the late 1980s. The 1969 Home Office Guidelines had not been designed for a counter-terrorism situation and had, rightly, been discarded. The FRU Directives and Instructions were manifestly unsatisfactory and the Security Service similarly lacked any external framework for assessing the extent to which agents could become involved in criminality. Successive reports and representations from senior RUC, Security Service and (latterly) Army officers had highlighted the fact that this situation was unacceptable.
- 4.87 In such circumstances the UK Government had a duty to provide an effective statutory framework and clear policy direction. The issue was considered extensively at Cabinet level and Government Ministers were clearly aware that agents were being handled in Northern Ireland without reference to any adequate guidelines because no such framework existed. Ministers nonetheless continued to place a high priority on pursuing an intelligence-led approach to the terrorist threat. The result of this was that agent-handlers and their supervisors were being asked to perform a task – namely the penetration of agents to the heart of a terrorist group – that, in some cases, could not be carried out in a way that was both effective and lawful.
- 4.88 What was required was a clear statutory recognition that agents must be run at the heart of terrorist groups; some recognised limits as to the extent to which

⁸⁷ Internal memo, Lt Col A/16 to ACOS G2, 3 March 1992

agents could become involved in criminal enterprises; and a rigorous regulatory framework to prevent abuses. RIPA subsequently demonstrated the type of statutory regime that should have been applied much earlier in the context of Northern Ireland. However, it is doubtful whether RIPA and its associated Code of Practice provides a real resolution to these difficult issues given that it provides little guidance as to the limits of the activities of covert human intelligence sources.

- 4.89 Many of the grave issues relating to the involvement of agents in the murder of Patrick Finucane must, therefore, be considered in the context of the wilful and abject failure by the UK Government to put in place adequate guidance and regulation for the running of agents.

The operational environment for agent-handling in Northern Ireland

- 4.90 In my view, the Government's failure to put in place proper agent-handling guidelines was all the more serious because the difficulties faced by agent-running organisations in Northern Ireland were particularly acute. The running and handling of agents in the circumstances that prevailed in Northern Ireland at the time of Patrick Finucane's murder was fraught with danger, both for the agent and the handler.
- 4.91 Although there has been much media reporting on the number of agents recruited by the intelligence agencies in Northern Ireland during the Troubles, there has been little attention paid to the difficulties faced by these agencies in relation to the recruitment, handling and retention of such agents. It is certainly true that all paramilitary organisations were significantly penetrated and that many planned terrorist operations were frustrated. Nonetheless, many of the papers and notes of internal discussions seen by my Review highlighted how difficult the agencies felt it was to recruit agents from the ideologically committed ranks of paramilitary organisations in Northern Ireland.
- 4.92 Once an agent had been recruited, the dangers that they faced were particularly severe. The extreme paranoia and suspicion evident in terrorist organisations in Northern Ireland during this period could, paradoxically, have a beneficial effect in counter-terrorism terms because they diverted the organisations into debilitating internal security reviews. However, this also created an extremely dangerous environment for an agent. Many members of terrorists groups came under suspicion at one time or another.
- 4.93 If intelligence passed by an agent led to a terrorist plot being thwarted, his associates would immediately look for the source of the leak. Discovery could lead to torture and execution. The retired RUC officers I met during this Review had calculated that the IRA killed 59 of its own members who were suspected of being informers.⁸⁸ The officers recounted how the execution of suspected agents

⁸⁸ Note of meeting with former RUC officers, 25 July 2012

and informers sent shock waves through the ranks of other agents or informers who would consider themselves next in line.

- 4.94 Almost all agents held significant fears that they would be unmasked by their paramilitary associates. The retired RUC officers noted that an agent's fear of their terrorist associates was far greater than their fear of displeasing their handlers. A/05 described the agent's experience as follows:

*"It was a schizophrenic existence and worse a life conducted in constant danger of compromise and consequent death."*⁸⁹

- 4.95 Security Service Officer G/07 provided a similar account of the difficulties of agent-running in Northern Ireland at the time:

*"Agent running in NI was particularly challenging because both loyalist and republican terrorist organisations possessed ruthless and effective internal security teams who were acutely aware of the dangers posed to their organisations through agent penetration. These counter intelligence teams mounted focused and frequently lethal investigations and interrogations intended to identify and punish informers, thereby warning others of the consequences of assisting the authorities. Some individuals deemed guilty were mutilated, others banished (with their families) from the Province, while some were summarily executed."*⁹⁰

- 4.96 Even the practical arrangements for seeking to recruit and meet an agent in Northern Ireland could be fraught with difficulty. Submissions to my Review on behalf of both the FRU and the RUC SB stressed the difficulties of communicating with an agent.

- 4.97 Meetings with handlers had to be subject to elaborate precautions. Mobile telephones did not exist and there were inherent security risks in using a landline. In many areas there were no public telephones, and where they were available their use could arouse suspicions. Any telephone calls made had necessarily to be cryptic and quick, which could make it difficult for the handler to comprehend adequately the context of the intelligence being provided. These difficulties meant that an agent might sometimes have to go along with events without being able to communicate them first to his handler.

- 4.98 The risks that agent-handlers faced were also significant. RUC SB officers lived with their families in local communities and faced a constant terrorist threat that was potentially exacerbated by their duties to meet agents in various locations in Northern Ireland. In his written submission to my Review, A/05 noted that members of the armed forces with 'non-Irish accents' were particularly vulnerable to being identified as members of the security forces when operating in closely-knit local communities in Northern Ireland.⁹¹

⁸⁹ A/05, written submission to the Review, Annex 1

⁹⁰ G/07, written statement, 27 September 2012, para 14

⁹¹ A/05, written submission to the Review, Annex 1

- 4.99 In their written submission to my Review, the PSNI stressed that, “*the work undertaken by SB was dangerous, with officers operating in some of the most difficult and high risk areas in Northern Ireland*”.⁹²
- 4.100 The criticisms I make of agent-handling in this Report must, therefore, be considered in the context of both the unacceptable lack of any guidelines for agent-handling and the extremely difficult and dangerous environment within which both agents and their handlers operated.

⁹² PSNI, written submission to the Review, para 6(11)

Chapter 5: Action taken by the security forces to tackle loyalist terrorism

- 5.1 Whilst much of my Report will inevitably focus on the allegations that agents of the State assisted or colluded with loyalist paramilitaries, it is also necessary to position these findings in the context of the action taken by the authorities to prevent and frustrate loyalist terrorism during the late 1980s.
- 5.2 During the period with which this Review is concerned there were many aspects to the work of the security forces in combating loyalist terrorism. I summarise three of the key areas below.

The arrest and imprisonment of loyalist terrorists

- 5.3 I have examined the role of the authorities in arresting, prosecuting and imprisoning loyalist terrorists during the 1980s. The statistics in relation to the imprisonment of loyalist terrorists during the Troubles as a whole are somewhat uncertain. A recent review of the relevant literature by Professor Bill Rolston recorded statistics of 15,000 republicans imprisoned during the Troubles, with estimates of loyalist prisoner numbers varying from 5,000 to upwards of 12,000.¹
- 5.4 The period I have focused on for the purpose of this Review is the late 1980s. The historical record clearly shows that, when the State introduced internment in the early 1970s, this measure was deployed overwhelmingly against republicans. By the late 1980s, it appears that the security forces were, as a general rule, taking significant action to seek to pursue and imprison loyalist terrorists.
- 5.5 I have, for example, examined the statistics relating to charges brought by the Royal Ulster Constabulary (RUC) during the relevant period in which Patrick Finucane was murdered. In the period 1 January to 31 October 1989, 139 loyalists were charged with terrorist-type offences compared with 206 republicans. In the equivalent period in 1988, 132 loyalists were charged with such offences compared with 206 republicans.² It should be noted that in the period 1988–89, republicans were responsible for three times as many murders as loyalist paramilitaries (126 deaths compared with 42) and many more bombings.³
- 5.6 The Police Service of Northern Ireland's (PSNI's) statistics provided to my Review confirmed the charging rates for the offences of murder and attempted murder during the period 1987–89: overall, 47 loyalists were charged with murder compared with 38 republicans; and 32 loyalists were charged with attempted murder compared with 83 republicans.⁴

¹ Professor Bill Rolston, *Review of literature on republican and loyalist ex-prisoners*, 2011, p. 11 (www.ofmdfmi.gov.uk/final_literature_review.pdf)

² Figures produced for November 1989 Security Policy Meeting

³ David McKittrick et al., *Lost Lives*, Mainstream Publishing, 2004, p. 1554, Table 3

⁴ PSNI Statistics Branch, table, PSNI submission to the Review, Appendix D

- 5.7 In view of the higher level of republican violence during this period across Northern Ireland as a whole, these figures do not, in my view, suggest any bias on the part of the RUC in failing to pursue loyalist terrorists. The success rate in charging loyalist terrorists was, in fact, disproportionately high.
- 5.8 The comparative success of the security forces in pursuing loyalist terrorists was stressed in a number of submissions to my Review. The Northern Ireland Retired Police Officers' Association provided my Review with statistics suggesting that, during the period 1983–96: “[A loyalist [was] twice [as] likely to be charged for killing a catholic civilian as a republican [was] likely to be charged with the killing of a protestant civilian.”⁵
- 5.9 Further detailed statistical analysis would be required to establish the exact nature of the trends evident during this period. However, I can certainly infer from the available material that there is no evidence to suggest that, in the late 1980s, the security forces were institutionally biased in seeking to bring charges against republican paramilitaries as opposed to loyalists. On the contrary, the actions of the authorities in charging, prosecuting and imprisoning loyalist terrorists during the late 1980s in my view seriously undermines any simplistic notion that loyalist terrorists should be regarded as an extension of the State. As Professor Richard English noted in his report for my Review:

“... the idea of close cooperation between loyalists and the state ... sits uneasily with the very large number of loyalists imprisoned by that state during the Troubles.”⁶

The seizure of loyalist arms in the late 1980s

- 5.10 A further important aspect of the security forces' action against loyalist terrorists during the late 1980s were the efforts to prevent loyalists from importing arms into Northern Ireland and to seize arms that had been imported.
- 5.11 Cabinet Office documents show repeated references to security force successes in disrupting loyalist attempts to acquire weaponry in the aftermath of the Anglo-Irish Agreement. A letter from the Director General of the Security Service to the Cabinet Secretary in April 1986 outlined operations to frustrate loyalist attempts to purchase weapons in Scotland and London, with two further investigations into possible future attempts continuing.⁷ This briefing was also provided to the Prime Minister's Office,⁸ and a note produced for the Joint Intelligence Committee Chair in July 1986 stated that:

“... staff [in the Security Service] have commented that if the UDA had obtained these weapons, it would have represented a significant increase in its available arsenal and operational capabilities.”⁹

⁵ Submission of former RUC officers to the Review

⁶ Report of Professor Richard English to the Review, p. 21

⁷ Letter from Sir Antony Duff to Cabinet Secretary Sir Robert Armstrong, 25 April 1986

⁸ Note to Sir Percy Cradock, *Loyalist Paramilitary Activity*, 29 April 1986

⁹ Note to Sir Percy Cradock, *Loyalist Arms Procurement*, 3 July 1986

5.12 In December 1986, a report of the Joint Intelligence Committee confirmed that RUC and Security Service action had frustrated a number of further loyalist arms procurement operations, with Ulster Defence Association (UDA) members and sympathisers – including three members of the Territorial Army – having been arrested. According to this report, the seizure “*represents a severe setback for UDA efforts to procure arms on the mainland, disrupting a hitherto safe route from Scotland to Belfast*”.¹⁰

5.13 As I note in Chapter 6, I have found no evidence to support the allegations that the UDA, with the support of Brian Nelson and the intelligence agencies, imported arms into Northern Ireland in the mid-1980s. Whilst it is undoubtedly the case that loyalists did import arms in late 1987 through an Ulster Resistance-led operation, I do not believe that Nelson had any involvement in those shipments.

5.14 Although both the Provisional Irish Republican Army (PIRA) and the loyalists did manage to import weapons into Northern Ireland in the 1980s, an analysis of the security operations undertaken during this period suggests that the security forces had a significant degree of success in seizing loyalist arms. The following seizures are of particular note during the period 1988–89, though this list is by no means exhaustive:

- On 8 January 1988, the RUC stopped and searched two cars in Portadown and recovered the bulk of the UDA’s share of the arms shipments organised by Ulster Resistance. Davy Payne, a senior UDA figure, was arrested and later convicted and sentenced to 19 years’ imprisonment.
- The following month, a number of revolvers, AK47s, RPG rocket launchers and hand grenades were seized, and arrests made.¹¹
- In October 1988, the components for almost 1,000 home-made machine guns were seized.
- On 30 January 1989, a search in the Shankill area of Belfast recovered 2,500 rounds of ammunition and firearms including a machine gun.¹²
- In February 1989, bomb-making material was recovered in Rathcoole.¹³
- On 24 March 1989, a sawn-off shotgun and pump action rifle were recovered.¹⁴
- In April 1989, three members of Ulster Resistance were arrested in Paris when apparently seeking to pursue the purchase of arms.
- In May 1989, two home-made sub-machine guns were seized with a sawn-off shotgun, a pistol and ammunition.¹⁵
- In November 1989, four pistols, a sub-machine gun, assorted ammunition and three detonators were seized from the UDA.¹⁶

¹⁰ JIC Irish Terrorism Current Intelligence Group – Irish Terrorism: Mainland Activities and Arms Procurement, 11 December 1986, JIC(86)(WSI)50

¹¹ PSNI, submission to the Review, 6 September 2012, p. 9

¹² CF 31 January 1989

¹³ PSNI, submission to the Review, 6 September 2012, p. 10

¹⁴ *Ibid.*, p. 11

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 10

Intelligence operations to frustrate loyalist terrorists

- 5.15 As part of this Review, I have considered extensive evidence relating to the activities of the intelligence agencies in countering loyalist terrorism. I consider the running of loyalist agents in detail later in this Report but it is important to acknowledge the fact that the intelligence agencies did achieve a significant degree of success in containing and thwarting loyalist terrorists in the late 1980s.
- 5.16 I have no doubt that penetration of loyalist terrorist organisations had, in many instances, the effect of frustrating terrorist activity. Much of the material I have reviewed on successful intelligence-led actions against loyalist terrorist organisations remains sensitive and cannot be disclosed in a manner consistent with my obligations under Article 2 of the European Convention on Human Rights. Such operations did, however, include attempts to divert the UDA away from terrorist activity through a variety of means, and covert operations designed to recover newly acquired loyalist weaponry.
- 5.17 It is important that I acknowledge the role played by such intelligence activity in preventing loss of life as a result of loyalist attacks. In particular, I am satisfied that intelligence operations led by the Security Service and the RUC SB played a significant part in effectively nullifying the terrorist threat from the UDA in certain geographical areas of Northern Ireland in the late 1980s. Intelligence was also critical to the successes achieved by the security forces in seizing arms during this period.
- 5.18 The pattern of loyalist terrorist activity, both over time and in different regions, did correlate to an extent with the level of agent penetration or other disruptive activity achieved by the intelligence agencies. The West Belfast UDA is, to an extent, an important exception to this pattern (in that it was both penetrated but also highly active in carrying out terrorist operations) and one that will be explored extensively in this Report.

Overview

- 5.19 In view of the criticisms later in this Report, it is important to note that the authorities were taking significant action against loyalist terrorists during the late 1980s. I have no doubt that the action taken by the security forces did frustrate loyalist terrorists and significantly reduce their operational capacity in Northern Ireland as a whole.
- 5.20 Any attempt to crudely describe loyalist terrorists as simply ‘State-sponsored forces’ is, in my view, untenable and fundamentally at odds with a substantial body of contemporary evidence and the historical context of the relationship between loyalists and the security forces during this period (see Chapter 2). The evidence of collusion between elements of the State and loyalist terrorists that I have uncovered during the course of this Review does, therefore, need to be positioned in the context of this chapter and the action that was being taken by the State to thwart loyalist paramilitaries.

Chapter 6: The recruitment of Brian Nelson

- 6.1 Brian Nelson, who worked as an agent for the Army's Force Research Unit (FRU), is central to my review of the circumstances that led to Patrick Finucane's murder. In this chapter I consider the background against which he was initially recruited by the FRU in 1984 and his activities whilst he was acting in the capacity of their agent within the Ulster Defence Association (UDA) until he left Belfast with his family in October 1985 to live and work in what was then West Germany. I then consider the FRU's re-establishment of contact with Nelson during the period January to April 1987 with a view to re-recruiting him as their agent, the intervention by the Security Service in that process and, following his return to Belfast, his re-infiltration into the UDA.
- 6.2 I refer to various Contact Forms (CFs) and Military Intelligence Source Reports (MISRs) – which as I have noted were documents that the FRU used, respectively, to record the intelligence they obtained from Nelson and to disseminate it amongst the intelligence agencies operating in Northern Ireland at the time. I also refer to a document which Nelson is believed to have authored and which I shall refer to as Nelson's 'journal', as it has come to be known.

Brian Nelson's background

- 6.3 Brian Nelson was born and brought up in the Shankill area of Belfast. He left school at 15 and joined the Royal Navy. Later he joined the Territorial Army. In October 1965, when he was 17, he signed up with the Regular Army, serving with the 1st Battalion Black Watch in Germany and Cyprus. He was medically discharged in early 1970.
- 6.4 After returning to Belfast he joined the UDA in 1972. In the following year he was charged with offences arising from the kidnap of Gerald Higgins, a partially sighted man. During this Review I received powerful submissions from the victim's daughter which make clear the sheer brutality of this offence.¹
- 6.5 In March 1973 Nelson and two other men abducted Higgins and took him to a UDA club where he was beaten, set on fire and electrocuted. Higgins was only saved when an Army patrol intervened as he was apparently being led to his execution. He was taken to hospital where his injuries were such that he was not expected to live. Thankfully he survived, though his daughter submitted to this Review that "*My father never recovered from this horrendous ordeal. His life was left in tatters, his faith in humanity destroyed*".² In February 1974 Nelson was

¹Letter to the Review, 23 July 2012

²Email to the Review, 29 August 2012

sentenced to imprisonment for seven years for firearms offences, intimidation and assault occasioning actual bodily harm.

The initial recruitment

- 6.6 Nelson was released from prison in August 1977 and appears not to have become involved in paramilitary activity until May 1984, when he contacted the Army to offer his services as a source of intelligence.³ A CF relating to his first meeting with a FRU handler describes his motivation for informing against the UDA in the following terms:

“... in the early days, the UDA was a necessary organisation but it had grown evil and was behind more of the criminal activities in Protestant areas.”⁴

- 6.7 Despite his previous conviction for involvement in serious sectarian violence, the FRU tasked Nelson with re-joining the UDA,⁵ and he was soon appointed Intelligence Officer for the West Belfast Brigade. He was the FRU’s only loyalist agent and became an important source of information. Between May 1984 and October 1985 Nelson met with his handlers some 60 times, and he was paid over £2,000 for the intelligence he gathered for them.

Nelson’s involvement in the attempted murder of T/27 in 1985

- 6.8 The attempted murder of T/27 on 27 September 1985 provides a clear example of Nelson’s propensity for involvement in very serious violent crime during his first period as a FRU agent. The analysis below considers Nelson’s involvement in the attempted murder of T/27 during his first phase as an agent; the FRU’s knowledge of Nelson’s involvement; the passing of information from the FRU to the Royal Ulster Constabulary (RUC); and the question as to whether the RUC took any steps to protect T/27 or warn him that his life was in danger. I go on to consider Nelson’s renewed involvement in the UDA’s targeting of T/27 during the period 1987–88.

The targeting of T/27

- 6.9 The targeting of T/27 began with Nelson compiling a list of Sinn Féin Councillors involved in the local elections of 1985. He noted in his 1990 statement that “*after the elections*” he was approached by L/28 who asked him for the names, addresses and photographs of Sinn Féin candidates.⁶ Nelson appeared to gain much of this material from the magazine *Republican News*, stating in his ‘journal’ that this material “*led directly to the attempted murder of [T/27]*”.⁷

³ Assistant Chief Constable J C B Fitzsimons to DPP(NI), 11 July 1990, p. 3 [see Volume II, pp. 224–228]

⁴ CF 8 May 1984

⁵ Nelson’s ‘journal’, p. 1

⁶ Brian Nelson, statement to Stevens I Investigation, 18 January 1990

⁷ Nelson’s ‘journal’, p. 36

- 6.10 The first CF relating to Nelson’s involvement in the targeting of T/27 is dated 1 August 1985. It records a meeting between Nelson and his two FRU handlers during which Nelson informed them that Thomas ‘Tucker’ Lyttle – a high-ranking UDA member – had asked him to provide names, addresses and photographs of Sinn Féin Councillors. Although at that stage Lyttle had apparently indicated that “*the final choice of target*” was for Nelson to decide, it appears from a CF dated 8 August 1985 that Lyttle had specified that T/27 was the Sinn Féin member to be targeted.
- 6.11 On two occasions during August 1985 Nelson mentioned to his handlers that T/27 was being targeted and that ‘Tucker’ Lyttle was keen for action to be taken. The FRU sent MISRs to the RUC following both ‘meets’, noting the continuing threat to T/27.⁸
- 6.12 On Tuesday 3 September L/28 tasked Nelson with obtaining an updated photograph of T/27.⁹ The FRU passed this intelligence to the RUC Special Branch (SB) in a MISR dated 10 September 1985.
- 6.13 Over the course of the next week, the West Belfast UDA intensified the targeting of T/27. On Wednesday 11 September L/28 told Nelson that T/27 left his house “*between the hours of 0715–0730 every day except weekends*”. T/27 had been followed and L/28 stated that Nelson’s camera had been used to take photographs of him as he left his home. Nelson was asked to confirm that the photographs were of T/27.¹⁰
- 6.14 On Friday 13 September L/28 told Nelson that he thought it would be feasible to shoot T/27 with a rifle from a range of 300 metres but that he felt the chance of missing at that distance was greater. A CF dated that day recorded that Nelson:
- “... believes the rifle shot will be dismissed and the old favourite method of knocking on [T/27’s] front door by a UDA member with a pistol would achieve more certain results.”¹¹*
- 6.15 The information in the CF of 13 September was recorded in a MISR dated 16 September. This outlined the key details of the UDA’s targeting of T/27, including the fact that the UDA had identified his daily routine and the fact that he left his house between 7.15 and 7.30am.¹²
- 6.16 I note that the MISR dated 16 September did provide key information that could have been exploited by the RUC SB to help to protect T/27 from attack. In particular, the information relating to T/27’s morning routine was critical to the UDA’s targeting. However, the MISR failed to mention the important role of L/28, which might have assisted in mounting surveillance or taking other preventative measures. Nelson’s accurate prediction of the UDA’s method of attack – a knock-on-the-door pistol shooting – was also omitted from this MISR. The MISR merely noted that “*it is not known as yet, how or when the UDA will attack T/27*”.¹³

⁸ MISRs 8 and 16 August 1985

⁹ See CF 5 September 1985

¹⁰ CF 13 September 1985

¹¹ Ibid.

¹² MISR 16 September 1985

¹³ Ibid.

6.17 At this stage in the plot Nelson was privy to extensive details regarding the targeting of T/27 but had played a peripheral role in the actual targeting itself. This changed when Nelson fulfilled L/28's commission to confirm T/27's identity and carry out a 'recce' on the newsagent frequently visited by T/27. A CF dated 19 September recorded that Nelson had driven to Donegal Street two days previously and ended up "*all but*" bumping into T/27 as he left the newsagent's.¹⁴ When Nelson later saw L/28, he had apparently told him that he had "*positively identified*" T/27. L/28 was "*delighted*" with the news and noted that he was looking for a silencer. The FRU handlers recorded that Nelson:

*"... presumes that the silencer will be for a pistol and the probable method of killing [T/27] will be for the UDA to knock upon his door, killing him as he answers."*¹⁵

6.18 The MISR produced as a result of Nelson's debriefing on 19 September is particularly significant. As illustrated above, the CF of 19 September had clearly recorded the finalising of the targeting process on T/27. In addition to the name, address, photograph and routine of T/27, the UDA now had visual confirmation of his identity and Nelson had correctly forecast the method of attack that would be used. The FRU were also aware that L/28 was the central figure behind the plot.

6.19 However, the MISR, dated 23 September, recorded only that "*the UDA continue to target [T/27]*". Had the more detailed information from the CF been circulated more widely, and had the RUC SB been willing to act on the information, it could have facilitated more effective preventative measures being taken in relation to the planned attack.

Additional statements by Brian Nelson about the targeting of T/27

6.20 The CFs based on Nelson's conversations with L/28 in September 1985 recorded a significant amount of key pre-attack intelligence. However, Nelson's own accounts suggest that he had even greater knowledge of the targeting than is recorded in the CFs.

6.21 In both his 1990 statement and in his 'journal', Nelson made clear that he also knew of L/22's role in the planning of the attack. This is significant given that L/22 later admitted to Nelson that he had been directly involved in shooting T/27. In his 1990 statement, Nelson claimed that L/28 had told him before the attack how:

*"[L/22] has got [T/27] down to a tee. The only problem is that he wants to be sure that it's him."*¹⁶

¹⁴ CF 19 September 1985

¹⁵ Ibid.

¹⁶ Brian Nelson, statement to Stevens I Investigation, 18 January 1990

- 6.22 In his 'journal', Nelson stated that L/28 specifically told him of L/22's intention to exploit T/27's morning routine. L/22 was apparently planning to:

*"... knock on the door a few minutes early [i.e. prior to 7.30am] and T/27 will open the door as normal thinking that its his friend [i.e. the man that took him to work each morning]."*¹⁷

Post-attack intelligence provided by Nelson

- 6.23 At 7.10am on Friday 27 September 1985 T/27 was shot three times at close range as he answered the front door of his home in West Belfast. Although he was seriously injured, he survived the attack. Later that day Nelson met his handlers and outlined to them his conversations that afternoon with L/28. After listening to the reports of the shooting on the radio, L/28 had told Nelson that "*it went just the way it was planned*".¹⁸ The CF of that day attached a photograph taken by the UDA whilst targeting T/27.
- 6.24 In Nelson's account of this meeting with his handlers in his 1990 statement, he claimed that he "*didn't feel too good*" after the attack and "*gave deep thought to what I was involved in*".¹⁹ In his 'journal', he went further to suggest he had "*serious doubts about [his] continued involvement at this level*".²⁰ Nelson did not record in his statement any criticism from his handlers about his role.²¹
- 6.25 I should note that there is no reference in the contemporaneous FRU documents to suggest that Nelson had been concerned about his role in the attack on T/27. In the light of Nelson's return from Germany and his continued targeting of T/27, I am inclined to treat as highly suspect any doubts on his part as to the morality of what he was engaged in.
- 6.26 In a CF dated 10 October 1985, Nelson reported a later conversation with L/28 indicating that a 'friend' of James Pratt Craig had allegedly been told that the RUC SB "*were aware*" that T/27 "*was being targeted with a view to being shot, a month ago*".²² L/28 told Nelson that he was taking this tip-off "*with a pinch of salt*" because the police would "*surely*" have "*placed people within the area*" if they knew about the targeting. L/28 was not alone in thinking that the police might have reacted in this way. In his 'journal' account Nelson himself recalled having "*believed that possibly something would be done to pre-empt the attempt on [T/27]*".²³

Continued targeting of T/27 during 1987–88

- 6.27 Having survived the attack in September 1985, it is notable that T/27 continued to be targeted once Nelson returned from Germany in 1987. On 23 December 1987 'Tucker' Lyttle agreed a list of personalities to be "*targeted with a view to*

¹⁷ Nelson's 'journal', p. 37

¹⁸ CF 27 September 1985, Item 13

¹⁹ Brian Nelson, statement to Stevens I Investigation, 18 January 1990

²⁰ Nelson's 'journal', p. 39

²¹ Brian Nelson, statement to Stevens I Investigation, 18 January 1990

²² CF 10 October 1985

²³ Nelson's 'journal', p. 39

attacks in the New Year".²⁴ Eight targets were included on the list, including T/27. The 'P card' relating to him noted that he had moved house, which no doubt would have limited the UDA's targeting ability. The UDA list recorded T/27's place of work. This information was passed by the FRU to the RUC in the form of both a MISR and an immediate report to the Tasking and Co-ordinating Group (TCG) Belfast.²⁵

6.28 On 5 January 1988 Nelson reported that Lyttle had allocated the targeting of T/27 to L/22.²⁶ This was particularly significant given the role that L/22 had in the attempted murder in 1985. A MISR dated 5 January was produced as a result of this information.²⁷

6.29 In the event, the targeting of T/27 does not appear to have been actively pursued by the UDA and no further attack was ever mounted. However, on 8 November 1989 Nelson is recorded as having informed his handlers that L/22 had shot T/27 in 1985.²⁸ Again, this information was passed to the RUC in a MISR.²⁹

Failure of the RUC to warn or protect T/27

6.30 Despite the very significant amount of information that was passed by the FRU to the RUC SB regarding the threat to T/27, there is no record in the relevant police station or, indeed, anywhere else that he was warned about the known threat to him. R/01, a member of the TCG, was interviewed by the Stevens team on 29 November 1990,³⁰ but was unable to confirm that any action had been taken to warn or otherwise protect T/27 following receipt of the later threat intelligence during 1987–88.

6.31 The T/27 case is, therefore, important in a number of respects. Brian Nelson was directly involved in the targeting of an individual that resulted in an attempted murder. His two handlers, who consistently debriefed him throughout August and September 1985, were fully aware of his role. The six pre-attack CFs outlining the targeting of T/27 went directly to the FRU HQ. In addition to information about his direct role, these CFs provided very detailed intelligence about the UDA's wider targeting of T/27.

6.32 The consequence of Nelson's intelligence reporting was that by the time T/27 was attacked, the FRU were fully aware that he was a key target for the West Belfast UDA; that L/28 was the lead commander for the planned attack; that the UDA had identified that T/27 left his house between 7.15 and 7.30 every weekday morning; and that Nelson had positively confirmed T/27's identity on a 'recce'. Nelson had also correctly forecast the UDA's method of attack to his FRU

²⁴ CF 24 December 1987

²⁵ MISR 24 December 1987 and Immediate Report 24 December 1987

²⁶ CF 5 January 1988

²⁷ MISR 5 January 1988

²⁸ CF 8 November 1989

²⁹ MISR 9 November 1989

³⁰ Statement of R/01, 29 November 1989

handlers. Whilst the FRU did not know, as Nelson put it in his 'journal', "*when the actual hit was to take place*",³¹ it was clear by 19 September 1985 that the targeting process was being finalised and that T/27's life was in grave danger.

- 6.33 The FRU had passed on crucial information to the RUC SB but in some respects the intelligence was incomplete or absent. The MISRs failed to mention the central role of L/28, the fact that Nelson had carried out a 'recce', or his accurate prediction of the method by which T/27 would be attacked. Nevertheless, the RUC SB were fully aware that T/27's life was in danger. In particular, the MISR of 16 September provided crucial details about the UDA's identification of T/27's weekday morning routine. This is specific intelligence that could have helped protect T/27 from attack by, for example, advising him to change his morning routine or to move house. The fact that T/27 did move house after the attack may, indeed, have been a contributory factor in preventing the UDA's targeting of him during 1987–88 from developing into an actual attack.
- 6.34 Despite their knowledge of the grave threat that Nelson could pose to the lives of persons he targeted in his capacity as a UDA Intelligence Officer, and the unwillingness or inability of the RUC SB to act on that information, the FRU had no hesitation in re-recruiting Nelson as an agent in 1987.

Allegations that the State facilitated the illegal importation of weapons

- 6.35 A number of non-governmental organisation (NGO) reports have alleged that Brian Nelson and the FRU facilitated the UDA to import arms into Northern Ireland during his first spell as an agent. Although on a narrow view these allegations do not strictly relate to the murder of Patrick Finucane, the gravity of the accusations is such that I have reviewed the available material on this issue.
- 6.36 In their report, 'Deadly Intelligence', British Irish Rights Watch (BIRW) noted that the FRU:

*"... allowed Brian Nelson to be centrally involved in loyalists' acquisition of illegal weapons from South Africa, an operation of which MI5 [Security Service] also had knowledge."*³²

- 6.37 Other groups have gone further and suggested that the State in effect provided the weapons to loyalist paramilitaries through Brian Nelson. A recent report from the NGO Relatives for Justice, for example, noted the effect of the arms shipments as follows:

*"The weapons supplied by MI5 were used in a number of attacks in which multiple fatalities occurred."*³³

³¹ Nelson's 'journal', p. 39

³² BIRW, *Deadly Intelligence*, 1999, para 1.12

³³ Relatives for Justice, *Sean Graham's Bookmakers Atrocity*, 2012, p. 19

UDA attempts to obtain arms in 1985

- 6.38 There is no doubt that Brian Nelson visited South Africa in 1985 to discuss a putative shipment of arms to the UDA. The FRU CFs and Security Service documents show that both the FRU and the Service were fully aware of Nelson's visit to South Africa and his discussions with an arms dealer in that country.
- 6.39 If, as has been alleged, the intelligence agencies intended to supply loyalist paramilitaries with arms, then it would follow that the FRU and the Security Service would have intended Nelson's visit to South Africa to result in the transportation of arms to Northern Ireland for use by the UDA. The evidence in fact demonstrates the opposite. As Justice Cory noted in his report, the FRU and the Security Service intended the arms shipment to be intercepted whilst it was en route to Northern Ireland.³⁴
- 6.40 The FRU CFs noted the handlers' concerns that Nelson could be exposed in the event that the arms were intercepted by the security forces. The CF dated 23 June 1985, for example, noted that "*great care*" would need to be exercised to ensure that exploiting Nelson's intelligence did not lead to the UDA unmasking him as an agent.³⁵ However, although the handlers were concerned on this point, the CFs demonstrate that the FRU nevertheless intended for the weapons to be intercepted en route to Northern Ireland. The Officer Commanding (OC) of the FRU's East Detachment (East Det FRU) noted on one CF that:
- "I do not believe that recovery of the weapons consignment en route would necessarily lead to a security problem. The ultimate circle of knowledge will be much greater than the four names. Additionally, random customs inspection, at say Dover, is a real possibility. The source will be reassured on these points."*³⁶
- 6.41 The OC also envisaged that details of the plan would be circulated to naval intelligence at the relevant time.³⁷ The handlers themselves also refer to the intention to "*have these weapons intercepted at some stage en route*".³⁸
- 6.42 The Security Service documents demonstrate a similar desire to intercept the weapons. The Service tasked Nelson via the FRU to answer a series of detailed questions regarding the proposed arrangements for the shipment. One memo in June 1985 recorded that: "*We fully appreciate the delicacy of source's position but we are naturally most anxious to intercept the goods before they reach Northern Ireland.*"³⁹
- 6.43 A further question, however, arises as to whether, despite the intention of the intelligence agencies, Nelson's activity did ultimately result in arms being imported into Northern Ireland. Had the FRU and the Security Service aimed

³⁴ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 26, para 1.53

³⁵ CF 23 June 1985

³⁶ CF 21 May 1985

³⁷ Ibid.

³⁸ CF 24 July 1985

³⁹ Security Service memo from F5/4 to HQNI, June 1985, para 6

to intercept the shipments using Nelson's intelligence, but failed to do so, then they could be justifiably criticised for permitting Nelson to take part in a criminal conspiracy that ultimately led to the successful importation of arms.

6.44 The evidential basis for the proposition that arms were ultimately imported into Northern Ireland as a consequence of Brian Nelson's actions appears to rest on a single passage in Nelson's 'journal', in which he stated:

*"In 1987 I was discussing with my Handler ... the South African operation when he told me that because of the deep suspicion the seizure [would] have aroused, to protect me it had been decided to let the first shipment into the country ..."*⁴⁰

6.45 Nelson's 'journal' is an important source of evidence for my Review but, as with all such accounts, it must be tested against all the other available evidence. In this case, Nelson's 'journal' directly contradicts the accounts he himself had previously given in relation to the arms shipments.

6.46 The CFs suggest that the arms deal mooted in 1985 ultimately fell through because the UDA had failed to raise the necessary funds. The CF dated 28 June 1985 recorded that 'Tucker' Lyttle had told Nelson that the UDA were unable to raise the money to purchase the arms.⁴¹ A later CF, dated 7 April 1989, recorded Nelson telling his handlers that no arms had ever been imported as a result of his trip to South Africa. He is reported to have said that, *"when I went the deal did not materialise because the UDA could not fund the purchase"*.⁴²

6.47 In his statement to the Stevens I Investigation on 14 February 1990, Nelson said:

*"As far as I am concerned no arms were purchased from South Africa through me at any time or any other person in the UDA."*⁴³

6.48 Other FRU and Security Service documents show that they believed that the putative arms deal in 1985 had fallen through because of the UDA's shortage of funds. I have not seen any other RUC or Security Service intelligence report to indicate that the UDA received arms from South Africa in 1985. Given the intelligence coverage of the UDA, it seems highly unlikely that they would have been able to import arms without the intelligence agencies at least picking up some signals that this had happened.

The 1987 arms shipment

6.49 It is undoubtedly true that loyalist paramilitaries imported arms into Northern Ireland in late 1987. The evidence I have seen, however, suggests that this importation of arms was a separate operation in which Nelson had no involvement. The importation of arms in late 1987 appears to have been a joint project between

⁴⁰ Nelson's 'journal', p. 34

⁴¹ CF 28 June 1985

⁴² CF 7 April 1989, Item 34a

⁴³ Brian Nelson, statement to Stevens I Investigation, 14 February 1990

the UDA, the Ulster Volunteer Force and Ulster Resistance. Members of Ulster Resistance played perhaps the most critical part in the operation. The limited evidence available suggests that the 1987 loyalist shipment came via Lebanon.

- 6.50 I have not conducted a detailed examination of the intelligence coverage in relation to these shipments, though I have had sight of a Security Service internal memo which records that the Service were unable to intercept the shipment because of a lack of prior intelligence.⁴⁴ In Chapter 5 I outlined some of the arrests and seizures subsequently carried out in 1988–89 by the security forces in response to these shipments.
- 6.51 I have examined the evidence to see whether Nelson and the FRU were in any way involved with the shipment. The CFs in fact indicate that Nelson had very little awareness of this operation. He reported on the reaction to the seizure of much of the UDA's share of the weapons in January 1988 but it was not until August 1988 that he reported to his handlers the comment of another member of the UDA that the arms had come from South Africa.⁴⁵ Had Nelson been intimately involved in the shipments as had been suggested, he would have inevitably known the origins of the arms prior to August 1988.

Overview

- 6.52 In summary, although Brian Nelson certainly did visit South Africa in 1985 to discuss an arms deal, the evidence I have seen suggests that the aim of the FRU and the Security Service was to intercept and seize the weapons, rather than to facilitate the re-arming of loyalists as has been alleged. The partially successful importation of arms in 1987 was a separate operation, with which Nelson and the FRU had no involvement. Security Service records suggest that the RUC recovered an estimated two-thirds of the 1987 shipment, with the remainder reaching Ulster Resistance.

The re-recruitment of Nelson in 1987

- 6.53 The focus of my analysis of the Nelson case has been on his actions during the period 1987–89. Before considering these, it is essential to outline the circumstances in which Nelson was re-recruited by the FRU and re-infiltrated into the UDA as an Intelligence Officer in 1987. I have also examined in detail the attitude of the Security Service towards the re-recruitment.

Initial attempts to re-recruit Nelson

- 6.54 In October 1985, Nelson was offered a one-year contract to work in West Germany as a floor layer. Nelson left Belfast and appears to have had no contact with the UDA or the FRU for several months.

⁴⁴ Security Service, internal note on the arms shipments

⁴⁵ CF 15 August 1988, para 12

6.55 A/05 has described the FRU's motivation in seeking to recruit Nelson as follows:

*"... there was a desperate need for operational intelligence on the Protestant terror groups, who were successfully targeting individuals for assassination on a seemingly ad hoc basis ... We, in the FRU, decided that if we could persuade Brian Nelson to return to Northern Ireland we could reinstate him as Intelligence Officer in the UDA and gain valuable intelligence on UDA targeting."*⁴⁶

6.56 Army documents confirm that FRU handlers met with Nelson in December 1985 and January 1986, when they sought to re-recruit him and re-infiltrate him into the UDA. The CF dated 26 December 1985 noted that "[Nelson] was asked to give up his job in Germany and return to work for the office".⁴⁷

6.57 The FRU's records also confirm that the UDA themselves were experiencing considerable difficulty with their 'intelligence' efforts at the time and felt that the return of Nelson could significantly assist them in this regard. The FRU CF dated 3 January 1986 noted:

"[L/28] ... admitted that the 'Int' had 'gone down hill' since source's departure. In actual fact the UDA are still unable to use the Intelligence files created by ... [Nelson] on the computer because he withheld part of the password." [Emphasis added]⁴⁸

6.58 I consider that these comments should have raised immediate concerns within the FRU as to whether Nelson might, in fact, improve the UDA's 'intelligence' capacity if he returned to Northern Ireland. The situation as it stood in 1986 might, on the face of it, have been a satisfactory one for the security forces: in Nelson's absence the UDA were struggling with their so-called 'intelligence' efforts. In those circumstances it is arguable that ensuring that Nelson remained in West Germany would serve the purpose of continuing to frustrate the UDA's paramilitary activity.

6.59 Further insight into the FRU's likely motivation for seeking to re-recruit Nelson can be gained from A/05's 2002 statement to the Stevens III Investigation, when he gave the following account of how he was developed as their agent following his return to Belfast:

"... we carefully developed Nelson's case in conjunction with [the RUC SB] with the aim of making him the Chief Intelligence Officer for the UDA. By getting him into that position FRU and SB reasoned that we could persuade the UDA to centralise their targeting through Nelson and to concentrate their targeting on known PIRA activists, who by the very nature of their own terrorist positions were far harder targets. In this way, we could get advance warning of planned attacks, could stop the ad hoc targeting of Catholics and could exploit the information more easily because the harder PIRA targets

⁴⁶ A/05's prepared statement given in interview to Stevens III Investigation, 2 December 2002, para 80

⁴⁷ CF 26 December 1985, Item 36

⁴⁸ CF 3 January 1986, Item 18

demanded more reconnaissance and planning, and this gave the RUC time to prepare counter measures.”⁴⁹

6.60 I have considered above the knowledge that the FRU had of Nelson’s involvement in the attempted murder of T/27 in 1985. It appears that the Security Service were also aware that, despite Nelson having reported this targeting to the FRU, this intelligence was not exploited. This would have been clear to the Service from the FRU’s ‘Half Yearly Report’ dated 24 February 1986, a copy of which has been found on the Security Service’s files, which noted that:

“At present there has been no exploitation based on his [Nelson’s] information, although he had been informing the office for some time that the UDA were targeting Sinn Fein members/workers. In Sep 85, [T/27] was shot three times by gunmen from the UDA, previously reported by source during Aug – Sep 85.”⁵⁰

6.61 Notwithstanding that knowledge, Security Service documentation shows that they too were anxious to seek to recruit Nelson as their own agent within the UDA. A Security Service internal note dated 15 January 1986 recorded that Nelson could provide the Service with “*top level access*” to that organisation. The intelligence that he could potentially provide was seen to be particularly important given the “*increasing political links between unionists and paramilitaries*”.⁵¹ The Head of the Security Service’s F Branch responsible for dealing with Irish-related terrorism subsequently suggested that “*ASP [Assistant Secretary Political] take soundings of the FRU to establish their willingness to handover ... [Nelson]*”.⁵²

6.62 After Nelson had failed to contact the FRU during the Easter holiday as had been arranged, FRU and Security Service officers flew to West Germany in May 1986 to seek to meet him. One of these officers, A/11, noted that the FRU’s rationale for re-establishing contact with Nelson was the “*deteriorating attitude of certain loyalist elements within Northern Ireland towards the British Government as well as the RUC*”.⁵³ Nelson’s potential as an agent was described as “*enormous*” and he was thought to possess “*the potential to go far should he return and carry on from where he left off*”.⁵⁴ However, the meeting was ultimately aborted when the intelligence officers unexpectedly encountered Nelson’s family.

Re-establishment of contact with Nelson

6.63 The Security Service conducted further research into Nelson’s status in Germany in the autumn of 1986. This research showed that Nelson had a work permit lasting until October 1990. A/07 then called Nelson in Germany on 20 December 1986.⁵⁵ Nelson was invited to visit Northern Ireland at the FRU’s expense but he declined the offer, apparently saying that he had “*no intention of returning in the*

⁴⁹ A/05’s prepared statement given in interview to Stevens III Investigation, 2 December 2002

⁵⁰ FRU, *Half Yearly Report*, 24 February 1986

⁵¹ Security Service, internal note, 15 January 1986

⁵² Security Service, internal note, 23 January 1986

⁵³ CF 21 May 1986

⁵⁴ *Ibid.*

⁵⁵ Telephone Contact Form, 20 December 1986

immediate future". The FRU handler commented that Nelson seemed "*settled*" but that a "*face to face meeting with ... [Nelson] may result in an early return or at least a rough idea of when to expect this*". The OC of East Det FRU endorsed the plan and noted that the visit would take place at the end of January 1987.

6.64 Nelson was met by the OC of East Det FRU A/03, A/07 and a Security Service officer at Heathrow Airport on 14 January 1987. The CF makes clear that the FRU's aim was to "*tempt [Nelson] to return permanently*" to Northern Ireland.⁵⁶

6.65 That CF records that Nelson's main motivating factor was thought to be his "*love of excitement*", with "*the mercenary element*" described as "*minor*".⁵⁷ It also notes that, when drunk at the meet, Nelson appeared "*very keen*" on the idea of returning, but that it was possible that "*when sober and confronted by his domestic responsibilities*", the prospect of leaving Germany might seem less attractive.

6.66 The Security Service officer's internal note of the meeting gave a very positive assessment of Nelson. Nelson was said to be "*highly motivated by patriotism to Britain and contempt for paramilitary godfathers*". He was described as being of "*a much higher calibre than the average UDA gouger*".⁵⁸ Overall, the officer felt that Nelson would make an "*excellent*" agent for the Security Service.

6.67 Nelson described in his 'journal' the proposition put to him at Heathrow Airport. He noted his satisfaction at the time with life in Germany, saying that "*as a family we were quite content and had no reason for returning to Belfast*". He outlined the pitch put to him at Heathrow, saying that the FRU told him they needed the "*high grade intelligence*"⁵⁹ he could provide.

6.68 Nelson recounted in his 'journal' his deliberations over whether to move back to Northern Ireland as a FRU agent. It is clear that he considered the risk of taking his family "*from the relative safety of Germany back to the dangers of Belfast*". However, he then pointed to his "*own sense of morality*", though he acknowledged that this "*may sound very presumptuous especially considering the [T/27] affair*". One aspect of his 'journal' account that correlates neatly with the CFs produced by the handlers is Nelson's attraction to the 'excitement' of working for the FRU. Nelson described it as "*being bitten by a bug*" and becoming:

*"... enmeshed in a web of intrigue, conspiracies, confidences, danger and the power of being aware of things that others around you aren't."*⁶⁰

6.69 The Security Service note of the Heathrow meeting does, however, outline another significant early warning sign in relation to Nelson and his activity. Without having consulted the FRU, Nelson had already begun to pursue the possibility of arranging an arms shipment with the Turkish 'Grey Wolves' terrorist group in West Germany. At the Heathrow meeting on 14 January 1987 Nelson

⁵⁶ CF 14 January 1987

⁵⁷ Ibid.

⁵⁸ Security Service telegram, 19 January 1987

⁵⁹ Nelson's 'journal', p. 43

⁶⁰ Ibid., p. 45

indicated that he was happy to pursue the arms shipment, and for his intelligence to be exploited and UDA members arrested, subject to four conditions. The first 'condition' was as follows:

“... [the] first batch of weapons would have to be allowed through without any action by us [the security forces], or else he would be immediately suspected.” [Emphasis added]⁶¹

6.70 Whilst Nelson's concern for his own security was understandable, his confidence in dictating such stipulations would suggest that he wished to have a significant, and perhaps unhealthy, degree of control over the exploitation of his intelligence. The Security Service's Assessments Group, based at Stormont, picked up on this reference and were justifiably critical of it. In a telegram dated 21 January 1987, they commented as follows:

“Turning to the UDA – Grey Wolves link that has been established we are averse to giving this further encouragement. There is no merit in setting up an arms supply conduit where one does not currently exist ...”⁶²

The tussle between the FRU and the Security Service over Nelson

6.71 This re-establishment of contact with Nelson ultimately prompted a bitter and acrimonious tussle between the FRU and the Security Service. Much of the dispute focused on the procedures and clearances required for recruiting agents and the personalities involved on either side.

6.72 It is not relevant to my Review to make findings in relation to what are essentially procedural issues or disputes between different personalities. However, in order to establish organisational responsibility for Nelson's re-recruitment, I do consider it necessary to determine the extent to which the Security Service approved of it. There is a clear discrepancy between the statements of Security Service personnel and A/05 on this issue. In 1993 John Deverell, the Security Service Director and Co-ordinator of Intelligence in Northern Ireland (DCI), told the Stevens II Investigation that the Service thought the re-recruitment “*inadvisable*”,⁶³ whilst A/05 is adamant that they did not; on the contrary, he stated that the decision was taken jointly by the FRU and the Service.⁶⁴

6.73 My analysis of the documentary evidence demonstrates that throughout 1986 the Security Service had actively pursued Nelson and was enthusiastic about his potential to become a Service agent. However, by early February 1987 it is clear that the Service's initial enthusiasm had waned and that the agency had mixed views on the re-recruitment.

6.74 The agent-running section continued to believe that Nelson's return to the UDA in Belfast would be beneficial, though the unwillingness of Nelson's family to return from Germany was clearly of significant concern to the Security Service's

⁶¹ Security Service telegram, 19 January 1987

⁶² Security Service Assessments Group, telegram to agent-running section, 21 January 1987

⁶³ DCI statement, 21 June 1993

⁶⁴ A/05, statement to Stevens I Investigation, 5 December 1990, p. 4

Head Office. The Head of F8 recorded on 3 February 1987 that it would be “*grossly unfair*” to persuade Nelson to return from Germany to the detriment of his family.⁶⁵

6.75 A note believed to have been compiled by A/05 at about this time regarding discussions between himself and Security Service officers does, however, highlight the Service’s continued interest in recruiting Nelson as their own agent. The note included, for example, the following account of a discussion with the ASP in early February:

*“ASP then indicated that Head Office were very interested in the ... [Nelson] case. [G/03], he said, had been very impressed by ... [Nelson] whom he thought had great potential. ASP further said that while he did not want it thought that his Service was ‘poaching’ he felt that Head Office might have it in mind to offer ... [Nelson] full-time employment in a secret capacity.”*⁶⁶

6.76 A/05 briefed the Assistant Chief of Staff of the Army’s Intelligence Section (ACOS G2) that he did indeed believe this to be ‘poaching’. He went on to describe arrangements being considered for FRU personnel to meet with Nelson. A/05 held a further discussion with the Head of the agent-running section, G/02, who apparently stated that the Security Service Head Office was “*extremely interested in the case*” and that the Service believed Nelson had “*a great deal of potential, and that he might be able to work his way up to the top of the UDA*”; consequently, they felt that Nelson should be run by the Service “*because he would be providing strategic and political intelligence*”. G/02 felt that “*the DG [Director General] would be able to put together a convincing case for this to happen and that he would probably succeed*”. A/05 disputed this and outlined how Nelson had previously been involved as an Intelligence Officer and in arms procurement so “*he would be providing information of supreme interest to the Army and the RUC*”; accordingly, since Nelson had always been a FRU agent, he saw no reason why he should not continue to be one.⁶⁷

6.77 The tussle resulted in an ultimately abortive attempt by the FRU to meet Nelson in Germany. A/03 and A/07 set off for Germany on 13 February 1987 but the meeting was cancelled following strong objections from the Security Service to it taking place without their involvement.⁶⁸

6.78 The fall-out from this episode with respect to the relationship between the Security Service and the FRU appears to have been significant. A/05 complained of “*unwarranted interference*” and “*blatant obstruction*” by the Security Service.⁶⁹ G/02 apparently told A/05 that Patrick Walker, the then Head of Counter-Terrorism at the Security Service, was very angry about the FRU’s actions.⁷⁰

⁶⁵ F8 telegram, 3 February 1987

⁶⁶ Note from A/05 to ACOS G2/ASP, February 1987, para 7

⁶⁷ *Ibid.*, paras 21–22

⁶⁸ *Ibid.*, paras 26–27

⁶⁹ *Ibid.*, paras 36–37

⁷⁰ *Ibid.*, para 29

G/02 subsequently stated that he now had “no confidence” in A/05 and would subsequently “avoid any possible involvement with the FRU”.⁷¹

The approval of the re-recruitment by Army command

6.79 Thereafter A/05 cleared the FRU’s re-recruitment of Nelson through the Army chain of command. His note of events indicates that he “briefed CLF [Commander Land Forces] and ACOS [Assistant Chief of Staff] G2 on the case and outlined the [Security Service] interest”. The then CLF, Major General A S Jeapes, apparently indicated that he “saw no reason” why the Service should take over the case.⁷² When interviewed by the Stevens team in 1990, Major General Jeapes showed little recollection of the circumstances of Nelson’s re-recruitment, though I see no reason to doubt the accuracy of A/05’s note. When they were interviewed in 1990, the Security Service DCI and ASP suggested that the CLF had personally wanted the Army to have “independent coverage of the UDA”, though Major General Jeapes disputes this.

6.80 The theft of weapons from the Ulster Defence Regiment (UDR) barracks in Coleraine in February 1987 certainly does seem to have reinforced the desire of senior officers in the Army to re-recruit Nelson. The RUC SB had apparently been aware of the UDA’s intention to raid the armoury but had not reported this to the Army. A Security Service telegram dated 25 February 1987, referring to Nelson by his source number, 6137, noted the following:

*“It may be of interest that ACOS G2 told DG [Director General] on his visit yesterday that if they, the Army, had had 6137 in place they would have been spared the humiliation of the Coleraine UDR theft. Since the RUC chose not to tell the Army about their specific intelligence on the raid, the Army now regard it as necessary to have their own agents reporting directly to them.”*⁷³

The deal offered to Nelson in February 1987

6.81 Following the abandonment of the meeting in West Germany, Nelson met A/07 and A/03 on 18 February in Northern Ireland. The discussion revolved round financial arrangements and the ‘package’ to be agreed with Nelson for his return to Northern Ireland. A/07 sought HQ approval for £7,200 in capital expenditure to give to Nelson for the purchase of a house and a taxi, plus monthly payments of £200. Nelson was described as being “very reluctant to discuss financial matters as he finds the subject somewhat embarrassing”.⁷⁴

6.82 The tasking of Nelson at this stage was clear: he was to regain his old job as UDA Intelligence Officer. Nelson was said to believe “that the role is currently being carried out by Lyttle who would be only too pleased to delegate it to [him] again”.⁷⁵

⁷¹ Security Service, internal note, 16 February 1987

⁷² Note from A/05 to ACOS G2/ASP, undated but approx. February 1987, para 25

⁷³ Head of agent-running section to F8, 25 February 1987, para 4

⁷⁴ CF 18 February 1987

⁷⁵ Ibid.

6.83 Having re-established contact with ‘Tucker’ Lyttle, Nelson’s excitement at this new role was evident in his next meeting with the FRU on 25 February. Nelson outlined how he suggested to Lyttle that he would:

“... attempt to smuggle four hand guns to the Province in his furniture when it is moved from GERMANY. 6137 also suggested to LYTTLE that he would purchase these weapons from the ‘GREY WOLVES’.”⁷⁶

6.84 Lyttle declined the offer and Nelson was rebuked by his handlers for this behaviour. A/07 recorded that Nelson:

“... has been firmly warned about this type of behaviour and that in future he is to carry out the instruction and tasking to him from this office only and no more ‘free lancing’ will be tolerated.”⁷⁷

6.85 Despite this warning from the handlers, the covering text on the CF significantly underplays the seriousness of this incident, saying that Nelson merely had:

“... a tendency to be a little over enthusiastic and also has a tendency to task himself in his pursuit of what he believes will please this organisation ... he feels obliged to do all he can for the organisation in order to re-establish himself and justify the money he is receiving.”⁷⁸

6.86 It seems to me that for an agent of the State, without any reference to his handlers, to be seeking to instigate an arms purchase from an international terrorist group is significantly more serious than just a “*little*” over-enthusiasm. Nelson was clearly acting as an agent provocateur in seeking to initiate the arms smuggling operation. As such, his actions should be seen in the context of the Security Service Assessments Group’s judgement that there was no merit in his seeking to establish a new arms supply route and his stipulation of conditions in relation to it. This behaviour should certainly have served as a further warning to the FRU with respect to the re-recruitment of Nelson. It is also revealing that the handler concerned appears to have suggested that Nelson believed that initiating such activity might “*please*” the FRU.

Continuation of the tussle between the FRU and the Security Service

6.87 The dispute between the Security Service and the FRU over Nelson was to continue for a number of weeks following his re-recruitment. In a note dated 19 February 1987, the ASP adopted a sceptical position towards the FRU’s planned re-recruitment. He cited Nelson’s likely “*lower standard of living*” in Northern Ireland as a factor which A/05 and the Army needed to be “*aware*” of.

6.88 However, the ASP’s note did include the observation that the Service would have no further interest in Nelson:

⁷⁶ CF 25 February 1987

⁷⁷ Ibid.

⁷⁸ Ibid.

“... until 6137 has made a firm decision as to his future, and it has been established if he has been able to regain his previous contacts and position within the UDA.”⁷⁹

6.89 When A/05 asked for clarification on this point, the ASP responded on 2 March 1987 by saying that:

“It is possible that the Security Service may renew its interest in 6137 if he should regain his previous position within the UDA.”

6.90 These comments reflected the internal discussions going on within the Security Service. The records of these discussions suggest that the Service retained an interest in recruiting Nelson as their own agent. For example, a note of a meeting on 20 February 1987 recorded that:

“If the Army is successful in enticing the subject back to Northern Ireland, [the agent-running section] might then be interested in taking it on.”⁸⁰

6.91 This view appeared to have hardened by late April, when the minutes of a meeting recorded the following:

“There was some doubt that 6137 would return to Northern Ireland from Germany; if he did, [the agent-running section] would aim to take over the running of him.” [Emphasis added]⁸¹

Nelson’s re-infiltration into the UDA as an Intelligence Officer

6.92 A/07 arranged Nelson’s purchase of a house in Belfast and telephoned him on a daily basis during the spring of 1987. At the next meeting on 30 April, Nelson reported that ‘Tucker’ Lyttle had informed him that he would be “*Chief Intelligence Officer UDA for the entire Province*”. Further, L/28 had informed him that L/35 and L/27 would work with Nelson in the Intelligence Team.⁸²

6.93 The FRU’s aim in re-recruiting Nelson, namely to install him as an Intelligence Officer for the UDA, was achieved remarkably quickly. The fact that the West Belfast UDA had gained a greater co-ordinating role in relation to UDA intelligence also appeared to fulfil the FRU’s aim, as described by A/05, that the UDA’s targeting be centralised through Nelson.

6.94 There is a particularly significant section in the CF dated 30 April 1987 which follows on from general comments about Nelson’s security. A/07 recorded that:

“In the past when [Nelson] targetted [sic] people for the UDA he of course would be aware that the victim would be ‘hit’ some time or other and based on his information. However, he never knew the identity of the ‘hit’ team or

⁷⁹ Note from ASP to CO FRU, 19 February 1987, para 4

⁸⁰ Minutes of joint F8/agent-running section/station meeting, 20 February 1987

⁸¹ Note of Security Service internal meeting, 27 April 1987

⁸² CF 30 April 1987

actually when they would strike. It is hoped these arrangements will continue as it leaves [Nelson] virtually above suspicion if a job goes wrong.”⁸³

- 6.95 The entry is particularly significant as it makes clear that, rather than the use of Nelson’s intelligence to prevent loss of life, the FRU’s priority appeared to be Nelson’s security in the event that UDA attacks went “*wrong*”. Whilst it is possible that this comment represented a benign desire to distance Nelson from UDA attacks, even the Ministry of Defence’s (MoD’s) own internal document entitled ‘Problem Areas’ notes that the way it is written “*could be interpreted as the Army approving of paramilitary murders*”.⁸⁴
- 6.96 In the light of the attempted murder of T/27, it should have been clear to the FRU that, whilst Nelson could of course remain “*above suspicion*”, his activities had the potential to pose a severe danger to those individuals on whom he was to gather targeting information.

Overview

- 6.97 A number of conclusions can be drawn from this detailed background to Nelson’s re-recruitment by the FRU. The first is that the FRU actively pursued Nelson in order to persuade him to re-join the UDA with a view to gaining the position of Intelligence Officer. In that respect the recruitment of Nelson was substantively different to the more typical scenario in which an individual already positioned within a terrorist organisation volunteers, or is persuaded, to become an agent of the State. Such was the FRU’s determination to re-recruit him that they pursued him over a number of months and offered him a significant financial deal as part of the ‘package’ for returning to Northern Ireland.
- 6.98 To all intents and purposes therefore, in tasking Nelson to target Provisional Irish Republican Army activists for the UDA and paying him accordingly, Nelson was acting in a position equivalent to an employee of the MoD. His subsequent actions as an agent of the State must be seen in this light. As A/05 himself put it at Nelson’s trial:

“... whatever [Nelson] may or may not have done throughout his time with the UDA since 1987, he would not have done it had we in FRU not reinstated him in the UDA in the first place.”⁸⁵

- 6.99 There were also major warning signs during Nelson’s re-recruitment that should have been clearly apparent to both the FRU and the Security Service. A/05 was also to say at Nelson’s trial:

“When his name was first disclosed to me, obviously we look at the past files so I was, therefore, made aware of his previous activities.”⁸⁶

⁸³ Ibid.

⁸⁴ MoD *Problem Areas* document, Volume 1, Flag 16, para 13

⁸⁵ A/05, evidence in mitigation at Brian Nelson’s trial, 29 January 1992

⁸⁶ Ibid.

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- 6.100 The past files would have revealed that, with two accomplices, Nelson had taken a partially sighted Catholic man at gunpoint to a UDA club where he was tortured, as described above at paragraphs 6.4–6.5. Further, Nelson’s part in the attempted murder of T/27 had flagged up the danger of his becoming involved in conspiracies to murder, particularly in the light of knowledge that his information was not being exploited by the RUC. Nelson’s departure to Germany appears to have weakened the UDA’s intelligence capacity and there was a foreseeable risk that engineering his return to Northern Ireland would, in fact, strengthen their capacity in this regard. Finally, Nelson himself had also clearly acted as an agent provocateur in seeking to initiate an arms smuggling operation, in the course of which he had attempted to stipulate that his handlers must allow one shipment of weapons to get through.
- 6.101 The tussle between the FRU and the Security Service over Nelson’s re-recruitment is also revealing. Although much of the dispute merely illustrates the ‘turf war’ between the respective organisations, it does serve to demonstrate how high up the chain of command knowledge of attempts to re-recruit Nelson extended. Both ACOS G2 and the CLF, Major General Jeapes, were directly involved in, and sanctioned, A/05’s attempts to re-recruit Nelson as a FRU agent. The Director General of the Security Service, Sir Antony Duff, had also been involved in discussions about the re-recruitment.
- 6.102 I am satisfied from the documentary records I have seen that the Security Service were heavily involved in the discussions around the re-recruitment of Nelson. Whilst the Service certainly strongly opposed the manner in which the FRU re-recruited Nelson, it is clear that they had, initially, been most enthusiastic about the prospect of his becoming a Security Service agent. Indeed, even after his re-recruitment by the FRU they sought to keep their options open in that regard. Further, they never raised with the FRU any of the key concerns they should have had about Nelson, namely his previous involvement in sectarian violence; his involvement in the attempted murder of T/27; and his willingness to act as an agent provocateur.

Chapter 7: The activities of Brian Nelson 1987–89

7.1 In this chapter I consider the nature of Brian Nelson’s activities after his re-recruitment by the Force Research Unit (FRU) in 1987, and the way in which he was handled as an agent. Those considerations revolve round two key issues: the first relates to Nelson’s dissemination of targeting material to loyalist paramilitaries, and the question as to whether his handlers ever provided him with such targeting material. The second relates to Nelson’s involvement in a series of murders and other attacks, and how the security forces responded to the threat intelligence which he provided.

Nelson’s dissemination of targeting material to loyalists

7.2 Nelson’s distribution of targeting material to other loyalist paramilitaries was an issue of central importance to my Review. That he engaged in such activity is not in question; indeed, in January 1992 at Belfast Crown Court he pleaded guilty to no less than 12 counts of aiding, abetting, counselling and procuring other individuals to possess documents containing information likely to be useful to terrorists in planning or carrying out acts of violence.¹

7.3 As Nelson pleaded guilty the Court did not consider in detail the pattern of his activities, nor the way in which the Force Research Unit (FRU) responded to his actions. However, in the light of my Terms of Reference I have considered whether the FRU knowingly permitted Nelson to engage in the dissemination of targeting material and, if so, whether there was any justification in doing so.

Statements made by FRU officers

7.4 A convenient starting point is the statement that the former Commanding Officer (CO) of the FRU, A/05, voluntarily provided to the Stevens III Investigation on 2 December 2002² in which he described Nelson’s ‘dual role’ in infiltrating the UDA and reporting to the FRU as follows:

“The first part of his role was to act as Intelligence Officer for the UDA and undertake the activities necessary to continue to hold down that position. These included

(a) collating and running the UDA’s intelligence files. These included information on PIRA and other Republican suspects.

¹ Schedule of Brian Nelson’s convictions and sentences, Belfast Crown Court 3 February 1992

² A/05, prepared statement given in interview to Stevens Investigation team, 2 December 2002, paras 82 and 83

- (b) *providing information to members of the UDA and other Loyalist paramilitary organisations for targeting purposes.*
- (c) *acting under instructions from those above him in the chain of command of the UDA/UFF [Ulster Freedom Fighters].*
- (d) *undertaking targeting of suspected Republican terrorists.*
- (e) *briefing and updating other members of the UDA from both his geographical area and other parts of Belfast.*

The second part of his role was to work for FRU. In this respect his duties included:

- (a) *gathering the confidence of his UDA superiors and associates by appearing in their eyes to be a trustworthy and diligent intelligence officer in whom they could confide;*
- (b) *reporting to us as accurately as possible on all activities of his terrorist associates in the UDA/UFF and other Protestant groups;*
- (c) *trying to exert control on their murderous activities through his position as intelligence officer by achieving a situation in which planning and preparation of criminal activities were channelled through him so that he could report to FRU their intentions, and we could pass the information to the RUC for them to prevent the intended actions;*
- (d) *achieving a level of access whereby he could provide to the exploitation agencies, through FRU, the detailed type of information that they required to mount arrest operations against the terrorists.”³*

7.5 In this context, A/05 put forward a number of justifications for Nelson’s distribution of targeting material to loyalist paramilitaries. First, he said that it would have been necessary for Nelson to do so in order to maintain his cover as a fully committed member of the UDA. He was, after all, the UDA’s Intelligence Officer, and his duties required him to provide information and/or documents to other members of the UDA and, at times, other loyalist paramilitary organisations. Given the dangers of his undercover role, he was in a vulnerable position, and any reticence to hand over material required of him would have been “*difficult and dangerous*”.⁴ In his submission to my Review, A/05 explicitly denied that Nelson’s dissemination of material had gone beyond what was necessary to maintain his cover.⁵

7.6 Second, A/05 contended that “*the passage of personality information to members of the PPMs [Protestant paramilitaries] was in itself relatively insignificant*”. He went on to explain:

³ Ibid., paras 82 and 83

⁴ Ibid., paras 94, 98 and 99

⁵ A/05, submission to the Review

*“It was the detailed targeting process that followed which was important and that was what FRU wanted to concentrate on ... [T]here are examples in the documentation showing Brian Nelson being consulted by other PPMs on specific targeting matters, after material had been passed out ...”*⁶

7.7 A/05’s contention was that Nelson’s subsequent involvement in the targeting process meant that both he and the FRU did effectively have a degree of control over the UDA’s use of the ‘personality information’ that had been disseminated. A/05 explicitly rejected what he described as the ‘speculation’ that any of the material that had been passed on by Nelson had any connection with any murder.⁷

7.8 Third, A/05 maintained that:

*“It was constantly impressed upon Nelson that any information he passed out should be reported to FRU. Furthermore this so-called ‘proliferation’ was reported by FRU to RUC SB thus giving it the opportunity, if it saw fit, to arrest individuals in possession of the material.”*⁸

7.9 In summary, A/05 contended that Nelson’s dissemination of material was consistent with his role as a FRU agent because he reported it to the FRU, who in turn passed the intelligence to the Royal Ulster Constabulary Special Branch (RUC SB) for exploitation.

7.10 A/05’s comments deserve serious consideration. I fully recognise that Nelson’s dual role as the UDA’s Intelligence Officer and a FRU agent involved a difficult balancing act, both for him and the FRU. It would have been impossible for Nelson to maintain his cover unless he had responded positively when loyalist paramilitaries made specific requests for targeting information.

7.11 Clearly, however, whether the FRU were justified in allowing Nelson to engage in such activity must depend on their ability to demonstrate that it did indeed assist the security forces in frustrating terrorist activity and saving lives.

7.12 I have, accordingly, considered below specific instances of Nelson’s dissemination of targeting material, and the FRU’s responses to them, to assess whether they were justified by reference to the criteria that A/05 put forward in his statement. In particular:

- (i) Was Nelson’s dissemination of targeting material necessary for the purpose of maintaining his cover? Plainly, judged against this criterion, he should only have passed on the minimum amount of information necessary for him to maintain his position.
- (ii) Did Nelson promptly notify his FRU handlers regarding the information that he had passed on to loyalist paramilitaries so that the FRU, in turn, could inform the RUC SB? I consider that this criterion, at the very least, would have required Nelson to inform the FRU of the names of individuals

⁶ A/05, prepared statement to Stevens Investigation team, 2 December 2002

⁷ Ibid., para 101

⁸ Ibid., para 104

in relation to whom he had passed on targeting information. Without that essential information there would have been little that the security forces could have done to ensure the safety of those individuals.

- (iii) Assuming that it was necessary for Nelson to pass targeting information on to other loyalists, was there (at the very least) a reasonable prospect of him becoming aware of any subsequent targeting, and thus being able to provide intelligence that could be used to frustrate terrorist activity and save lives?

Analysis of Nelson’s dissemination of targeting material

- 7.13 The instances of Nelson’s dissemination of targeting information fall into three broad categories: the initial dissemination after he re-joined the UDA in 1987; his subsequent dissemination of material within the UDA; and his distribution of material to the Ulster Volunteer Force (UVF).

The initial dissemination of targeting material in 1987

- 7.14 The FRU Contact Forms (CFs) demonstrate that Nelson disseminated targeting material extensively during August and October 1987. I consider some of those instances below.
- 7.15 The CF dated 4 August 1987 recorded that L/28 had asked Nelson to provide him with three copies of “*all photographs and information on Republican personalities in his [L/28’s] area*”, and made it clear that these targeting packs would be going to his military commanders, L/22, L/20 and L/03.⁹
- 7.16 I am prepared to assume that Nelson was not in a position to refuse L/28’s request. However, there is nothing in either that CF or any other record that I have seen to indicate that Nelson ever informed his handlers of the identities of the ‘republican personalities’ who were to be included in the targeting packs, nor that his handlers ever sought that information from him.
- 7.17 The corresponding Military Intelligence Source Report (MISR) dated 7 August 1987 confirms that the FRU transmitted the above information to the RUC. Clearly, however, without the names of the individuals being targeted, this intelligence would have been of very limited value as regards ensuring their protection.¹⁰
- 7.18 Of even greater concern, a CF dated 20 October 1987 recorded that Nelson was specifically tasked by his then handlers to “*copy all UDA targeting files and computer floppy discs*”.¹¹ Given that the FRU had already received copies of Nelson’s intelligence dump on 14 October 1987, this raises the possibility that FRU were explicitly tasking Nelson to copy material for the purpose of dissemination to other UDA members. The same CF recorded Nelson’s attendance at a UDA meeting on 15 October, during which he had told the assembled company:

⁹ CF 4 August 1987

¹⁰ MISR 7 August 1987

¹¹ CF 20 October 1987

“... that as from FRI 16 OCT 87, he would have updated all available targeting information and it was available when required.”¹²

7.19 Although I cannot be sure whether the FRU tasked Nelson to copy his intelligence dump for the purpose of disseminating it, the entry above makes clear that the FRU were aware on 20 October that Nelson intended to hand over targeting material to other UDA members.

7.20 In the light of the information the handlers had received regarding the imminent availability of Nelson’s targeting information to other loyalist paramilitaries, I consider that it would have been reasonable to expect them to have advised him as to the best means of minimising and controlling its distribution. That would have been in line with A/05’s stated aim that the UDA’s targeting be ‘centralised’ through Nelson, and to ensure that Nelson’s activities did, in fact, serve the purpose of frustrating terrorist activity.

7.21 The FRU’s records, however, demonstrate that Nelson went on to engage in extensive dissemination of his targeting material. The CF dated 26 October 1987 provides perhaps the most serious example of Nelson disseminating targeting material. The CF, referring to Nelson by his source number, 6137, noted that:

“Having updated his P card system, 6137 has photocopied the files and has supplied the following people with copies:

(a) [L/22]

(b) [L/20]

(c) [L/03]

(d) [L/18]

(e) [L/12]

The reason for the distribution of the files is twofold:

(a) To prevent the information being lost in a Security Forces raid.

(b) To increase the targeting capacity of the UDA.”¹³

7.22 In my view, it must have been abundantly clear that Nelson’s aims in proliferating the material were avowedly criminal in nature. That they were so is borne out by his subsequent pleas of guilty to aiding and abetting, counselling and procuring another individual to pass documents containing information likely to be useful to terrorists.

7.23 There is nothing in the above-mentioned CFs to indicate that such widespread dissemination was essential to maintaining Nelson’s cover. Indeed, as noted above, Nelson’s offer on 15 October to make his targeting material available to other members of the UDA appears to have been made entirely voluntarily.

¹² Ibid.

¹³ CF 26 October 1987, Items 4 and 5

- 7.24 However, even if it was necessary for that purpose, it should have been apparent to Nelson's handlers that it would almost certainly have been impossible for him subsequently to have been involved in the targeting process for each and every target that the UDA might go on to select from that material. By disseminating the material so extensively, he effectively relinquished his control over it.
- 7.25 Indeed, it appears to have been Nelson's express purpose that other UDA members and Brigades should independently involve themselves in targeting. He had, after all, told the meeting on 15 October that:
- "... he was tied down with too many briefs and paper work to be able to confirm or deny any targeting and that he could only do so much targeting."*¹⁴
- 7.26 Some assistance can be derived from the Ministry of Defence's (MoD's) 'Problem Areas' document, to which I have briefly alluded above. This was a substantial document that I understand was recovered by the Stevens III Investigation from the Army in July 2000. There has been some dispute in the submissions made to my Review about the authorship of this document.
- 7.27 The MoD submitted that, on balance, it appeared to them that the document had been produced by A/16 prior to Nelson's trial.¹⁵ That officer, now deceased, was a later successor to A/05 as the CO of the FRU. The MoD noted that Lieutenant Colonel (Lt Col) A/24, who had provided legal advice to the Army in Northern Ireland during the relevant period, was "*virtually certain*" that he was not the author and, moreover, "*he is very confident that it was not written by a member of Army Legal Services, or indeed by a lawyer at all*". He went on to state that the repeated use of the term 'we' suggested to him that "*the document may have been prepared within the FRU itself*", and he thought it "*highly likely*" that A/16 (whom he had known well) was the author.¹⁶
- 7.28 For his part, A/05 was adamant that A/16 could not have been the author. He had worked very closely with A/16 over a number of years and did not recognise his style of writing in the 'Problem Areas' document. A/05 noted that it did not contain the "*clerical additions*" that he would have expected to see in accordance with the Army's "*well laid-down procedure for dealing with classified documents*" and that it appeared to have been written by someone who was "*not familiar with the practicalities of agent handling in Belfast with someone like Nelson*".¹⁷
- 7.29 What is clear, however, is that A/16 did produce a note relating to Nelson that was entitled 'Moments of Concern', which had been sent to the then Assistant Chief of Staff of the Army's Intelligence Section (ACOS G2) on 2 January 1992.¹⁸ This document itself referred to the "*[Nelson] Index Volumes*" which, it seems to me, could well have been a reference to the 'Problem Areas' document, which was itself structured by reference to different volumes of case files. It is also clear that A/16 had been tasked by the MoD in June 1991 to lead on the Army's

¹⁴ CF 20 October 1987

¹⁵ MoD, letter to the Review, 11 May 2012

¹⁶ MoD, letter to the Review, 15 August 2012

¹⁷ Transcript of meeting with A/05, 7 September 2012, p. 57

¹⁸ A/16, note to ACOS G2, *The Nelson Case – Moments of Concern*, 2 January 1992

response to the Nelson case, including advising the MoD on “*any aspect of the content of the FRU documents*”.

7.30 I note that in many respects the ‘Moments of Concern’ note corresponds closely with the longer and more detailed ‘Problem Areas’ document. A number of similar issues are raised in both documents, albeit in slightly different language and style. Having considered the evidence as a whole, it seems highly likely to me that the ‘Problem Areas’ document was produced by A/16 or a member of his team.

7.31 In relation to Nelson’s proliferation of targeting information to loyalist paramilitaries, the ‘Problem Areas’ document assessed that it:

“... was extremely dangerous as Nelson would no longer have control over targeting material. The spreading of such material greatly enhanced the UDA’s potential for murder, with no possible warning from Nelson. The Handlers make no comment on this action.” [Emphasis added]¹⁹

Subsequent dissemination within the UDA

7.32 Within six months of re-joining the UDA, therefore, Nelson had made a significant impact in increasing the UDA’s targeting capacity. His FRU handlers had advance warning of Nelson’s actions but appear to have placed no restrictions on his dissemination of targeting information.

7.33 Further analysis of the CFs demonstrates that these were not isolated events. Over the next two years, Nelson’s work as a FRU agent was characterised by his repeated dissemination of dangerous targeting information throughout the UDA, and the FRU’s handling of him was characterised by a willingness to allow him to engage in such activity without proper control.

7.34 Whilst many examples are to be found of Nelson’s proliferation activity, I have concentrated on those that I consider to be the most serious, as set out below:

- A CF dated 24 June 1988 recorded Nelson having provided copies of ‘P cards’ relating to 43 individuals to the UDA’s North Belfast Brigade at Thomas ‘Tucker’ Lyttle’s request. The CF does not record who those 43 individuals were, nor any request by Nelson’s handlers that he provide them with that information.²⁰
- A CF dated 27 July 1988 noted that L/28 had asked Nelson to provide “*two copies of all recent material on Republicans as soon as possible*”. Nelson and L/27 spent two hours updating the ‘P cards’ and photocopying them, and then handed them over to L/28. It seems clear from the attendant circumstances that Nelson understood that the two sets of copies would be provided to L/20 and L/22 respectively. The CF contains no record of the names of the individuals; the only information as to their identity that Nelson could provide was that “*at least three INLA/IPLO [Irish National Liberation Army/Irish People’s Liberation Organisation, republican paramilitary groups]*”

¹⁹ MoD *Problem Areas* document, Volume 1, Flag 35, para 31

²⁰ CF 24 June 1988, Item 2

members were from [an area of Belfast] in the personality cards that he had copied".²¹ Again, there is no indication of Nelson's handlers admonishing him for failing to provide that information to them, nor even asking him for it.

- A CF dated 21 September 1988 recorded Nelson as having been asked by a UDA member from South Belfast on 13 September to provide information on two named individuals and "*all Republican activists in South Belfast Bde UDA's area*". On 20 September Nelson had personally photocopied the 'P cards' of approximately 50 republican activists in that area and left them at UDA HQ for collection.²² Again, no names of the individuals concerned are recorded on the CF, nor is there any indication of Nelson having been asked to provide them to his handlers.

The same CF also recorded that on 21 September 1988 L/28 had asked Nelson for "*all details on IPLO members*". Because he was going away the following day, Nelson and L/28 together collected the relevant 'P cards' from the UDA's Intelligence Cell, which they then dropped off at L/20's house. Knowing that he had some more 'P cards' on IPLO members at home, Nelson collected them and gave them to L/28 later the same day.²³

Once again, no names of the individuals concerned are recorded on the CF, nor any concern expressed that Nelson failed to provide them. Further, whilst it might have been difficult for Nelson to have refused L/28's request in relation to those 'P cards' at the Intelligence Cell, he appears to have been under no pressure to provide the additional cards which were (presumably unbeknownst to L/28) at his home address.

- A CF dated 10 January 1989 recorded that L/28 had asked Nelson "*to put together all the information he had on Sinn Fein members in Belfast*" for the following morning. After collecting the necessary information from the Intelligence Cell, Nelson worked on the detailed packs at his home during the evening, which he then handed over to L/28 early the next day. He was able to tell his handlers who ten of the individuals concerned were, but was unable to remember the names of "*three or four additional personalities*".²⁴ As I have indicated later in this chapter, one of those "*additional personalities*" must have been T/22. Once again, his handlers appear not to have made any comment about his inability to fully inform them in this regard.

The corresponding MISR dated 11 January 1989 duly informed the RUC that the ten named Sinn Féin members were being targeted by the UDA but, needless to say, was incomplete as regards the three or four others whose names Nelson could not remember.²⁵

²¹ CF 27 July 1988, Item 18

²² CF 21 September 1988, Items 11 and 12

²³ CF 21 September 1988

²⁴ CF 10 January 1989, Items 2 and 3

²⁵ MISR 11 January 1989

- A CF dated 2 March 1989 recorded Nelson's plan to share targeting information with L/38, who was based in County Fermanagh. Nelson visited L/38 on 28 February with L/03 and explained to him that he "*had a comprehensive list of personalities*" living in the Fermanagh area. L/38 was said to be "*most enthusiastic*" about carrying out the targeting, and Nelson promised him that he would send photographs of the individuals concerned.²⁶ A CF dated 9 March 1989 indicated that L/38 confirmed safe receipt of the photographs when Nelson telephoned him.²⁷ Although Nelson would clearly have been able to inform his handlers about the personalities to be targeted, there is no indication of him notifying his handlers, nor of them seeking that information from him.

MISRs dated 8 and 11 March 1989 confirm that the above information was transmitted to the RUC.²⁸ Clearly, however, in the absence of names, the value of this intelligence would have been very limited.

7.35 It is clear to me that the above examples of Nelson's dissemination of targeting material were wholly incompatible with the stated objective of both the FRU and the RUC of frustrating terrorist activity and saving lives. Separately they demonstrate Nelson disseminating material in circumstances where he would have had little or no control over the way it was subsequently used, instigating the distribution of targeting material (rather than being asked for it), and in most cases acting in a manner that went far beyond what was either reasonable or necessary to maintain his cover.

7.36 Even where the dissemination of material could be viewed as having been necessary to maintain Nelson's cover, his repeated failure to provide his handlers with the names of persons whose details had been proliferated meant that his actions could, clearly, make no contribution to the protection of those under threat. I reiterate my view that, in the absence of that essential information, the security forces would have been in no position to adequately protect the individuals concerned from the danger that Nelson's activities placed them in. Despite that, the FRU continued to employ Nelson throughout this period without making any attempt to restrict or control his activity in this regard.

Dissemination of information to the Ulster Volunteer Force

7.37 However, even more dangerous in my view was Nelson's further dissemination of targeting material to the UVF. It should have been apparent to all concerned that distributing such material beyond the confines of his own organisation, the UDA, would to all intents and purposes amount to total abandonment of control over the use to which it was then put. But even assuming that such proliferation could have been justified on the basis that it was essential to maintain Nelson's cover, it would have been imperative that he fully inform his handlers so that any necessary protective measures could be put in place.

²⁶ CF 2 March 1989

²⁷ CF 9 March 1989

²⁸ MISRs 8 March 1989 and 11 March 1989

7.38 Instances where Nelson proliferated material beyond the UDA include the following:

- A CF dated 23 March 1988 recorded that L/04, a member of the UVF, asked Nelson if he could provide a photograph of T/24, whom he confirmed the UVF was targeting. He also asked for a selection of photographs of other republicans, mainly from North Belfast. Nelson provided him with approximately 20 photographs but when he met with his handlers could only recall the names of five of the individuals concerned (including T/24).²⁹

The FRU, accordingly, were aware that Nelson had passed potentially dangerous information to another paramilitary organisation in circumstances where he had little or no control over its future use. Further, whilst the FRU would also have been aware that approximately 15 other individuals were potential UVF targets, they would have had no idea who they were. Despite that, there is no suggestion in the CF that the handler sought in any way to curtail Nelson's activity.

The corresponding MISR, dated 23 March 1988, informed the RUC SB of the names of the five individuals whose photographs Nelson had passed to L/04. Whilst the value of the intelligence that other unidentified republicans from North Belfast were also being targeted would clearly have been minimal, it is perhaps surprising that it was omitted from the MISR altogether.³⁰

- A CF dated 7 April 1989 indicated that Nelson found out that L/04 had been seeking further targeting information, this time in relation to T/02. On 28 March Nelson visited L/04 at his home to discourage him from targeting T/02, on the grounds that T/02 had become aware that he was a loyalist target and had changed his routines accordingly. He suggested to L/04 that Thomas Keenan and Alex Maskey would be "*much better targets*". A deal was agreed whereby the UVF would provide the UDA with explosives in exchange for targeting information on Keenan and Maskey. On 3 April, Nelson had taken L/04 to 'recce' Keenan's house and the workplace of Maskey's wife, from which Maskey regularly collected her. At L/04's request, Nelson also agreed to write down all his targeting information on the two men.³¹

It is clear that Nelson's handler recognised that Nelson had provided this assistance to the UVF because he both actively desired the murder of Keenan and Maskey, and was frustrated that the UDA had not succeeded in attacking them. The handler noted that:

"[Nelson] feels that if the UDA are not going to act then it is better that the UVF do it than no one. Although the UVF are not particular about their targets they appear to be more aggressive." [Emphasis added]³²

²⁹ CF 23 March 1988, Item 22

³⁰ MISR 23 March 1988, Item 3

³¹ CF 7 April 1989, Items 2–5

³² *Ibid.*, Item 4b

L/04 was clearly content with the targeting information that Nelson had provided, as he told Nelson on 4 April 1989 that the UVF would arrange delivery of, and pay for, a limpet mine to be supplied to the UDA.

Far from admonishing Nelson for the above exchange of targeting information with the UVF, A/13 appeared actively to welcome it by commenting that:

“If this is successful it will enhance [Nelson’s] standing with [L/28], particularly if the UVF carry out an attack on one of the targets for which [Nelson] supplied the information.” [Emphasis added]³³

- The CF dated 7 April 1989 showed that Nelson had also discussed with L/04 the targeting of T/44, whom it appears that the UVF were “*desperate to get*”.³⁴ Nelson volunteered information which better identified the individual in question and offered to provide a photograph, which he later supplied to L/04. Again, despite the obvious danger to T/44’s life, A/13 appears not to have admonished Nelson for his enthusiastic assistance to the UVF with their targeting, and simply commented as follows:

*“... it shows that the UVF are far from the mark regarding targeting, not being sure who they are targeting, but once they have the correct target they act. The UVF are probably desperate to attack a heavily traced PIRA member to make up for their sectarian attacks of late.”*³⁵

Nor is there any suggestion in the above CFs that the FRU considered that Nelson’s passing of information to the UVF would assist the security forces in saving lives. On the contrary, it seems to have been clearly understood – at least by Nelson’s handlers – that the information could assist the ‘more aggressive’ UVF in carrying out attacks on republicans.

- A CF dated 16 August 1989 recorded further extensive proliferation of targeting material by Nelson to the UVF. On 8 August 1989, Nelson was visited at his house by L/41 on behalf of L/13, a member of the UVF. L/41 explained that L/13 had recently ‘lost’ targeting information provided to him earlier on republicans, particularly members of the IPLO.³⁶

Nelson apparently drove to his store where he retrieved “*approximately half of his stock of photos showing Republican personalities*”. He and L/41 then photocopied them, after which L/41 took the copies away to give to L/13. Despite the clear opportunity Nelson would have had to note the names of the individuals whose photographs were thus provided to the UVF, he appears not to have been able to provide that essential information to his handlers.

The MoD’s ‘Problem Areas’ document itself acknowledged that:

*“This is obviously an extremely dangerous practice with targeting material being provided with no controls upon it.”*³⁷

³³ Ibid., Item 7a

³⁴ Ibid., Item 8

³⁵ CF 7 April 1989, Item 9

³⁶ CF 16 August 1989, Items 2–5

³⁷ MoD *Problem Areas* document, Volume 3, Flag 17

The CF also recorded that on the same day, 8 August 1989, Nelson met another member of the UVF, L/04, who supplied him with targeting information on republican paramilitaries; the handler's comments suggest the possibility that the information might have been obtained from a member of the security forces. Nelson reported that "*the following day I retrieved certain photographs from my files that matched some of the personalities and supplied these to [L/04]*".³⁸

The CF recorded the following comment by A/01, Officer Commanding (OC) of the FRU's East Detachment (East Det FRU) regarding this information:

"This is a worrying element indicating that a member with possible access to CRUCIBLE [a security force database] may be passing information to PPM's."

Once again, however, and despite that concern, Nelson does not appear to have been admonished at all for having voluntarily supplied L/04 with targeting material.

- 7.39 Having regard to the above and other examples, I have concluded that, in fact, Nelson's activity consistently went beyond what could have been justified by reference to the criteria put forward by A/05.

The RUC SB's knowledge of Nelson's activity

- 7.40 It is clear to me from my analysis that the FRU generally did pass on to the RUC SB extensive information relating to Nelson's dissemination of targeting material to the UDA and the UVF.
- 7.41 However, the value to the RUC SB of the information contained in the MISRs was severely limited by the fact that they frequently did not include the names of individuals who were being targeted because Nelson had not provided that information to the FRU.
- 7.42 I also note that Nelson's own role in disseminating targeting material was frequently minimised in the MISRs, presumably for source protection reasons. MISRs tended to indicate, for example, that the West Belfast UDA Intelligence Cell – rather than Nelson specifically – had engaged in the dissemination. It would not, however, have required a very detailed analysis for the RUC SB to have deduced that Nelson was directly involved in this activity.
- 7.43 There was, however, one important exception to the FRU's tendency to mask Nelson's direct role. This arose in the MISR dated 26 October 1987, which reported in detail on Nelson's extensive proliferation of his intelligence dump.³⁹ The MISR repeated the wording of the CF almost exactly, and noted that it was the FRU's 'source' (i.e. Nelson) who had been responsible for the dissemination.

³⁸ CF 16 August 1989, Items 2–5 and 15

³⁹ MISR 26 October 1987

- 7.44 Despite the RUC SB having been made fully aware on that occasion of Nelson's involvement in the extensive dissemination of dangerous targeting material, there are no records to suggest that they did anything to object to his engaging in this activity. Of even greater concern, bearing in mind their primacy in the intelligence network operating in Northern Ireland, nor is there any evidence to indicate that they took any action to exploit any of the information contained in the MISR.
- 7.45 Further, there is nothing in the records to suggest that the RUC SB sought to clarify any of the intelligence received from Nelson regarding proliferation. If the SB were concerned that the MISRs did not include the names of individuals being targeted as a result of Nelson's dissemination of 'P cards', one would expect to see frequent SB requests for clarification regarding Nelson's reporting. Nor is there any record to suggest that the SB sought to exploit Nelson's reporting by arranging for individuals known to be in possession of targeting material to be arrested.
- 7.46 It is equally concerning that there is nothing in the documents I have seen to suggest that the FRU ever sought to query with the RUC SB why they were not exploiting the intelligence provided by Nelson with regard to his production and dissemination of targeting material. A/05 stated in his 2002 statement simply that:

*"[i]f Special Branch Officers decided not to exploit intelligence [that FRU passed on to them] I believe they would have done so only for good reason."*⁴⁰

The impact of Nelson's dissemination of targeting material

- 7.47 At paragraph 7.6 I noted that A/05 described the provision of targeting details to loyalist paramilitaries as "*in itself relatively insignificant*". I disagree. In the hands of hardened terrorists intent on murder a 'P card' was potentially highly dangerous information. I am, therefore, driven to agree with the accuracy of the MoD's assessment in the 'Problem Areas' document to which I have referred above, that uncontrolled dissemination of targeting information was "*obviously an extremely dangerous practice*".⁴¹
- 7.48 A/05 is, of course, correct in saying that the UDA required much more than 'P cards' alone in order to carry out attacks successfully. But 'P cards' were significant in themselves, potentially providing the UDA with a number of the key ingredients for undertaking an attack: a motive (by identifying the individual concerned as a republican terrorist); a photograph; an address; the individual's age; and (sometimes) details about the individual's routine, place of work and car. 'P cards' and other targeting information gathered by Nelson thus fell unambiguously into the definition in section 22 of the Northern Ireland (Emergency Provisions) Act 1978, in force at the material time, of "*information with respect to any person ... which is of such a nature as is likely to be useful to terrorists*".⁴²

⁴⁰ A/05, prepared statement given in interview to Stevens Investigation team, 2 December 2002, para 64

⁴¹ MoD *Problem Areas* document, Volume 3, Flag 17 (see para 7.38 of this Report)

⁴² Section 22, Northern Ireland (Emergency Provisions) Act 1978

- 7.49 As mentioned above, the MoD's own 'Problem Areas' document recognises the potential impact of such information being distributed to loyalist terrorists, acknowledging as it does that Nelson's proliferation of targeting material "*greatly enhanced the UDA's potential for murder*".⁴³
- 7.50 The extensive and uncontrolled nature of Nelson's dissemination makes it extremely difficult to make an accurate assessment of the damage or harm that in fact resulted from it. The problem is compounded by the manner in which Nelson distributed the material – often forgetting, not recording, or not telling his handlers specifically what 'P cards' and/or other targeting material he had distributed.
- 7.51 It is sufficient for me to observe that, in the event, a number of individuals whose details were found in the UDA intelligence dumps were murdered by the UDA or the UVF during the period August 1987 to December 1989, that is to say, the period from when Nelson first proliferated targeting material to when he ceased to be the UDA's Intelligence Officer. Whilst a causal link between Nelson's activity and these murders cannot be proved, these further attacks do raise the real possibility that Nelson's activity had the potential to cause far-reaching damage.

Overview

- 7.52 Nelson's dissemination of targeting information across the UDA and the UVF was a sustained and consistent course of conduct. The manner in which he carried it out materially increased the targeting capacity of both the UDA and the UVF.
- 7.53 Whilst I consider that the FRU may have been justified in permitting Nelson to disseminate such material where it was strictly necessary to maintain his cover as an agent, it would plainly have placed the targeted individuals at great risk. I consider that it was incumbent on the FRU in these circumstances to have ensured both that Nelson fully reported to them about it and, wherever possible, that his reporting was exploited by the RUC to frustrate terrorist activity and save lives.
- 7.54 It is clear to me, however, that Nelson disseminated information enthusiastically and to an extent well beyond what was reasonable or necessary to maintain his cover. His repeated unwillingness or inability to inform his handlers of the names of those individuals whose details had been disseminated meant there was little prospect of enabling the security forces to protect those individuals from attack.
- 7.55 Despite this, the FRU appear not to have sought to restrict or curtail Nelson's activity in this regard. By continuing to employ him, I consider that the FRU were providing him with, at the very least, tacit approval of his activity. On occasions, however, it seems to have gone much further than that, if not to the point of actively encouraging his activity.

⁴³ MoD *Problem Areas* document, Volume 1, Flag 35

- 7.56 All this took place whilst Nelson was being supervised and directed by three successive handlers and various co-handlers within the FRU. However, the same OC of East Det FRU was in place throughout most of the period. Similarly, A/05 was the CO of the FRU throughout most of that time and has not sought to distance himself in any way from Nelson's proliferation activity. His submission to my Review makes no attempt to distance the FRU from this activity, and tends to confirm that the FRU saw it as a necessary part of Nelson's role as an agent.
- 7.57 It must also be said that the RUC SB were fully informed in October 1987 of the most serious example of Nelson's dissemination of targeting information. Despite that, they subsequently took no action to exploit the information that Nelson had provided. The Stevens I Investigation was, however, able to seize significant quantities of targeting material within months of commencing its investigation, leading to numerous UDA members being charged with criminal offences.

The passing of information from the FRU and the RUC SB to Nelson

- 7.58 In assessing the Army's handling of Brian Nelson, I have considered in detail the allegations that the FRU passed targeting information to their agent. It is clear that if, in fact, information was passed to Nelson that could assist the UDA in its targeting of individuals, it would cast serious doubt on A/05's stated reasons for running Nelson. Far from saving lives, on the contrary, such activity would place individuals at a grave risk of assassination. As Justice Cory put it in his Report:

*"... if a handler turned over information that facilitated the targeting operations of a terrorist organization, he or she would run the risk of becoming an accomplice in those activities."*⁴⁴

- 7.59 I have examined a number of different sources of evidence on this question. They include Nelson's 'journal'; the statements that have been made by Nelson's various FRU handlers; the interview by the journalist Peter Taylor of one of those handlers; the comments made by FRU personnel to a Security Service officer in June 1988; and the FRU's own documentary records. The question of whether Nelson's handler provided him with the address of Terence McDaid is covered later in this chapter.

The allegations made in Nelson's 'journal'

- 7.60 The document commonly described as Nelson's 'journal' refers to a detailed set of notes that appear to have been made by Nelson whilst in custody. Subsequent investigations suggested that the 'journal' may have been stolen from Nelson whilst he was in prison. I have had access to the 'journal' because a copy of it was recovered by the Police Service of Northern Ireland during the course of the Stevens III Investigation. Whilst this document must be treated with a greater degree of care than formal statements taken under caution, I have no doubt that the text of the document was produced by Brian Nelson.

⁴⁴ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 53, para 1.153

7.61 The picture presented by Nelson’s ‘journal’ is a somewhat mixed one. Referring to the disorganised collection of UDA intelligence material that came into his possession and under his control when he became its Intelligence Officer in 1987, Nelson stated that:

“I baulked at the thought of having to go through and evaluate every scrape [sic] of paper. I phoned [FRU handler], having decided that it would take me weeks if not months to get through it all, it would be done a lot quicker by BMI [British Military Intelligence]. We arranged a meet and I passed the lot over to him. A day or two later I received a phone call from [the handler] telling me that there was a lot of useless and out of date information amongst all the other stuff and did I want him to put it through the shredder. I gladly told him to do so and received a day later a much pruned ... amount of documentation.” [Emphasis added]⁴⁵

7.62 The ‘journal’ went on to record – in relation to the index card system that Nelson then started building up on particular individuals – that:

“... information on each individual had to be correct in every possible detail and for this I could not nor did expect assistance from BMI.” [Emphasis added]⁴⁶

7.63 Despite that assertion, however, the ‘journal’ contained a number of instances when Nelson claimed to have received assistance from his handlers in relation to specific targeting operations. These include:

- That A/02 told him a UDA target, T/01, had moved address: *“A/02 told me I’d be wasting my time, T/01 had moved to Downpatrick and was no longer living at Rutland St”*.⁴⁷
- That ‘the Boss’ (an unidentified member of the security forces) told him that *“the UDA should think about undertaking an ... bombing campaign on ... situated targets”* in Eire because this *“would cause the Eire government to have a re-thing [sic] on their extradition policy”*.⁴⁸
- That in relation to the targeting of T/26, A/02 told him *“not to go near [T/26’s] house, he would get the photograph for me and I could give [L/49 the UFF Commander] the complete targeting pack”*. The journal goes on to allege that A/02 subsequently traced an outline of a photograph of T/26’s house.⁴⁹

7.64 The former BBC journalist John Ware has provided my Review with his original interview notes based on conversations he had with Nelson in jail in 1991. In these conversations, Nelson recounted a similar allegation relating to UDA targets in the Republic of Ireland. John Ware’s notes of the conversation recorded that:

⁴⁵ Nelson’s ‘journal’, p. 63,

⁴⁶ Ibid., p. 65

⁴⁷ Ibid., p. 79

⁴⁸ Ibid., p. 67

⁴⁹ Ibid., p. 92

“[Brian Nelson’s FRU] handler had suggested the UDA bomb targets in the South. Brian said this was a perfectly serious suggestion by his handler. The handler had said that Dublin would have to rethink its objection to extradition. A bombing campaign in the South could not be sustained by their precarious economy. They would have to give way on extradition.”⁵⁰

- 7.65 The contemporaneous notes of Brian Nelson’s conversations with John Ware included other allegations made by Nelson that his Army handlers provided him with information. He told John Ware, for example, that his handler had given him Brian Gillen’s address, which Nelson passed on to the UDA. However, Nelson stated that this information had only been provided to him, *“because [the handler] said it would be too dangerous for me to go ... [to Gillen’s address]. [The handler] gave it to me to stop me going there.”⁵¹*
- 7.66 The relevant FRU CFs did not, however, contain any material to corroborate these allegations. Although Nelson was undoubtedly involved in the formulation of plans to bomb an oil refinery in County Cork in October 1987, the CFs suggested that the targeting was L/28’s idea and that the UDA did not follow through on the plan.⁵²
- 7.67 The accounts in the ‘journal’ relating to the targeting of T/01 and T/26 are broadly plausible when compared with the relevant CFs, though the FRU documentation contained no specific references to confirm that A/02 did provide Nelson with the specified information. Whilst the CF dated 18 August 1987 noted that L/49 had in his possession a targeting pack that included a photograph of T/26’s house, it does not suggest that the handler provided Nelson with any assistance relating to that photograph.⁵³
- 7.68 The same CF noted that the UDA were targeting T/01, and included the handler’s comment that *“[T/01] now lives in Downpatrick”*.⁵⁴ It did not explicitly state that Nelson was given that information by his handler, though in other respects the relevant CFs do broadly corroborate the elaborate story that Nelson recounted in his ‘journal’ about the targeting of T/01.⁵⁵

Statements made by FRU personnel

- 7.69 It is clear from the statements made by FRU personnel that Nelson’s various handlers were aware that they were not permitted to pass targeting information to their agent. For example, A/12 stated in his interview of 15 March 2001 that it *“would be a crime ... to start identifying people to a terrorist organisation ... it was very clearly beating the rules”*. He added that it was *“a golden rule in handling that ... you don’t give information to the informant”*.⁵⁶

⁵⁰ John Ware, notes of interview with Brian Nelson, 5 July 1991

⁵¹ *Ibid.*, 13 June 1991

⁵² CF 13 October 1987

⁵³ CF 18 August 1987

⁵⁴ *Ibid.*

⁵⁵ Nelson’s ‘journal’, p. 80 – the story about asking two UDA members to conduct a ‘recce’ on the Rutland Street address is corroborated by the CF

⁵⁶ Record of interview with A/12 by Stevens Investigation team, 15 March 2001

7.70 As was noted in the Stevens II Report, Nelson’s FRU handlers consistently denied having ever passed any targeting information to him. Some of them, namely A/02, A/15, A/12, A/10 and A/07, acknowledged that there were occasions when Nelson requested information, such as vehicle checks to be made, but claimed that they never provided him with such information. A/15 admitted that he “*did, on occasions, tell Nelson if he had wrong information, but I never corrected such information*”.⁵⁷ A/02 emphatically denied the suggestion in Nelson’s ‘journal’ that he had assisted him in ‘weeding out’ the UDA intelligence dump.

Peter Taylor’s Interview with ‘Geoff’

7.71 In his book and TV programme, ‘Brits: The War against the IRA’, the journalist Peter Taylor broadcast a notably different account given by one of Nelson’s FRU handlers (identified only as ‘Geoff’). A transcript of their discussion recorded the following exchange:

“Taylor: On occasions would you give him the kind of information he was looking for?”

Geoff: No, but I would say to him perhaps you don’t have that wrong there.

Taylor: But if you confirmed a vehicle registration and if the person who owns that car is targeted by the UDA, UFF and killed, you are complicit in the killing of that person because you confirmed the registration number, that’s the real difficulty.

*Geoff: Yes, well it’s a fine line you walk.”*⁵⁸

7.72 The above exchange was a clear admission by ‘Geoff’ that he would assist Nelson at times by confirming that the targeting information he had compiled was accurate.

7.73 The Stevens III team was able to identify ‘Geoff’ as A/02. He was Nelson’s main handler during the period May 1987 to January 1988. A/02 subsequently admitted in his interview under caution on 5 July 2000 that he was indeed the person identified as ‘Geoff’.

7.74 During an interview on 6 July 2000, A/02 denied that he had ever actually used a phrase to the effect of “*you don’t have that wrong there*” to confirm Nelson’s targeting information, and claimed that he had been quoted out of context. He stated that he would “*under no circumstances ... pass information to a source*”.⁵⁹

7.75 I cannot conceive of a reasonable explanation as to why A/02 would have lied to Taylor when indicating that he confirmed the accuracy of certain targeting information. Taking into account what he said to Taylor and the allegations in Nelson’s ‘journal’, I do find that there is evidence to suggest that during the period May 1987 to January 1988 Nelson was provided with some degree of assistance in relation to targeting information.

⁵⁷ Statement of A/15, 22 July 1993

⁵⁸ Transcript of ‘Brits’. See also Peter Taylor, *Brits: The War against the IRA*, Bloomsbury Publishing, 2002, p. 292

⁵⁹ Record of interview with A/02 by Stevens Investigation team, 6 July 2000

FRU comments to a Security Service officer

7.76 When considering this issue, I have also taken into account the comments reportedly made by FRU officers to a Security Service officer in June 1988. The meeting between these officers is covered in detail in Chapter 8. For the purpose of this chapter, the following note made by the Security Service officer in a memo dated 11 July 1988 is of particular relevance:

“... FRU admitted that 6137 [Nelson] was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of “justifiable” actions, and to an extent he may attempt to use his agent role to gain intelligence from FRU.” [Emphasis added]⁶⁰

7.77 These comments indicate that Nelson was perceived as having sought to use the FRU as a source of intelligence on republicans. Given that the FRU handlers were clearly aware of Nelson’s desire to see the UDA attack ‘legitimate’ republican targets, it must have been abundantly clear to them that Nelson would use any ‘intelligence’ gained from them to further this objective.

FRU documentary records

7.78 The strongest evidence that FRU handlers passed information to Nelson is to be found in the FRU’s own documentary records. The documents show several instances, dating from January 1988, of Nelson’s handlers providing him with information that was subsequently deployed for targeting purposes.

7.79 The analysis below focuses on the clear provision of information to Nelson on at least four occasions during 1988. One of these examples in fact relates to the FRU passing information to Nelson at the request of the RUC.

The passing of information relating to Alex Maskey

7.80 The conspiracy to murder Alex Maskey in July 1988 provides me with a clear example of an exchange of information between Nelson and his handler. On 17 July 1988 Nelson made strenuous efforts to enable UDA gunmen to murder Maskey. He first reported his involvement in this conspiracy to his handlers after the attempted murder had been aborted. The exchange with his handler, however, is a particularly significant indicator of the nature of the relationship between Nelson and the FRU at that time.

7.81 A Telephone Contact Form (TCF) dated 17 July 1988 recorded two conversations between Nelson and his handler, A/13, starting at 5.55pm that day. Extracts from the TCF are detailed below:

H [Handler – A/13]. How are you?

S [Source – Nelson]. OK, I’ve had an exciting day

H. What have you done

⁶⁰ Security Service telegram, 11 July 1988 [see Volume II, p. 305]

S. *Can you give me a read out of an incident?*

H. *What*

S. *If I give you a number*

H. *Yeah, go on*

S. *[vehicle registration number given]*

H. *[A number repeated]*

S. *[Number corrected by Nelson]*

...

H. *Tell me about it*

S. *It's a beige Lada*

H. *Yeah*

S. *It belongs to Alex Maskey*

H. *Does it*

S. *Yeah, he just missed death ny [sic] about 20 seconds, I was involved up to my neck with a Mister Heckler (HK)*

H. *Why didn't you tell me?*

S. *I didn't have time*

H. *What*

S. *I didn't have time*

Comment: [vehicle registration number] is registered to [a different individual] ... [address given] and is a cream Lada 1200 Estate. It was sighted in New Lodge at 1440 hrs on Sun 17 Jul 88.

[Further call – Handler to Source]

S. *Is it his?*

H. *No*

S. *It is*

H. *No, it's probably used by him though*

S. *Yeah, it was him*

...

H. *What's going to happen now?*

S. *If he's there next Sunday, he's going down.*"⁶¹

7.82 I consider this exchange to be particularly significant. Nelson had identified a car that he believed belonged to the intended victim, but was seeking confirmation of this from his handler. Despite knowing that Nelson had just been “*up to his neck*” in an attempt to murder Maskey, and that the attempt had apparently

⁶¹ TCF 17 July 1988

been very nearly successful, A/13 confirmed to Nelson that Maskey “*probably*” used the car in question. The handler appears not to have admonished him for his involvement, other than to say that “*if you were caught there was nothing we could have done*”. Even Nelson’s clear signal that there would be a further attempt on Maskey’s life the following Sunday elicited no response except “*you can tell me on Tuesday*”.

7.83 In the context of the clear conspiracy to murder Maskey, there is no possible justification for his handler providing him with valuable targeting information. The check that the handler made on the vehicle registration number (VRN) revealed that, although the vehicle was registered to a different individual, that person lived at the address known to the FRU as Maskey’s address. The handler’s comment that Maskey probably used the vehicle was, therefore, likely to have been accurate.

7.84 It would have been apparent from Nelson’s conversation with A/13 that Maskey was in grave danger. Confirmation of the link between Maskey and the vehicle in question was clearly important targeting information that could have greatly facilitated a further attempt on his life. Despite that, the handler appears to have had no hesitation in providing Nelson – and, through him, the UDA – with that information. It is difficult to conceive of a clearer example of the FRU apparently being prepared to assist the UDA with their targeting of known individuals, rather than acting to save their lives.

The passing of information to identify the source of ‘leaks’

7.85 A review of the documentation suggests that there were several joint FRU/RUC SB operations using Nelson in order to seek to identify the source of security force ‘leaks’ to the UDA. Several examples of this are outlined in Nelson’s ‘journal’,⁶² and the TCF dated 10 April 1989 shows Nelson informing his handlers of the VRNs that the UDA were checking with their security force ‘contact’.⁶³ This in turn enabled the RUC to monitor their systems to seek to identify the individual carrying out the checks for the UDA.

7.86 Such operations were, in my view, potentially important means of seeking to prevent ‘leaks’ to the UDA (a major problem during this period as I outline in Chapter 11). On the occasions mentioned above, Nelson was only tipping off his handlers that information *already in the UDA’s possession* was due to be checked by security force contacts.

7.87 However, it is also clear from a review of the documentation that both the FRU and the RUC SB also initiated operations to identify ‘leaks’, during which Nelson was directly provided with VRNs by his handlers. I consider two documented instances of this practice below.

⁶² Nelson’s ‘journal’, pp. 116–117

⁶³ TCF 10 April 1989

The passing of information relating to Brendan Hughes

7.88 A TCF dated 27 January 1988 noted that Nelson had unsuccessfully tried to contact a UDA ‘Brigadier’, L/10, “*to pass some vehicle registration numbers for checking*”. A/13, Nelson’s handler at the time, annotated the CF as follows:

*“[Nelson] was given a list of five vehicle registration numbers (see attached) by handler and was told to tell Lyttle that he had obtained them on a drive past of Conway St Mill. The priority was put on [VRN given] with [Nelson] telling Lyttle that he had seen [T/26] talking to the owner.”*⁶⁴

7.89 The car with the ‘priority’ VRN belonged to Brendan Hughes, a well-known member of PIRA.

7.90 A further CF dated 3 March 1988 explicitly stated that the VRN in question was “*originally given to [Nelson] by this office in order to trace the origin of the checks if it was RUC*”.⁶⁵ It appears, therefore, that the aim of the exercise was to identify who in the security forces was apparently providing the UDA with the results of vehicle checks, though there is no evidence to indicate that the FRU ever managed to establish this. In his submission to my Review, A/05 stated that:

*“There can be no doubt that the object here was not to increase Nelson’s knowledge in relation to potential targets, but to find out in conjunction with the RUC who was leaking VRNs from within either the RUC or UDR.”*⁶⁶

7.91 Nelson subsequently passed on the VRN to L/24, though the check that was made indicated that the vehicle was registered to a car hire firm.⁶⁷ A CF dated 23 March 1988 recorded Nelson asking Lyttle for the VRN to be checked again because the car “*had been very prominent at the recent funerals of PIRA members*”.⁶⁸

7.92 Nelson subsequently provided the VRN to L/26, a UDA Brigadier, for checking. Later that day L/26 told him that the vehicle did belong to Brendan Hughes, and provided Nelson with Hughes’ address.⁶⁹

7.93 A TCF dated 22 March 1988 recorded a brief conversation between Nelson and his handler, A/13, regarding the results of the check, as follows:

S [Nelson]: ... do you remember the number?

H [Handler: A/13]: No, explain.

S: The one I got checked, that came through different.

H: Yes.

S: Well it came back, [Hughes’ address stated], is that right?

H: Yes, when did you put it in?” [Emphasis added]⁷⁰

⁶⁴ TCF 27 January 1988, Item 3

⁶⁵ CF 3 March 1988, Item 20

⁶⁶ A/05, submission to the Review, p. 15

⁶⁷ CF 3 March 1988, Item 20

⁶⁸ CF 23 March 1988, Item 9

⁶⁹ Ibid., Items 10 and 11

⁷⁰ TCF 22 March 1988

- 7.94 The above exchange shows that A/13 confirmed the accuracy of L/26's information regarding Hughes' address. Given that the aim of the operation was to identify who was carrying out the vehicle checks on behalf of the UDA, it is not clear to me why there was any need for the handler to confirm Hughes' address.
- 7.95 A/05 pointed out in his written submission to my Review that Hughes' car was registered to the address of one of his family members. He argued that, because the address was wrong, Nelson had "*not been given information that could be used to identify where Hughes lives*".⁷¹ However, in my view, the provision of the address of Hughes' relative was potentially equally as dangerous. The McDaid murder later demonstrated that the fact that the UDA were targeting the 'wrong address' did not necessarily deter them from mounting attacks.
- 7.96 It is clear that Nelson did indeed use this information to update the targeting material in his intelligence dump. When the dump was seized by the Stevens I Investigation, the index card for Brendan Hughes included a handwritten annotation describing his car, its VRN and his possible address as indicated above.⁷²
- 7.97 Hughes again appears to have been actively targeted by Nelson in August 1989. A CF dated 30 August 1989 indicated that Nelson proposed Hughes to L/22 as a target, and provided L/22 with his accommodation address⁷³ and the VRNs of "*two cars known to belong to Hughes*". One of those two cars was the car with the VRN provided to Nelson in January 1988, though Nelson doubted whether Hughes was still using that car.⁷⁴
- 7.98 It is abundantly clear from this CF that Nelson was directly using the information provided to him by the FRU to assist a dangerous UDA commander in targeting Hughes.

The passing of information relating to McGeown and T/06

- 7.99 A CF dated 31 March 1988 recorded Nelson having been given two VRNs by the FRU to pass to L/26 for checking, noting that this task was "*requested by RUC Source Unit*".⁷⁵
- 7.100 In his submission to my Review, A/05 stressed that the passing of information in this case was part of the RUC's ongoing attempts to find out where leaks were coming from. A/05 stated that:

*"This was not to increase [Nelson's] or the UDA's targeting capacity but in order to gain information to control the situation."*⁷⁶

⁷¹ A/05, written submission to the Review, p. 16

⁷² Brian Nelson 'P card' on Brendan Hughes

⁷³ CF 30 August 1989

⁷⁴ Ibid.

⁷⁵ CF 31 March 1988

⁷⁶ A/05, submission to the Review, p. 16

- 7.101 The VRNs related to cars registered to the wife of Pat McGeown and T/03 (“*but driven by [T/06]*”). The CF stated that Nelson “*was told who used the vehicles to assist in his cover story for where he saw them*”.⁷⁷
- 7.102 A CF dated 6 April 1988 showed that Nelson did pass the VRNs to ‘Tucker’ Lyttle and told him “*that Pat McGeown was seen in the first vehicle and [T/06] was in the second car*”.⁷⁸ It is clear that Nelson would, in effect, have lost control from this point over the information that had been passed to him. Lyttle appears to have given the VRNs to L/24 as well as L/26. Although L/24 later informed Nelson that he had the results of the checks, there is no record of Nelson having received the results from either L/26 or L/24, nor is there any indication that the FRU or the RUC SB identified the source of the leak as the result of this operation.
- 7.103 However, it is clear that Nelson used the vehicle details to update the information in his intelligence dump. His index card relating to McGeown was annotated with the vehicle details that had been passed to him.⁷⁹ The annotation is dated April 1988, indicating that it followed shortly after his being informed of the vehicle details by the FRU. The same annotation was also found on McGeown’s card which was recovered by the RUC in June 1989. This indicates that Nelson had disseminated this information to others in the UDA.
- 7.104 T/06’s index card was similarly updated by Nelson with the information that had been passed to him.⁸⁰ A CF dated 20 December 1988 indicated that Nelson subsequently used this information for UDA targeting purposes. It recorded Nelson prompting two UDA figures to consider T/06 as a target. He passed them a photograph of T/06 and the details of his vehicle as they had been passed to him by his FRU handler at the request of the RUC.⁸¹
- 7.105 This is a clear example of Nelson instigating the targeting of an individual and using information provided to him by the security forces. Whilst no subsequent attack on T/06 is known to have occurred, Nelson appears to have continued to consider him as a target. A CF dated 22 November 1989, for example, recorded Nelson having told L/28 that he had three targets for L/22, one of whom was T/06.⁸²
- 7.106 It is important to draw a distinction between these two cases and the other examples I have highlighted in this chapter. I accept that in both cases the primary aim of the operation was to identify the source of security force leaks, not to provide Nelson with targeting information. Nevertheless, seeking to identify the source of leaks by deliberately providing new information of potential targeting value was, in my view, an extremely reckless course of action. Even if the exercise was to enable the source of the leaks to be identified, the FRU would plainly have little or no control over the subsequent use of the information.

⁷⁷ CF 31 March 1988, Items 21 and 22

⁷⁸ CF 6 April 1988, Item 4

⁷⁹ ‘P card’ on Patrick McGeown [see Volume II, pp. 40–41]

⁸⁰ T/06 ‘P card’, Nelson intelligence dump

⁸¹ CF 20 December 1988

⁸² CF 22 November 1989

7.107 I consider that the provision of VRN details to members of terrorist organisations could only have been justified if the FRU and the RUC SB were sure that they could exercise sufficient control over the information to prevent it being subsequently used for terrorist purposes. Clearly the information provided to Nelson about Brendan Hughes, Patrick McGeown and T/06 was used for just such purposes. In this context, it is worth noting that several months after these VRNs were provided to Nelson, FRU handlers indicated to a Security Service officer that Nelson may have sought to use the FRU to gain intelligence for his UDA activity.

August 1988 exchanges between Nelson and his handler

7.108 Two FRU documents dating from August 1988 provided further suggestions that handlers were willing to provide Nelson with sensitive information. A TCF dated 12 August 1988 recorded Nelson asking his FRU handler, A/13, to carry out vehicle checks on two cars. Nelson explained that the reason for requesting the checks was “*to eliminate*” (in the sense of ruling out of consideration) the owners of those vehicles in connection with his targeting of “*the taxi driver*” (T/02). A/13’s response, when Nelson said that he expected the checks to confirm that the cars belonged to friends of T/02, is transcribed “[y]eah, they probably are, looking at where the owners live”.⁸³

7.109 A/13 appears not to have rung Nelson back subsequently to confirm the results of the checks. The exchange between the handler and Nelson at the next debrief, on 15 August 1988, is of particular significance. The CF recorded the following information:

“6137 [Nelson] began by saying that he was unhappy with not getting the results of vehicle checks he had asked for from handler ... 6137 said that he thought that ‘the boss’ trusted him and if he did not then it was no good continuing working for this office. Handler explained that it was in 6137’s best interests that vehicle checks were not given on the telephone emphasising that if someone was listening they could trace the call and 6137 would be compromised. It was bad security that 6137 stated the vehicle numbers on the telephone, it would be even worse for handler to give the names and addresses of the owners ... 6137 has been given results of checks in the past if they affect his own security. On this occasion 6137 was told that both cars were registered to Republicans.”⁸⁴

7.110 In his submission to my Review, A/05 provided the following comment on this part of the CF:

“The position is quite clear. [Nelson] was not given information unless the information was necessary for his own protection. He was not given information to assist him with targeting individuals or so that the information could be passed to others.”⁸⁵

⁸³ TCF 12 August 1988

⁸⁴ CF 15 August 1988

⁸⁵ A/05, submission to the Review, pp. 16–17

7.111 However, the MoD's 'Problem Areas' document included the following comments on this CF:

"Nelson begins the meeting by challenging the Handler as to why he is not getting his car checks over the phone. The Handlers state that this is bad security! This implies that:

a. He has been given checks before

b. He is given checks in face to face exchanges.

The Handler goes on to say that Nelson had been given numbers in the past if they affected his own security. How was this done? Was it on Nelson's word alone? The Handler goes on to say that on this occasion Nelson was told that both cars belonged to Republicans. Giving any Source car registration checks is against Army rules."⁸⁶

7.112 In my view, the MoD assessment is particularly pertinent in this case because the CF dated 15 August 1988 in fact demonstrates that Nelson was clearly seeking one of the VRN checks in connection with targeting activity and not for the purpose of his own 'security'. Nelson requested the VRN check on a Talbot Solara car belonging to T/34 because he had seen the car parked outside the Sinn Féin Centre on Sevastopol Street when he was targeting the Centre.⁸⁷ FRU records in fact show that Nelson went on to check the VRN with another member of the UDA and then suggested T/34 as a target to other members of the UDA.⁸⁸

A change of approach in Nelson's handling

7.113 The CFs revealed a significant change of approach on the part of the FRU handlers from the spring of 1989. The change of approach followed the murder of Patrick Finucane and the departure of Nelson's usual handler. A more senior handler, Colour Sergeant A/10 became Nelson's main handler in April 1989. Justice Cory acknowledged this change in his Report when he referred to a "*change in attitude*" evident in June and August 1989.⁸⁹

7.114 A CF dated 13 June 1989 recorded a meeting between A/10 and Nelson. The CF noted a particularly significant incident when Nelson took out of a sports bag that he had brought with him to the meeting "*approximately 150 assorted photographs of various PIRA parades and funeral processions, most of which he had acquired from ... [the press]*". The CF recorded that:

"The source then went on to surprise his handlers by asking for their assistance in pinpointing the identities of certain personalities featured in the photos!

This was an unexpected request by the source. The co-handler [A/12] discreetly went to make coffee whilst the handler made it clear to the source

⁸⁶ MoD *Problem Areas* document, Volume I, Flag 71

⁸⁷ CF 15 August 1988

⁸⁸ CF 26 August 1988 and CF 12 September 1988, Item 20

⁸⁹ *Cory Collusion Inquiry Report*, p. 54, para 1.157

that he had just made a grave mistake. It was pointed out to the source, just who was debriefing whom. He was told to pack his photographs away, not to be so stupid and that there were to be no more attempts to question the handlers on these matters in the future.

The handler pointed out that he, the source, was a member of a team whose aim was to save lives and not one that exchanges information to enhance the taking of them. After a short talking to on ethics, [Nelson] accepted the error he had made and apologised to the handler.

[Nelson] will require careful monitoring regarding this sensitive matter, to ensure there are no repetitions.”⁹⁰

- 7.115 The MoD ‘Problem Areas’ document itself correctly acknowledged the implications of the above incident as follows:

“Nelson was not a new Source and had been in place for several years at this time. It seems possible that this service [i.e. identifying Republicans from photographs] had been rendered to him in the past. If this is the case it is an extremely serious matter. It leaves individuals and [the FRU] as a whole, open to allegations of collusion and conspiracy.”⁹¹

- 7.116 This admonishment of Nelson was, in fact, one of a number of warnings that A/10 gave him after taking over as his main handler. Nelson’s co-handler during this period, A/12, implied in his Stevens III interview on 15 March 2001 that there had indeed been a conscious change of approach towards the handling of Nelson. He stated that:

“... we were making sure, [A/10] and myself discussed it and I said to [A/10] you grip him ... You exert your authority and tell him that this doesn’t happen. So should it have happened in the past it’s not going to happen any more.”⁹²

- 7.117 The fact that Nelson felt comfortable in seeking his handlers’ assistance in relation to the 150 photographs he produced at the meeting in June 1989 is particularly telling. It seems to me unlikely that he would have expected help from his handlers on this occasion if he had not had the benefit of such assistance in the past. This incident must, of course, also be seen in the light of the cumulative pattern of evidence outlined in this chapter.

Overview

- 7.118 Considering the evidence as a whole, I am satisfied that during the period October 1987 to April 1989, FRU handlers did share targeting information with Nelson on occasions. The documentary evidence demonstrates that, in a number of cases, such information materially assisted Nelson and the UDA to target republicans. The provision of such information to Nelson is, on any view, utterly inconsistent with the objective of preventing terrorist activity and saving lives.

⁹⁰ CF 13 June 1989, Additional Information, Items 4–7

⁹¹ MoD *Problem Areas* document, Volume 3, Flag 6, para 6

⁹² Interview of A/12 by Stevens III Investigation, 15 March 2001

The circumstances in which some information was passed to Nelson are, in my view, only open to the interpretation that the FRU handler consciously wished to facilitate Nelson's targeting of a republican figure.

- 7.119 In particular, I believe that the results of vehicle checks were provided to Nelson on occasions and that he subsequently used this information for targeting purposes. There are also examples of Nelson being given vehicle details by the FRU and the RUC SB in order to help identify the source of leaks. Although the objective in these operations was a valid one, the manner in which this was done was, in my view, highly dangerous and did lead to information provided to Nelson being used by the UDA for targeting purposes.
- 7.120 I turn now to consider the direct role played by Brian Nelson in murders and other UDA attacks during this period.

Nelson's involvement in the murder of Terence McDaid

- 7.121 The UDA murdered Terence McDaid on 10 May 1988 in Belfast, having mistakenly identified him as his brother, Declan McDaid. Nelson pleaded guilty in 1992 to conspiracy to murder Declan McDaid and was sentenced to ten years' imprisonment.

The UDA's targeting of Declan McDaid

- 7.122 The first evidence of the UDA seeking to target Declan McDaid can be found in the CFs dating from September 1987. On 22 September 1987, Nelson and L/27 chose two targets, one of whom was Declan McDaid, in response to a request for targets from 'Tucker' Lyttle.⁹³ Nelson told his handlers that the UDA intelligence team had a photo of Declan McDaid and had carried out a 'recce' of his home on Oceanic Avenue in North Belfast. This intelligence was passed by the FRU to the RUC SB.

North Belfast UDA's attempts to assassinate Declan McDaid

- 7.123 It is apparent that, by the end of September 1987, the task of assassinating Declan McDaid had been given to the North Belfast UDA. Nelson informed his handlers that the North Belfast UDA were seeking to assassinate McDaid.⁹⁴ This information was in turn passed by the FRU to the RUC in MISRs. Nelson reported that, on 27 November 1987, two members of the North Belfast UDA had told him that they had planned to shoot Declan McDaid when he visited the social security office but something had happened to put them off.⁹⁵ Nelson was told that McDaid would be shot the following week.⁹⁶ After the initial abortive attempt, the North Belfast UDA do not appear to have actually made any further attempt to assassinate Declan McDaid.

⁹³ CF 23 September 1987, Items 5–7

⁹⁴ CF 29 September 1987, Item 2

⁹⁵ CF 1 December 1987, Item 2

⁹⁶ *Ibid.*

Nelson's targeting of Declan McDaid

- 7.124 Brian Nelson appears to have first taken a direct role in personally targeting Declan McDaid in February 1988. The CF dated 4 February 1988 noted that Nelson and L/28 had carried out a 'recce' of several premises in North Belfast, including Declan McDaid's house on Oceanic Avenue. The CF recorded that:

*"[L/28] and 6137 were discussing the fact the [sic] nothing had been done with regard to these personalities. 6137 said that more personnel were required in the Int Team to carry out targeting."*⁹⁷

- 7.125 Nelson returned to the targeting of Declan McDaid in April 1988. The CF dated 19 April 1988 recorded Nelson having prompted L/22 to consider Declan McDaid as a target. The CF noted that:

*"During the morning of Wed 13 Apr 88 [L/22] was at UDA HQ Shankill and he asked 6137 for targets in North Belfast. 6137 said he would have a look at the card index but suggested [T/04], Declan McDade [sic] and [T/08]. [L/22] asked 6137 to show him where they lived. 6137 took [L/22] and they carried out quick recces ..."*⁹⁸

- 7.126 This information was again passed on to the RUC in the form of a MISR. The MISR was dated 19 April 1988 and recorded all the key details of the targeting, including the fact that L/22 had Declan McDaid's address and photograph and had carried out a 'recce' of his home at Oceanic Avenue.⁹⁹ When considered alongside the number of MISRs already issued by the FRU, the MISR indicated the very serious nature of the threat to Declan McDaid's life. Despite this fact, there is no evidence that the RUC ever warned Declan McDaid or took any other action as a result of the intelligence.

The murder of Terence McDaid

- 7.127 Terence McDaid was shot at 10.09pm on Tuesday 10 May 1988 at his Newington Street home whilst watching television with his wife and parents. The UDA had intended to murder his brother Declan McDaid but killed Terence by mistake.

- 7.128 A brief TCF produced by the FRU noted that A/13 received four calls from Nelson in the early hours of 11 May. Nelson met his handlers later that day for a debriefing. He outlined his involvement in the UDA's targeting of Declan McDaid in the week beginning 2 May 1988, none of which he appears to have reported to his handlers prior to the murder. Nelson noted how, after a request from L/22, he had gathered intelligence on three UDA targets. The CF recorded that:

*"On Wed 4 May 88 6137 went to the Reference Library in Belfast and checked the above named at the address 6137 already had. He found McDaid at ... Oceanic Ave and also Maura McDaid at ... Newington St."*¹⁰⁰

⁹⁷ CF 4 February 1988, Item 10

⁹⁸ CF 19 April 1988, Item 5

⁹⁹ MISR 19 April 1988

¹⁰⁰ CF 11 May 1988, Item 4

7.129 Nelson handed the targeting details on the three individuals to L/22 on 5 May. He also provided targeting material to L/28 on the day of the murder. The CF recorded that:

“6137 met [L/28] at UDA HQ Shankill during the morning of Tue 10 May 88. [L/28] asked 6137 for all the information he had on Declan McDaid and 6137 gave him what little had been gathered. Nothing more was said.”¹⁰¹

7.130 In his 1990 statement to the Stevens I Investigation, Nelson admitted to an even greater level of involvement in the targeting of Declan McDaid. His statement implied that he checked the Electoral Roll on 4 May after having already carried out visual surveillance in the previous month which established that Declan McDaid visited the Newington Street address. This visual surveillance of Newington Street was not recorded in the CFs. Nelson’s admission to having carried out surveillance was as follows:

“Over a period of a month I had established visual sightings of this person and had discovered that he spent quite a lot of time at ... Newington – I’m not sure whether it is Street or Avenue ... I reported this fact to [L/22] and I also said ‘I’m sure that he is staying at Newington Avenue.’ A subsequent check of the Electoral Role revealed that there was also a McDade [sic] staying at this address ... When I had told [L/22], he asked me for his photograph. I gave him an index card containing a photograph of McDade and what information we had. On this card was also written – possibly staying at 4 Newington Avenue – not confirmed.”¹⁰²

7.131 The post-murder discussions within the UDA outlined in the CFs suggested that L/22 later sought to blame Nelson for the erroneous shooting of Terence McDaid rather than his brother Declan. The CF noted Nelson putting forward the following ‘defence’ of his intelligence-gathering:

“6137 told [L/22] that he ... had not confirmed that Declan McDaid lived at ... Newington Street and had not told anybody that the target was ready to be acted upon. 6137 also explained this to [L/28] when he came in.”¹⁰³

7.132 This CF and Nelson’s statement both gave the impression that he may not have ‘confirmed’ to the UDA hit team that Declan McDaid was definitely staying at Newington Street. However, the ‘P card’ on Declan McDaid recovered by the Stevens I Investigation suggested that Nelson had, in fact, positively confirmed that Declan McDaid was staying at the Newington Street address. Contrary to Nelson’s claim that he had annotated the card with the caveat that Declan McDaid was only “possibly” staying at the address, the recovered card includes the comment:

“Now living with sister at ... Newington Street.”¹⁰⁴

¹⁰¹ Ibid., Item 20

¹⁰² Brian Nelson, statement to Stevens I Investigation, 18 January 1990

¹⁰³ CF 16 May 1988, Item 4

¹⁰⁴ Brian Nelson ‘P card’ on Declan McDaid

Reaction of the FRU to Nelson's involvement in the murder

7.133 I believe that Nelson's involvement in the murder should have been a source of grave concern for his handlers and senior officers in the FRU. The CF dated 11 May 1988, however, suggested that, far from being critical of Nelson's actions, his handlers in fact sought to reassure him about his involvement in the shooting by the UDA. The CF included the following comment from the handler:

"6137 telephoned this office four times between 0041 – 0127 hrs on 11 May 88 feeling depressed as he thought that his targeting had led to the wrong person being shot dead. He was referring to the shooting of Terence McDaid earlier that evening instead of Declan McDaid. 6137 thought that the victim was an innocent Catholic and needed reassurance. Handler expected source to be depressed at the meeting but once 6137 had discovered that Terence was traced as PIRA he was quite content." [Emphasis added]¹⁰⁵

7.134 The clear inference from this comment is that Nelson's handlers reassured him by telling him that Terence McDaid was "*traced as PIRA*". The CF included no reference to the FRU expressing any warning, admonishment or alarm in respect of Nelson's involvement in the murder of Terence McDaid. This is despite the fact that Nelson had admitted to his handlers having a direct role in the identification of Terence McDaid's address and the fact that he was reporting this fact to the FRU only *after* the murder. The CFs also again clearly underlined the fact that Nelson was in favour of attacks against 'legitimate' targets and upset only by the prospect of 'innocent Catholics' being killed.

Allegations that a FRU handler gave McDaid's address to Nelson

7.135 I note that allegations have been made that a FRU handler supplied Nelson with the Newington Street address prior to the murder of Terence McDaid. These allegations have been made as a result of three separate disclosures by Nelson:

- Nelson apparently told his solicitor that his handler had provided him with the Newington Street address. This was later communicated by the solicitor to an official in the Crown Solicitor's Office, who in turn made a statement to the Stevens II Investigation.
- Nelson told John Ware whilst he was in prison awaiting trial that his handler had provided him with the address.
- Nelson made comments regarding the actions of his handler in an 'off the record' conversation to Stevens II officers on 28 June 1993. In response to a Stevens team officer stating his belief that the FRU handler had provided McDaid's address, Nelson said, "*You are nearly there, but not quite.*" Nelson went on to say that his handler "*was involved, but you'll never get a statement from me about it*".¹⁰⁶

¹⁰⁵ CF 11 May 1988, *Welfare*, Item 4

¹⁰⁶ Stevens II Investigation, note of 'off the record' conversation with Nelson, 28 June 1993 [see Volume II, pp. 74–75]

7.136 John Ware has provided my Review with his interview notes relating to his conversation with Nelson in prison on 5 July 1991. Mr Ware was an experienced journalist who took very detailed notes of his conversations with interviewees. The notes of the conversation included the following passage:

“Brian [Nelson] said that about one week before McDaid had been shot, his handler had told him that Declan lived in Newington Road/Avenue not Pacific [sic] Avenue which is where Declan had been living and where Brian said he had been doing his surveillance. Brian said his handler gave him this information because he was concerned that he was exposing himself to danger by conducting surveillance in the Pacific Avenue area.”¹⁰⁷

7.137 However, on other occasions Nelson categorically denied that his handler had supplied him with the Newington Street address. The basis on which Nelson pleaded guilty was his admission that he had obtained the address as a result of visual surveillance of Declan McDaid. The CFs suggested that the FRU had no knowledge that Nelson had been involved in visual surveillance on the Newington Street address. He appears to have told his handlers that he obtained the address from the Electoral Roll.

7.138 In the light of the contradictory statements made by Nelson on this issue, and the contemporaneous evidence provided by the CFs, it is not possible to substantiate the allegation that Nelson’s handler had provided him with the Newington Street address.

Overview

7.139 I am satisfied that Nelson played a pivotal role in the murder of Terence McDaid. The FRU were fully aware that their agent had played an important role in the murder of Terence McDaid by providing the UDA hit team with the Newington Street address. The FRU were also aware that Nelson was only reporting his actions in this regard to them after the murder, by which time the security forces would have been in no position to protect Terence McDaid. Nelson’s subsequent statements would, in fact, reveal that he had been even more directly involved in the targeting than he appears to have admitted to his handlers.

7.140 Despite this, the FRU showed no concern at all in respect to Nelson’s actions and instead appear to have sought to reassure him about his role by linking Terence McDaid to PIRA. I should also note that, though Declan McDaid was not actually attacked, it is nevertheless of grave concern that the RUC no took action to warn or otherwise protect him despite the intelligence passed to them by the FRU indicating a serious threat to his life.

¹⁰⁷ John Ware, notes of interview with Brian Nelson, 5 July 1991

Nelson's involvement in the murder of Gerard Slane

7.141 Gerard Slane was murdered by the UDA on 23 September 1988 at his home in West Belfast. Nelson entered a plea of guilty in 1992 to the collection of information likely to be of use to a terrorist in relation to this attack.

Nelson's targeting of Gerard Slane

7.142 The UDA decided to target Gerard Slane in revenge for the murder of the loyalist William Quee. Quee was murdered on 7 September 1988 by the republican terrorist organisation the Irish People's Liberation Organisation (IPLO).

7.143 On 7 and 8 September 1988 Nelson was involved in a series of discussions at the UDA HQ in an effort to identify the IPLO members responsible for the Quee murder. On 8 September, Nelson and L/27 showed a selection of security force photographs of IPLO and Irish National Liberation Army (INLA) members to two people who had supposedly witnessed the shooting to see if they could identify the culprits. Two individuals were 'identified' by the witnesses. Nelson and L/27 also sought out another 'witness' to the shooting, who went on to allege that Gerard Slane had been present at the scene.¹⁰⁸

7.144 On the strength of this supposed identification, Nelson began to gather intelligence on Slane. The CF dated 12 September recorded that:

*"During the morning of Sat 10 Sep 88 6137 checked the Electoral Register and found Gerard Slane living at ... Waterville Street. 6137 visited [a] Working Mens Club where the majority of mourners from Shankill had retired after the funeral of Quee. 'Tucker' Lyttle and [L/28] were there. 6137 told them of Slane's address."*¹⁰⁹

7.145 Nelson reported to his handlers that:

*"Everyone, including 'Tucker' Lyttle is eager to retaliate for the murder of Quee. If Lyttle can get someone as high as [T/14] he will be pleased."*¹¹⁰

7.146 The next meeting between Nelson and his handlers took place on 21 September 1988. During the meeting Nelson reported the UDA's continued targeting of Slane. Nelson noted that on 13 September, 'Tucker' Lyttle had *"commented that they [the UDA] needed a 'hit' badly."*¹¹¹ L/27 had proposed a 'recce' of Slane's house but Nelson warned against this due to a high level of RUC activity in the area.

7.147 The CF recorded that, on 21 September 1988, L/20, L/27 and Nelson had a conversation about UDA targeting in which Nelson *"asked about Gerard Slane"*. Nelson stopped at the UDA Intelligence Cell and retrieved the security force photograph of Slane. The CF went on to record that:

¹⁰⁸ CF 12 September 1988, Items 4–8

¹⁰⁹ Ibid., Item 9

¹¹⁰ Ibid., source comment

¹¹¹ CF 21 September 1988, Item 8

“6137 told [L/20] and [L/27] that Slane lived at ... Waterville St. [L/27] asked who else lived at the address. 6137 said that he would check the Electoral Register. [L/27] added that if only Slane lived there then he would be an easy target. 6137 dropped [L/20] of [sic] at ... and went to the main library in the City Centre to check the Electoral Register with [L/27]. They found that only Gerard and Theresa Slane live at ... Waterville St. [L/27] said that he wanted to carry out a recce. 6137 advised him to do it during the early hours of the morning and to use a taxi sign on a car as cover for being in the area. [L/27] agreed.”¹¹²

- 7.148 Nelson provided further detail on the targeting of Slane in his 1990 statement to the Stevens I Investigation. Nelson’s statement implied that L/20 had told him that the attack on Slane would be carried out quickly, though there is no record to indicate that Nelson informed his handlers of this. Nelson stated that, after receiving Slane’s targeting details on 21 September, L/20 had told him, *“Is this the chappie – I’ll soon deal with him.”*¹¹³

The murder of Gerard Slane

- 7.149 Gerard Slane was murdered in his home in Waterville Street in the early hours of Friday 23 September 1988. Responsibility for the attack was claimed later that day by the Ulster Freedom Fighters (UFF).
- 7.150 On the day before the Slane murder, Nelson had left Northern Ireland on a family holiday to Blackpool. He phoned his handler the day after the murder, 24 September. The TCF recorded the discussion of Gerard Slane’s murder as follows:

*“H [Handler]. Did you hear what happened?
S [Nelson]. Only this morning, they were quick.
H. Yes, extremely.
S. I bet that shocked you.
H. Just a bit.
S. It did me.”¹¹⁴*

- 7.151 In a debrief with his handlers on 30 September, Nelson was able to provide further intelligence on those responsible for the murder. Nelson stated that on 28 September L/20 had told him:

“... that during the morning of Thu 22 Sep 88 he [L/20] had sent two of his men to see if they could confirm that Slane was at his home, ... Waterville St. The two men returned to [L/20] and said that they had seen Slane working at the rear of his house. [L/20] was not entirely happy with this report and sent another man to check. This man returned saying that he saw Slane who had

¹¹² Ibid., Item 10

¹¹³ Brian Nelson, statement to Stevens I Investigation, 15 January 1990

¹¹⁴ TCF 24 September 1988

passed him in the street and entered ... Waterville St. [L/20] was happy with this report and it confirmed that Slane lived at the house.”¹¹⁵

- 7.152 L/20 went on to recount how the attack itself had involved a five-man team, with two gunmen hammering down Slane’s front door. On 6 October Nelson drafted the UFF statement for *Ulster* magazine claiming responsibility for the murder of Gerard Slane. The statement also included a threat to the INLA and incorporated security force photographs of Gerard Slane and his brother.¹¹⁶

The information passed by the FRU to the RUC

- 7.153 The Slane case provides the most serious example of the FRU failing to pass on important intelligence to the RUC SB prior to a UDA attack taking place. Nelson provided his handlers with important intelligence with regard to the targeting of Slane on two occasions: 12 September and 21 September 1988.

- 7.154 The MISR produced on 13 September 1988 did alert the RUC SB to the fact that the UDA were targeting Gerard Slane. The MISR stated that:

“West Belfast Bde UDA are targeting [T/14] in order to carry out an attack in retaliation for the murder of William Quee. Witnesses have identified [T/23], [T/43] and Gerard Slane as being involved in the murder. These people are now being targeted.”¹¹⁷

- 7.155 Despite this threat intelligence, the RUC appear to have taken no action to warn Gerard Slane or otherwise seek to frustrate the UDA’s attack. It should be noted that the MISR itself did not, however, record that the UDA had obtained Gerard Slane’s address.

- 7.156 The more serious omission, however, was in respect of the failure to pass on the intelligence provided by Nelson to his handlers on 21 September 1988. The MISR sent as a result of this debrief was dated 23 September and consequently almost certainly reached the RUC SB after Slane had been murdered. The MISR itself was remarkably vague and non-specific, merely recording that:

“West Belfast UDA are interested in all IPLO members in Belfast. They want three attacks to be carried out on IPLO members before the end of October which will be claimed collectively by the UFF.”¹¹⁸

- 7.157 This MISR failed to record the fact that Slane had been singled out as a target; that Nelson had confirmed his address using the Electoral Roll; or that the UDA intended to carry out a ‘recce’ of Slane’s home. As I note in Chapter 8, it is difficult to rule out the possibility that the FRU may have communicated more detail on Nelson’s reporting orally to the RUC Source Unit. This MISR had, however, been diluted to such an extent that it is reasonable to infer that the FRU may

¹¹⁵ CF 30 September 1988, Item 14

¹¹⁶ CF 11 October 1988

¹¹⁷ MISR 13 September 1988

¹¹⁸ MISR 23 September 1988

have been seeking to obscure the fact that they had failed to pass on threat intelligence relating to Slane prior to his murder.

- 7.158 The FRU did, however, subsequently inform the RUC SB of the identity of the UDA ringleader responsible for the murder of Gerard Slane. The MISR dated 3 October 1988 clearly recorded that “[L/20] planned the murder of Gerard Slane”.¹¹⁹
- 7.159 L/20 was never arrested in connection with the Slane murder and went on to play a significant role in the murder of Patrick Finucane. At a meeting between the Solicitor General and the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) in March 1991, the RUC’s failure to take any action as a result of this intelligence was noted. The minute of the meeting recorded that “*It was noted that the RUC had taken no action in respect of the suspects identified by Nelson.*”¹²⁰
- 7.160 In Chapter 17 I explore more fully the RUC’s failure to take sufficient action against this particular West Belfast UDA gang, including in relation to the murder of Gerard Slane. I have also released alongside my Report the relevant intelligence-reporting indicating key suspects for the murder of Gerard Slane.¹²¹

Overview

- 7.161 I am satisfied that Brian Nelson played a key role in the murder of Gerard Slane. The FRU were fully aware of Nelson’s involvement in the targeting of Slane prior to his murder. Although both Nelson and the FRU were surprised by the speed of the UDA attack on Slane, there is no evidence that either were particularly concerned about Nelson’s role in the murder. As the DPP(NI)’s analysis of Nelson’s involvement in the murder recorded, “*It is noted that the Army continued to use Nelson as an agent after this murder.*”¹²²
- 7.162 The FRU also appear to have failed to pass crucial pre-attack intelligence to the RUC SB in this case. The intelligence provided by Nelson on 21 September 1988 does not appear to have been passed to the RUC until after the murder, and even then it had been sanitised so heavily that any mention of Gerard Slane had been removed from the intelligence. The RUC were, however, told by the FRU on 13 September that Gerard Slane was being targeted but made no attempt to warn or otherwise seek to protect him. The RUC were also subsequently told the identity of the UDA ringleader directing the murder, L/20, but did not take any steps to arrest him or any of the other suspects identified by Nelson. L/20 went on to play a critical role in directing and organising the murder of Patrick Finucane.

¹¹⁹ MISR 3 October 1988, Item 1

¹²⁰ Solicitor General, DPP(NI) meeting, 23 March 1991

¹²¹ See relevant RUC intelligence documents [see Volume II, pp. 78–79]

¹²² DPP(NI), undated analysis relating to the Stevens I Investigation

Nelson, the RUC SB and the murder of James Pratt Craig

- 7.163 The murder of James Pratt Craig by the UDA on 15 October 1988 is one of the crimes that I will examine because it serves to illustrate two themes relevant to the work of my Review. The first of these is the flow of information to the UDA from the RUC SB in relation to James Pratt Craig, and the second is the role of Brian Nelson in inciting the fatal attack on him and the reaction of his FRU handlers to this murder.

Background

- 7.164 James Pratt Craig was a notorious and long-standing member of the UDA. Craig became a paramilitary leader in the Maze prison in the early 1970s and was charged (but not convicted) of a series of offences in the 1980s. The respected publication 'Lost Lives' provides the following account of Craig's activities:

*"It was written of Jim Craig that his notoriety and range of enemies was such that he could have been killed by almost any of Northern Ireland's paramilitary groups, loyalist or republican. According to both loyalist and security sources he was involved in many killings. He was also known as a paramilitary extortionist, running rackets and collecting protection money from a large number of businesses. He was reputedly actively involved in colluding with republican groups, including both the IRA and INLA, to have a number of other loyalists killed."*¹²³

UDA suspicions about James Pratt Craig

- 7.165 The FRU CFs suggested that loyalist paramilitaries had begun to suspect James Pratt Craig of having links with PIRA as early as 1985. In May 1985, Nelson reported that L/28 had asked him to put together a comprehensive file on Craig. Following media reports alleging that a UDA member had 'set up' the murder of two loyalists, Nelson reported on 10 July 1985 that "*Craig is the man, he will end up with a hole in his head*".¹²⁴

The RUC SB operation in 1987–88 relating to James Pratt Craig

- 7.166 The RUC SB had been monitoring James Pratt Craig and his links to PIRA since the early 1980s. The book, 'Phoenix: Policing the Shadows', provided a detailed account of the work of E4A (the RUC's surveillance section) in monitoring Craig's meetings with PIRA figures during the period 1982–84.¹²⁵ Alan Simpson provided a further account of the RUC CID's awareness of Craig's activities in his 2010 book, 'Duplicity and Deception'.¹²⁶

¹²³ David McKittrick et al., *Lost Lives*, Mainstream Publishing, 2004, p.1149

¹²⁴ CF 10 July 1985

¹²⁵ Jack Holland and Susan Phoenix, *Phoenix: Policing the Shadows*, Hodder & Stoughton, 1996, p.155–159

¹²⁶ Alan Simpson, *Duplicity and Deception: Policing the Twilight Zone of the Troubles*, Brandon/Mount Eagle Publications, 2010

7.167 It is apparent from the documentary record that, from at least June 1987, the RUC SB ran an operation designed to supposedly ‘discredit’ James Pratt Craig by feeding information to the UDA about his links to PIRA. The operation was a complex one and involved various (unwitting) channels being used to relay information to the UDA. A Security Service note dated 9 November 1988 noted that the information being provided was “*chiefly aimed at confirming UDA suspicions of the activities of UDA members who were in touch with PIRA*”.¹²⁷

7.168 The CF dated 11 June 1987 recorded Nelson’s reporting on information being fed by the RUC SB to the UDA regarding James Pratt Craig’s links with PIRA. Nelson reported on a conversation with a member of the UDA as follows:

*“... [the member of the UDA] went on to say that the source in SPECIAL BRANCH had confirmed that JAMES PRATT CRAIG was living with [a member of PIRA].”*¹²⁸

7.169 This intelligence reporting was subsequently discussed between the OC of East Det FRU and the Head of Special Branch for the Belfast Region. The OC’s comment on the CF included the following observation:

*“The above information was discussed personally with HSB BELFAST ... He is aware of the information being passed to [the UDA] which is part of a complex operation to discredit PRATT CRAIG. He was grateful for the above information and requested that anything further passed by 6137 on this subject be passed to him directly.”*¹²⁹

The role of Brian Nelson

7.170 Nelson subsequently became closely involved with the UDA’s attempts to ‘prove’ that James Pratt Craig was providing information to PIRA. On 8 July 1987 L/28 asked Nelson to build a file on Craig to ‘prove’ he was an informer. Craig continued to be the subject of UDA discussions throughout the rest of 1987 and into 1988.

7.171 Nelson claimed in his ‘journal’ account that at one point, as a result of information provided to him by his FRU handler, he told ‘Tucker’ Lyttle that he knew Craig was providing information to PIRA.¹³⁰ On 22 December 1987, a UDA Brigadier was killed by PIRA in a car bomb attack, which served further to increase the UDA’s suspicions about Craig.

7.172 Nelson became most heavily involved in the conspiracy to entrap and murder Craig in the summer of 1988. He proposed a series of bizarre means of entrapment, including the use of facial disguises to aid close-quarter surveillance and electronically bugging a bungalow apparently used by Craig.¹³¹ Nelson also became involved in the production of a document about the possibility of someone in the UDA providing information to PIRA. When it had been produced,

¹²⁷ Security Service note, 9 November 1988

¹²⁸ CF 11 June 1987

¹²⁹ Ibid.

¹³⁰ Nelson’s ‘journal’, p. 94

¹³¹ CFs 30 June 1988 and 6 July 1988

Nelson discussed the document with L/28, who “*agreed that it pointed the finger at Craig*”.¹³² Nelson described the document in his ‘journal’ as “*very damning*”.¹³³

7.173 The CF dated 11 July 1988 provided a lengthy account of Nelson’s attempts to convince senior UDA figures that Craig was ‘guilty’ of talking to PIRA. Nelson told his handlers that:

*“Evidence of Craig’s activities is no longer needed. I think that Craig will be shot, someone like ‘Tucker’ Lyttle will arrange a meeting and when Craig arrives he will be assassinated.”*¹³⁴

7.174 The CF dated 27 July 1988 reported that ‘Tucker’ Lyttle had told Nelson to target Craig but that the FRU handlers discouraged him from doing so, stating that Nelson “*has been warned of the dangers involved in targeting Craig and has been told not to conduct any*”.¹³⁵ From this point onwards, Nelson appeared to distance himself from the targeting of Craig.

7.175 It should be noted that throughout this period the FRU provided MISRs to the RUC SB pointing to the UDA’s intention to kill Craig.¹³⁶

The information flow in the summer of 1988 and the interrogation of Brian Nelson

7.176 The RUC SB’s provision of information to the UDA on Craig appears to have had a significant degree of success in distracting and diverting the UDA. A Security Service note dated 7 July 1988 recorded that the effect of the information had been “*for South and West Belfast [UDA] Brigades to suspend operations for the present*”. Similarly, the CF dated 4 August 1988 noted that the West Belfast UDA had become “*preoccupied*” with the internal dispute.¹³⁷ There are some suggestions in the documentary record that the SB began to scale down the provision of information from mid-July.¹³⁸

7.177 However, the operation by the RUC SB had an unexpected side-effect when it led to the UDA interrogating Nelson due to his suspected links to PIRA. On 19 August 1988 Nelson was interrogated and apparently electrocuted with a cattle prod. This incident was highlighted in the following exchange during the plea in mitigation at his trial in 1992:

“Mr Boal [defence Counsel]: It’s an exemplification perhaps of the dangerous life [Nelson] was living, did you become aware of one occasion in which he, in fact, came under suspicion and was interrogated in a brutal way?”

¹³² CF 24 June 1988, Item 8

¹³³ Nelson’s ‘journal’, p. 166

¹³⁴ CF 11 July 1988, Item 8a

¹³⁵ CF 27 July 1988, Item 7a

¹³⁶ See also Chapter 8 regarding the flow of MISRs in this and other cases

¹³⁷ CF 4 August 1988, ‘Case Development’, Item 9

¹³⁸ Security Service note, 15 July 1988

A/05: He came under suspicion, he was subject to brutal interrogation. He was electrocuted with a cattle prod on a number of occasions, and he survived through really the courage that we had come to expect of him.”¹³⁹

7.178 The CF dated 23 August 1988 in fact made clear that Nelson was interrogated as a direct result of the RUC SB provision of information to the UDA. The CF included the following account of ‘Tucker’ Lyttle’s rationale for suspecting Nelson of providing information to PIRA:

“[Lyttle] explained the facts about what the SB contact had told them reference PIRA knowing about operations that the UDA were planning and that there was an informer close to [L/01]. Lyttle said that if it was not [L/01] it was 6137 ... Lyttle said that 6137 was the only person in regular contact with [L/01] and had told him about most of the targeting including that of [T/02].”¹⁴⁰

7.179 Following this conversation, Nelson was taken to a house in the Lisburn area and interrogated with the cattle prod. It is important to note that the interrogation came about as a result of allegations that Nelson was linked to PIRA, not because he was suspected of providing information to the security forces. Nelson’s interrogation was also an illustration of the dangers of the operation mounted by the RUC SB: the paranoia it caused in UDA ranks had the positive effect of reducing their operational capacity but also led them to contemplate attacks on their own members and unintentionally led to an Army agent being placed in jeopardy.

The murder of James Pratt Craig

7.180 James Pratt Craig was murdered on 15 October 1988 by the UDA. An innocent bystander was also shot dead in the attack and four others were wounded. The murder was claimed by the UFF who said in a statement that he had been “*executed for treason*”.¹⁴¹ Later the UDA put together a document entitled ‘Collusion’, which outlined Craig’s alleged links with PIRA. This document was subsequently leaked to the press.

7.181 However, in an additional twist to an already complex sequence of events, Craig appears to have been murdered not by the UDA commander assigned the task of shooting him but by other UDA elements involved in criminal activities. In practice, therefore, the murder may have been connected as much to disputes over criminal activities as to the SB operation highlighting Craig’s links to PIRA.

7.182 Nevertheless, it seems unlikely that any UDA gang would have moved against a comparatively powerful figure such as Craig without knowing that the senior UDA ‘Brigadiers’ had sanctioned an attack. The UFF statement of responsibility for the murder in itself implies a link between the attack and the UDA’s suspicion, nurtured and confirmed by the SB operation, that Craig was linked to PIRA figures.

¹³⁹ Trial transcript, *R v Brian Nelson*, 29 January 1992, A/05 evidence in mitigation

¹⁴⁰ CF 23 August 1988, Item 21

¹⁴¹ UFF claim of responsibility for the murder of James Pratt Craig

Reaction to the murder

7.183 It is worth also noting the reaction to the murder of Craig by both the RUC SB and the FRU. Important intelligence with regard to the attack appears to have been withheld by the RUC SB from the CID murder investigation team. Two RUC intelligence source reports (SB50s) with important intelligence about those responsible for the attack were marked with the phrase “*CID not informed*”.¹⁴² However, there is evidence to suggest that the RUC SB did seek to take steps to reduce the risk of the UDA mounting further attacks against other loyalists suspected of being linked to PIRA.¹⁴³

7.184 The reaction of Nelson and his FRU handlers to the murder of Craig was recorded in a FRU CF dated 17 October 1988. The CF recorded L/28 having told Nelson that it was his document on Craig’s activities that had been “*instrumental*” in the death. The CF noted the following information under the heading ‘Welfare/Source/Handler relationship’:

“6137 was in good spirits at the meeting namely because, at long last James Pratt Craig got what had been coming to him for years. 6137 was please [sic] with himself as it was his document summarising Craig’s activities as an informer that was instrumental in the case against Craig and his execution. 6137 was somewhat dismayed that handlers had not brought a celebration drink to the meet but handler explained that it was not right to celebrate anyone’s death in such a way. This was an excuse and had handler known that 6137’s efforts had contributed then perhaps a drink would have been taken.”¹⁴⁴

7.185 A further note in the CF stated that:

“6137 does ... feel a great sense of relief now that Craig is dead. 6137 was concerned that if he got too good at his targeting, Craig would give PIRA 6137’s details in order to get rid of him.”¹⁴⁵

Overview

7.186 The murder of James Pratt Craig was not carried out by the West Belfast UDA and is not, therefore, central to the scope of my Review. However, it is necessary to recount the background to the murder to illustrate the level of contact between the RUC SB and the UDA in the context of the operation relating to Craig, and the attitudes of the FRU agent Brian Nelson and his handler to a murder which he had played a part in inciting.

¹⁴² RUC SB50s, 27 October 1988 and 24 November 1988

¹⁴³ Security Service documentation, 1988

¹⁴⁴ CF 17 October 1988, Additional Information, Item 3

¹⁴⁵ Ibid., Item 6

Nelson's involvement in other UDA attacks

- 7.187 This chapter provides an overview of a number of further targeting operations with which Nelson was involved both before and after the murder of Patrick Finucane. These activities amount to instances of attempted murder and conspiracies to murder, and allow me to illustrate vividly the very clear pattern of criminal behaviour in which Nelson was involved during his period as a FRU agent. They also make clear the level and depth of information on these activities which was known to the security forces at the material time, and bring into stark relief the many instances in which UDA targets went unwarned, despite their lives being under threat.
- 7.188 I need to refer to the findings of the Stevens team regarding evidence held within the RUC SB Threat Book and action taken by the RUC. Members of the Stevens team had access to RUC SB files on UDA targets, and were able to inspect the collator cards held at RUC stations in which the provision of warnings should have been logged.

Attempted murder of T/28 on 17 August 1988

- 7.189 The targeting of two brothers, T/28 and T/29, began after Nelson had returned to Belfast and he and L/28 had spotted their van in July 1987.¹⁴⁶ Nelson returned the following day and followed the van, later discovering that another car containing L/33, L/20 and two unknown men was also following it. He told his handlers that "*If [L/20] is on targeting, it usually means that the job will take place pretty soon*".¹⁴⁷ A MISR was sent to the RUC SB but it omitted mention of the second targeting team.¹⁴⁸ Nelson made further attempts to follow the van and was informed by the second targeting team of the location of the main office for the construction firm for which the brothers were working.¹⁴⁹
- 7.190 In late September L/27 showed Nelson a printout of PIRA personalities, including photographs of T/28 and T/29. Nelson believed the list had been sourced from an Army computer at Lisburn in 1982, though the CF contained a comment from the Field Source Controller that:
- "The computer printout does not look like an Army product at all although some of the information may have been extracted from Army sources."*¹⁵⁰
- 7.191 In mid-October L/24 told Nelson that two vehicles had been seen in the loyalist Springmartin area of Belfast. The local UVF commander was concerned because one of the vehicles contained either T/28 or T/29.¹⁵¹ This UVF interest is significant given later events, and was communicated to the RUC SB in a MISR the same day.¹⁵²

¹⁴⁶ CF 24 July 1987

¹⁴⁷ Ibid.

¹⁴⁸ MISR 27 July 1987

¹⁴⁹ CF 30 July 1987

¹⁵⁰ CF 29 September 1987

¹⁵¹ CF 20 October 1987

¹⁵² MISR 20 October 1987

- 7.192 The following week Nelson reported that L/22 had taken over the targeting of the brothers. Nelson had provided his intelligence to L/22, who had completed a 'recce' of their known addresses.¹⁵³ On 24 November Nelson informed his handlers that 'Tucker' Lyttle had asked for the brothers' addresses,¹⁵⁴ and two days later L/37 gave L/28 the go-ahead to carry out a close quarter attack (CQA).¹⁵⁵ In March 1988 Nelson reported that L/28 had asked him if he knew how to obtain a postman's uniform, which Nelson thought he was planning on using for the CQA.¹⁵⁶ Nelson then passed about 20 photographs of potential targets to L/04 of the UVF, which may have included T/28 and T/29, though there is no confirmation of this.¹⁵⁷
- 7.193 In May Nelson told his handlers of a plan to use a bomb on one of the vans which T/28 and T/29 used to travel together to work,¹⁵⁸ and on 20 June Nelson confirmed that L/20 had been trying to locate the brothers at work.¹⁵⁹ He then reported that others had been asking about the firm for which they worked, suggesting that they may have been the target of other teams.¹⁶⁰
- 7.194 On 17 August 1988, T/28 was injured in his home when a gunman fired four or five shots through the front door. L/28 told Nelson that the UVF were responsible. The UDA had been planning to mount an attack on 19 August but the UVF had beaten them to it.¹⁶¹ An RUC CID file recorded source intelligence that the gun used in this shooting had previously been used in the shooting of Terence McDaid.¹⁶²
- 7.195 The Stevens team found 21 MISRs relating to T/28 and T/29 dating from before the attempt on T/28's life, of which 19 were found to contain intelligence of UDA targeting. However, there are no entries in the Threat Book originating from Nelson with regards to the brothers, and I have found no record of their being warned of the fact that they were being targeted.

Conspiracy from August 1987 to July 1989 to murder Thomas Keenan

- 7.196 In August 1987 Nelson reported that each UDA Brigade was to be given a republican personality to target.¹⁶³ Thomas Keenan was to be assigned to the West Belfast Brigade.¹⁶⁴

¹⁵³ CF 26 October 1987

¹⁵⁴ CF 24 November 1987

¹⁵⁵ CF 1 December 1987

¹⁵⁶ CF 9 March 1988

¹⁵⁷ CF 23 March 1988

¹⁵⁸ CF 11 May 1988

¹⁵⁹ CF 24 June 1988

¹⁶⁰ CF 30 June 1987

¹⁶¹ CF 23 August 1988

¹⁶² RUC CID murder file, 1988

¹⁶³ CF 12 August 1987

¹⁶⁴ CF 18 August 1987 and TCF 20 August 1987

- 7.197 The CFs first showed that the UDA had an address for Keenan in December 1987, when they had decided to target him at his home.¹⁶⁵ Between January and July 1988 Nelson informed his handlers that Keenan's house was being routinely observed – in particular, the UDA were carefully monitoring Keenan and his wife when they entered and left their home.¹⁶⁶ His movements elsewhere were also being watched, including journeys to his children's school¹⁶⁷ and the social security office.¹⁶⁸
- 7.198 At different times between August 1987 and June 1988 Nelson told his handlers that the hit was to be carried out by L/28,¹⁶⁹ L/03,¹⁷⁰ L/20¹⁷¹ and the UDA's South Belfast Brigade. In January 1988 Nelson reported details of a plot to assassinate Keenan outside his home. He stated that Keenan would be shot with one of two weapons, one of which was already at hand and the other of which was to be delivered within three weeks.¹⁷²
- 7.199 Another notable aspect of these events was the suggestion that information was being provided to the UDA by RUC 'contacts'. On 7 August 1987 Lyttle told Nelson that a policeman had said: "*We are aware you are targeting Sean Keenan, however you have the wrong first name.*" Lyttle then showed Nelson a photograph of Thomas Keenan and said: "*This is the one we want.*"¹⁷³ On 6 April 1988 the FRU learned that L/41's contact in the RUC had told him that the local RUC station reacted slowly to shootings of PIRA members,¹⁷⁴ and on 2 March 1989 that detailed information on Keenan's weekly meetings at a university had come from the RUC.¹⁷⁵
- 7.200 Nelson repeatedly reported that an attempt on Keenan's life was imminent. On 11 January 1988 Nelson reported that Lyttle wanted the plan finalised within four days,¹⁷⁶ then on 19 January that Lyttle had said that everything was ready,¹⁷⁷ and on 25 January that L/28's men were ready to carry out the hit.¹⁷⁸ On 3 March 1988 Nelson again confirmed that the UDA were ready to carry out the attack, which would take about a week to organise, and would take place on a Wednesday at about 9.00am.¹⁷⁹ However, the attack never took place.
- 7.201 Some 37 MISRs, one immediate report and a letter to the Head of Special Branch were sent containing information on the targeting of Thomas Keenan. These MISRs provided a significant amount of detail, but without conveying the extent of Nelson's involvement. Nelson completed a number of 'recces' of Keenan's home

¹⁶⁵ CF 15 December 1987

¹⁶⁶ For example, CFs 19 January 1988, 4 February 1988, 3 March 1988 and 19 April 1988

¹⁶⁷ CF 12 January 1988

¹⁶⁸ CF 25 April 1988

¹⁶⁹ CF 12 January 1988

¹⁷⁰ CF 4 February 1988

¹⁷¹ CF 1 June 1989

¹⁷² CF 15 January 1988

¹⁷³ CF 12 August 1987

¹⁷⁴ CF 6 April 1988

¹⁷⁵ CF 2 March 1989

¹⁷⁶ CF 12 January 1988

¹⁷⁷ CF 19 January 1988

¹⁷⁸ CF 25 January 1988

¹⁷⁹ CF 3 March 1988

between January and May 1988, as well as on a takeaway restaurant that Keenan was known to visit,¹⁸⁰ a hospital¹⁸¹ and a university Students' Union.¹⁸² Nelson also suggested to L/04 that the UVF target Keenan,¹⁸³ and proposed the use of a car bomb to L/28.¹⁸⁴ In June 1989 Nelson asked L/20 to take responsibility for the hit, providing him with details and a photograph, and assisted him in acquiring a forged student card to enable a 'recce'.¹⁸⁵

7.202 There are no entries in the Threat Book relating to Keenan, and the Stevens team found no evidence of any warning provided in relation to the threat to his life.

7.203 In 1992 Nelson was charged with conspiracy to murder Keenan. He pleaded guilty and was sentenced to ten years' imprisonment. He was also charged with collecting information likely to be of use to terrorists in planning or carrying out an act of violence, for which he was sentenced to four years' imprisonment to be served concurrently with other sentences.

Conspiracy from November 1987 to October 1989 to murder Brian Gillen

7.204 On 13 November 1987 Nelson passed to his handlers a copy of a security force 'City Sightings List', containing the details of a number of individuals who had been put under surveillance. This included a photograph of Brian Gillen.¹⁸⁶

7.205 During 1988 Nelson reported that the UDA had obtained a description and registration of Gillen's car. They had also located the address of Gillen's sister, whom Gillen visited regularly, and Nelson had conducted 'recces' of the house.¹⁸⁷ On 3 March 1988 Nelson reported that Lyttle had established that Gillen had been staying at his sister's house on Mondays and Tuesdays, and told his handlers that he thought the attack would go ahead sooner rather than later.¹⁸⁸

7.206 On 30 November 1988 Nelson reported that three days previously a car containing L/20, L/33, L/25 and another member of the UDA, Kenneth Barrett, had been on the way to the house to shoot Gillen. However, the hit was called off when Nelson did not spot anyone inside the house.¹⁸⁹ On 12 December 1988 Nelson reported that he and L/22 had carried out another 'recce' of Gillen's sister's house.¹⁹⁰ Nelson then produced a two-page document on him for the UVF and provided a verbal briefing on Gillen to the Ulster Defence Force (UDF), another loyalist paramilitary group.¹⁹¹

¹⁸⁰ CF 19 January 1988

¹⁸¹ CF 27 July 1988

¹⁸² CF 2 March 1989

¹⁸³ CF 7 April 1989

¹⁸⁴ CF 18 July 1989

¹⁸⁵ CF 1 June 1989

¹⁸⁶ CFs 13 November 1987 and 18 November 1987

¹⁸⁷ CFs 4 February 1988, 12 February 1988 and 17 February 1988

¹⁸⁸ CF 3 March 1988

¹⁸⁹ CF 30 November 1988

¹⁹⁰ CF 12 December 1988

¹⁹¹ CF 20 December 1988

- 7.207 On 25 January 1989 Nelson told his handlers that Gillen had been named as one of eight men in a joint Special Active Service Unit of PIRA and IPLO members, whose task was to target senior loyalists. Lyttle told Nelson to compile a document on the group.¹⁹² Targeting of Gillen continued until October 1989, including following Gillen's movements to Lisburn and discussion of the use of a sub-machine gun.¹⁹³
- 7.208 Some 30 MISRs were issued containing information relating to the targeting of Brian Gillen. There are no entries in the Threat Book originating from Nelson regarding Gillen. Gillen was warned of a threat to his life in October 1989, but this was thought by the Stevens team to have been unconnected with Nelson's information. At his trial Nelson pleaded guilty to conspiracy to murder Gillen, for which he was sentenced to ten years' imprisonment to be served concurrently with other sentences.

Attempted murder of T/14 on 7 December 1987

- 7.209 On 24 November 1987 Nelson reported to his handlers that L/22 had picked two names from a list of Sinn Féin members, one of whom was T/14.¹⁹⁴ This was passed on to the RUC SB in a MISR the same day.¹⁹⁵ However, as Nelson later admitted in a statement to the Stevens Investigation, he had also prepared an intelligence card for T/14, which he had handed to L/22.¹⁹⁶
- 7.210 On 7 December 1987 a gunman knocked at T/14's front door and, when he approached, a number of shots were fired through it from a shotgun and a pistol. The following day 'Tucker' Lyttle met Nelson with the 'P card' for T/14, which Lyttle then tore up.¹⁹⁷ The Stevens team found no evidence of any attempt being made to warn T/14.

Attempts to murder Alex Maskey on 22 May 1987 and 17 July 1988

- 7.211 Nelson's involvement in the targeting of Alex Maskey during the period 1987–89 was considerable. On 18 May 1987 Nelson reported that the UDA were targeting a car registered to Maskey,¹⁹⁸ and on 22 May 1987 Maskey was injured at his home by a gunman who fled. L/28 was to tell Nelson that the UDA had been responsible for this attempt,¹⁹⁹ and in January 1988 Nelson learned that L/01 had been involved in its planning and execution.²⁰⁰

¹⁹² CF 25 January 1989

¹⁹³ For example, CFs 27 April 1989, 13 June 1989, 16 August 1989, 19 September 1989 and 24 October 1989

¹⁹⁴ CF 24 November 1987

¹⁹⁵ MISR 24 November 1987

¹⁹⁶ Brian Nelson, interviewed by Stevens III Investigation, 23 January 2001

¹⁹⁷ CF 10 December 1987

¹⁹⁸ CF 18 May 1987

¹⁹⁹ CF 29 May 1987

²⁰⁰ CF 19 January 1988

- 7.212 On Sunday 17 July 1988 Nelson telephoned his handlers to report that Maskey had been seen at a hotel and a UDA hit team had missed him by 20 seconds. If Maskey was seen there the following Sunday, another attempt would be made. L/01 had told him that he had seen Maskey enter the hotel with his wife, and asked Nelson to tell the West Belfast Brigade UDA to carry out a CQA.²⁰¹
- 7.213 Nelson's efforts to satisfy this request were considerable. He first drove past the hotel, spotting Maskey's car. He looked for L/28 at a club and then at L/28's mother-in-law's house. When he was told that L/28 was away, Nelson called at the home of L/22, who said that he would not be able to get hold of a weapon for two days. Nelson then went to another club where he found L/03, who was most enthusiastic about the opportunity to assassinate Maskey. L/03 and Nelson then travelled back to the first club and met with L/20 and Kenneth Barrett. However, Maskey had left the hotel just before L/20 and Barrett arrived with a gun.²⁰² A MISR dated 18 July stated that Maskey had become a priority target.²⁰³ However, a MISR produced following a further full debrief contained no mention of the attempted murder of Maskey.²⁰⁴
- 7.214 In pursuit of the conspiracy to kill, Nelson drove past the Gregory Hotel on the following two Sundays, but did not see Maskey's car.²⁰⁵ On 30 November 1988 Nelson reported that L/01 had ascertained Maskey's movements when picking his wife up from a florist's on Monday and Tuesday evenings, and Nelson had agreed to take over the targeting. Nelson then conducted three 'recces' of the florist's but did not see Maskey. He subsequently passed the targeting onto L/20.²⁰⁶ In January 1989 Nelson put together an intelligence pack on Sinn Féin members in Belfast, which included Maskey.²⁰⁷
- 7.215 In April Nelson suggested to L/04 of the UVF that Thomas Keenan and Alex Maskey were better targets than T/02. L/04 agreed and asked Nelson for all his information on Maskey. Nelson took L/04 to Maskey's house and the florist's.²⁰⁸ In July Nelson suggested a list of republicans to L/28 whom he considered would be good targets for a car bomb, including Maskey.²⁰⁹
- 7.216 Some 20 MISRs were issued containing information on the targeting of Maskey during this period. However, there are no entries in the Threat Book regarding Maskey and the Stevens team found no evidence that any warning was provided relating to Nelson's intelligence.
- 7.217 At Nelson's trial on 22 January 1992 he pleaded guilty to conspiracy to murder Alex Maskey. The prosecution had argued that Nelson's activities:

*"... could only be construed as demonstrating not only willingness, but indeed determination on the part of Nelson that an attack be made on Maskey."*²¹⁰

²⁰¹ TCF 17 July 1988

²⁰² CF 19 July 1988

²⁰³ MISR 18 July 1988

²⁰⁴ MISR 21 July 1988

²⁰⁵ CFs 27 July 1988 and 4 August 1988

²⁰⁶ CF 30 November 1988

²⁰⁷ CF 10 January 1989

²⁰⁸ CF 7 April 1989

²⁰⁹ CF 18 July 1989

²¹⁰ Trial transcript, *R v Brian Nelson*, 22 January 1992, p. 17

Attempted murder of T/33 on 12 March 1988

- 7.218 On 3 March 1988 Nelson informed his handlers that a member of the South Belfast Brigade UDA had given him a security force document containing the names, addresses and photographs of a number of PIRA personalities, including T/33. Nelson had shown the list to L/28 and L/22. L/22 showed an interest in T/33 and another target who both lived on Pacific Avenue, and told Nelson that he would concentrate on this street.²¹¹ On 9 March Nelson reported that targeting on Pacific Avenue had stalled due to rioting and police activity.²¹² However, on 12 March two masked, armed men entered T/33's home. He was not present, and after searching the house they left.
- 7.219 Two MISRs have been found containing information on the targeting of T/33 which date from before the March 1988 attempt. However, the Stevens Investigation found no entries in the Threat Book originating from Nelson regarding T/33, and no record of T/33 being warned.

Attempted murder of T/16 on 20 September 1988

- 7.220 On 19 April 1988 Nelson reported to his handler that he and L/22 had carried out a 'recce' of the home of T/16. Nelson had then prepared an intelligence document on a list of personalities that included T/16.²¹³ A MISR containing this information was produced the same day, but I have been unable to find evidence that T/16 was warned of a threat to his life.
- 7.221 On 20 September gunmen broke into a house on Carlisle Square and fired six shots into a bedroom in which another family had barricaded themselves. Nelson twice called his handlers later that day, telling them that "*it was ours this morning*".²¹⁴

Attempted murder of T/12 on 2 October 1988

- 7.222 On 12 September 1988 Nelson reported that earlier that day he had become unwittingly involved in an attack on the Irish National Liberation Army (INLA), a republican paramilitary group, when his taxi was hijacked by the Red Hand Commando (RHC), a loyalist paramilitary group. A member of the RHC had told him that the INLA had attempted to assassinate L/09, though he had been warned in time. One of the men who had allegedly made the attempt was T/12, of whom the RHC had a photograph.²¹⁵ On 21 September 1988 Nelson reported that L/24 had shown him a number of photographs of PIRA members, including T/12. Nelson noted that the photographs had come from his intelligence dump.²¹⁶ A MISR was raised on 13 September which included Nelson's comment that an attempt on T/12 would probably be made the following Monday,²¹⁷ but I have been unable to find evidence that T/12 was warned of a threat to his life.

²¹¹ CF 3 March 1988

²¹² CF 9 March 1988

²¹³ CF 19 April 1988

²¹⁴ TCF 20 September 1988

²¹⁵ CF 12 September 1988

²¹⁶ CF 21 September 1988

²¹⁷ MISR 13 September 1988

7.223 On 2 October 1988 three loyalist gunmen smashed through the window of T/12's home and fired into the living room. T/12 was abroad on holiday at the time.

Attempted murder of Patrick Monaghan on 9 November 1988

7.224 On 26 October 1988 Nelson told his handlers that he and L/27 had gone to the library to check the Electoral Register for the addresses of Patrick Monaghan and James Peter Morgan (the targeting of Morgan is discussed below). They went to Devenish Court, where Monaghan lived, but found the cul-de-sac blocked off. L/28 then told Nelson that L/20 had been given Monaghan as a target.²¹⁸

7.225 On 7 November Nelson told his handlers that he had conducted a 'recce' of Devenish Court but had been unable to locate Monaghan's house. He then visited L/20 at home with Monaghan's photograph, and L/20 and L/25 conducted a further 'recce', noticing that number [X] had a security door and, therefore, presuming that Monaghan lived there.²¹⁹

7.226 On 9 November gunmen entered [X] Devenish Court and held an 18-year-old boy hostage while searching the house.

7.227 Only one MISR relating to Monaghan was raised before the attempted attack. Dated 12 days earlier, it misleadingly stated that the UDA believed Monaghan to live at number [Y] Devenish Court, when the FRU knew that Nelson and Lyttle had confirmed that this was not the case. It also did not mention that a 'recce' had been attempted.²²⁰ A MISR relating to the 7 November intelligence was not raised until the day after the attack.²²¹

7.228 The Stevens team found no entries in the Threat Book originating from Nelson regarding Monaghan, and no record of Monaghan being warned by the RUC.

7.229 In January 1992 Nelson entered a guilty plea to the charge of conspiracy to murder Monaghan. At his trial the prosecution stated that:

*"[Nelson] knew ... that his selection of Patrick Monaghan and his identification of him to [L/20] effectively targeted Monaghan for murder."*²²²

Attempted murder of James Peter Morgan on 14 November 1988

7.230 On 26 October 1988 Nelson reported that he and Lyttle had checked the voter registers for the address of James Peter Morgan. L/28 had then asked Nelson if he had any suitable targets for L/22. Nelson had suggested Morgan.²²³

²¹⁸ CF 26 October 1988

²¹⁹ CF 7 November 1988

²²⁰ MISR 28 October 1988

²²¹ MISR 10 November 1988

²²² Trial transcript, *R v Brian Nelson*, 22 January 1992

²²³ CF 26 October 1988

- 7.231 On 1 November 1988 Nelson told his handlers that he had again suggested Morgan as a target to L/22. Following this they had purchased an Ordnance Survey map of Morgan’s home area.²²⁴ On 7 November Nelson reported that he had passed Morgan’s address and photograph to L/22, who had said that he would deal with Morgan.²²⁵
- 7.232 On 14 November 1988 two masked, armed men entered Morgan’s home but he was not present. When his wife claimed that he did not live there, they left.
- 7.233 The Stevens team found three MISRs relating to Morgan dating from before the attempt, but there are no entries in the Threat Book originating from Nelson regarding Morgan. In a statement dated 7 August 2002, 14 years after the event, Morgan stated that “*some time within 2–3 months before the attack*” a uniformed RUC officer had arrived at his door and told him that his RUC files were missing and they believed they were in the hands of a loyalist paramilitary organisation.²²⁶ The Stevens team, however, concluded that the RUC had warned Morgan *after* the attempt on his life, and that this was unconnected with Nelson.²²⁷
- 7.234 Nelson pleaded guilty to conspiracy to murder Morgan. At his trial the prosecution stated that Nelson had a substantial involvement in the targeting, describing that his activities “... *indicated an active and indeed willing participation in the plan to murder*”.²²⁸

Attempted murder of T/22 on 17 January 1989

- 7.235 In October 1987 Nelson informed the FRU that T/22 was being targeted by L/26.²²⁹ In March 1988 Nelson reported that an East Belfast Brigade UDA team had driven to T/22’s address with the intention of assassinating him. However, they had been met by a group of around 20 men who had opened fire on them and forced them to flee. As a result, Nelson had agreed that the West Belfast Brigade would pick up the targeting of T/22.²³⁰
- 7.236 Justice Cory noted that in November 1988 Nelson reported that he had been asked to target a priest, T/21, but he was unhappy about this and his handler asked “*why he did not suggest someone from PSF [Provisional Sinn Féin] or PIRA hierarchy*”.²³¹ Two months later L/28 asked Nelson for information on Sinn Féin members, and Nelson gave him 14 of his intelligence cards. He had recorded the names of ten of these, but could not remember the other four²³² – one of whom was presumably T/22.

²²⁴ CF 1 November 1988

²²⁵ CF 7 November 1988

²²⁶ Statement of James Morgan, 7 August 2002

²²⁷ Stevens I Investigation, officer’s report, 3 April 1991

²²⁸ Trial transcript, *R v Brian Nelson*, 22 January 1992, p. 16

²²⁹ TCF 28 October 1987

²³⁰ CF 23 March 1988

²³¹ CF 17 November 1988

²³² CF 10 January 1989

- 7.237 On 17 January 1989 two hooded men forced their way into T/22's home where they found only T/22's wife. They searched the house, before leaving. The day after the attack L/22 returned the 'P card' on T/22 to Nelson.²³³
- 7.238 The Stevens team found two MISRs regarding T/22 dating from before the attempt, but there are no entries in the Threat Book originating from Nelson regarding T/22, and no record of a warning being provided relating to Nelson's information.

Attempted murder of T/25 in April 1989

- 7.239 On 14 March Nelson provided L/22 with his intelligence on T/25 and a photograph. L/22 said he had been monitoring T/25's street.²³⁴
- 7.240 In April 1989 L/05 told Nelson that an attempt had been made on T/25's life but they had missed him by seconds. They had arrived at his home just in time to see him leaving for work. The UDA were now trying to find out where he worked, and would try again as T/25 was unaware of the attempt. The CF included the following comment from Nelson's handler:

*"Handler is baffled as to why the CQA team is trying to find out where [T/25] lives. Surely they should go to his house five minutes earlier than when they missed him."*²³⁵

- 7.241 I have found two MISRs relating to T/25, one dated prior to the attempt and one afterwards. However, I have been unable to find any evidence that T/25 was warned of a threat to his life (see Chapter 9).

UDA attacks frustrated by the security forces

- 7.242 It is clear to me that Brian Nelson reported extensively to his FRU handlers throughout the period 1987–89. He provided detailed intelligence on planned UDA attacks and the key figures involved in these attacks. As part of this Review, I have sought to establish the extent to which the security forces acted on Nelson's intelligence to seek to prevent UDA attacks and save lives.

The conclusions of the Stevens Investigations

- 7.243 The Stevens I and Stevens III Investigations conducted extensive enquiries to seek to establish what action had been taken as a result of Nelson's intelligence. In Chapter 24 when dealing with the prosecution of Brian Nelson, I outline the circumstances in which the Stevens I Investigation, at the request of the Attorney General, sought to establish the number of lives saved as a result of Nelson's work as an agent. These investigations included interviewing the relevant RUC

²³³ CF 25 January 1989

²³⁴ CF 14 March 1989

²³⁵ CF 12 April 1989

officers in the Special Branch and the Tasking and Co-ordinating Group (TCG) and, in some cases, checking the records in local police stations and writing to known UDA targets to ask them whether they had been warned.

7.244 In his letter to the Chief Constable dated 12 April 1991, Sir John Stevens concluded that:

*“There is no doubt whatsoever, from the evidence that we have obtained over this lengthy period that action was taken in only two cases to protect the potential victims of Protestant Loyalist assassination (Adams and [T/02]).”*²³⁶

7.245 This conclusion was subsequently accepted by the Attorney General. The further investigations undertaken during Stevens III uncovered no evidence that could displace this finding.

7.246 Despite Sir John Stevens’ conclusions in 1991, there were continuing suggestions that Nelson’s activities may, in fact, have saved many lives. In his 1998 report, the United Nations (UN) Special Rapporteur, Mr Param Cumaraswamy, noted:

*“During the mission, the Special Rapporteur was told by Government sources that Brian Nelson’s information saved about 70 lives.”*²³⁷

Analysis of the evidence

7.247 I have reviewed all the available material to seek to establish how many lives may have been saved as a result of Nelson’s activities as an agent of the FRU. I have examined the entirety of the documentation produced as a result of the Stevens Investigations. I have also examined the RUC SB Threat Book and Daily Intelligence Book to seek to establish whether any other executive action might have been taken to save lives based on Nelson’s reporting.

7.248 In summary, the evidence suggests that action was taken in only three cases to protect the lives of UDA targets as a result of Nelson’s reporting. I am satisfied that the suggestion made to the UN Special Rapporteur that Nelson’s information saved about 70 lives is baseless. I outline the three cases below to seek to establish what they reveal about the response of the security forces to the intelligence provided by Nelson, and in particular if there was a specific reason in each case why there was an operational need to protect a target.

The action taken to prevent an attack on Gerry Adams in May 1987

7.249 In May 1987, the UDA planned to assassinate the President of Sinn Féin, Gerry Adams, a sitting MP for West Belfast and a candidate at the upcoming General Election. The UDA intended to attach a limpet mine to Adams’ car when he visited a Housing Executive office in West Belfast. Nelson was tasked to act as a trigger to the hit team, who planned to drive up on a motorcycle and plant the mine on top of Adams’ car.

²³⁶ Sir John Stevens to Chief Constable, 12 April 1991, p. 2 [see Volume II, pp. 275–278]

²³⁷ UN Special Rapporteur, report submitted pursuant to Commission on Human Rights Resolution 1997/23, para 63

7.250 The UDA attack was due to take place on 20 May 1987, though the Army and the RUC SB had arranged to flood the area with security forces to prevent the attack taking place. A Security Service memo dated 21 May 1987 stated that:

“... in order to frustrate the operation the Army had arranged with the RUC that Security Forces activity in the area be stepped up so that the operation would have to be aborted – this was successfully done.”²³⁸

7.251 The CFs and Nelson’s accounts of the events of 20 May 1987 suggest that the attack may actually have been aborted because Adams failed to turn up, though all the reports do refer to the security forces having saturated the area with troops and police officers.

7.252 A further attack was due to take place on 27 May 1987, but this appears to have been cancelled after the UDA Inner Council gave instructions to the West Belfast UDA that the operation should be called off.²³⁹ The RUC subsequently recovered the limpet mine that had been intended for use in the Adams attack in a search carried out on 29 May 1987.

7.253 In his journal, Nelson suggested that in his subsequent discussions with the FRU:

“It was told to me, by my Handlers, that the assassination of Adams, had it gone ahead, would have been totally counterproductive particularly considering the delicate balance of power within Sinn Fein.”²⁴⁰

7.254 It is clear that the security forces did take steps to frustrate the planned UDA attack on Adams, albeit it must be said that the circumstances in which the UDA aborted the plan are somewhat unclear. The Adams case was potentially an early example of Nelson’s value and it was, in fact, cited by A/05 during his evidence in mitigation at Nelson’s trial in 1992.

7.255 Despite the apparent success of the operation to prevent the attack on Adams, Nelson’s emerging role was clearly a cause for serious concern amongst Security Service officers. The concern was evident in the memo sent by a senior Security Service officer to the London office on 21 May 1987. The telegram stated:

“We [Security Service officers] have discussed this extensively with [Assistant Secretary Political] who shares our view that the operation threatens to get out of control. At the very least if [Nelson] is to be tasked by the UDA with a range of projects against high profile Republican targets and is expected to take an active part in their execution he will inevitably be blown very quickly for precious little intelligence dividend and considerable expenditure of time and money by the Army. At the worst, if the attempt on Adams is to be repeated particularly before the general election and [Nelson’s] involvement in ... plus his links with the Army were to get into the public domain in some

²³⁸ Security Service memo, 18 May 1987, p. 9

²³⁹ CF 29 May 1987

²⁴⁰ Nelson’s ‘journal’, p. 59

way (whether immediately or in the future) then British intelligence and HMG [Her Majesty's Government] could face accusations of having conspired in the murder of a prospective MP with all the attendant adverse consequences.

... In short we are perturbed that the FRU have paid insufficient regard to the wider implications of this operation. Indeed it is possible that they have themselves been pushing 6137 to implement the Adams' plan speedily as a way of re-inforcing his standing with the UDA. [Assistant Secretary Political] has expressed our joint reservations in strong terms to ACOS G2 and CO FRU who have accepted them. ACOS G2 has given a specific instruction that the attempt on Adams must not succeed. DCI [Security Service Director and Co-ordinator of Intelligence] is also in the picture and we are confident that the situation is for the moment contained.”²⁴¹

- 7.256 This memo, in my view, clearly highlighted the dangers inherent in the future employment of Nelson as an Army agent. I consider the implications of this memo further when examining the responsibilities of the Security Service and the Army chain of command in Chapter 8. However, for the purpose of this chapter it is important to note the suggestion that the FRU may have been encouraging Nelson to ‘implement’ the Adams plan; and the apparent need for both strong representations from the Security Service and a ‘specific instruction’ from ACOS G2 to ensure that an attack would be prevented.

The action taken to prevent an attack on T/02 in May 1988

- 7.257 In May 1988, the UDA formulated a conspiracy to murder T/02 at his place of work in Belfast. A member of the RUC Full-Time Reserve had apparently provided information to the UDA in April 1988 suggesting that T/02 was involved in PIRA attacks.²⁴² Nelson subsequently carried out a series of ‘recces’ of T/02’s place of work.
- 7.258 On 19 May Nelson told his handlers that the attack on T/02 would take place the following morning. Nelson was to drive the lead car to T/02’s place of work²⁴³ and was apparently unable to avoid being in that position. On the morning of 20 May, Nelson was told by his handler that a heavy security force presence in the area would provide him with an excuse to abort the attack.²⁴⁴ The CF dated 23 May 1988 reported on the security force operation put in place to prevent the attack and noted that:

“6137 telephoned handler prior to the planned attack and consultations between East Det FRU and TCG led to the attack being aborted and [T/02] living to fight another day!”²⁴⁵

²⁴¹ Security Service telegram, 21 May 1987 [see Volume II, pp. 302–304]

²⁴² CF 6 April 1988

²⁴³ TCF 19 May 1988

²⁴⁴ TCF 20 May 1988

²⁴⁵ CF 23 May 1988, Item 17a

7.259 Nelson was told by his handler to stay out of any rescheduled attack on T/02. The action taken by the FRU and the TCG in this case was precisely the sort of intelligence-led operation which could save lives and have an enormously disruptive effect on a terrorist group. The FRU and the TCG should both be credited for preventing the attack on T/02.

7.260 However, I am left with a sense of some unease in relation to some aspects of the T/02 case. There are several references in the documents implying that the attack was prevented by the security forces only because Nelson was directly involved in the lead car. In his journal, Nelson even claimed that:

“Unknown to me at the time, [A/13] argued until four in the morning for the operation against [T/02] to proceed without interference. This was made known to me by [the co-handler] during the debrief that took place some days later.”²⁴⁶

7.261 This claim cannot be corroborated but the TCF dated 20 May 1988 does record the conversation between Nelson and his handler prior to the attempted attack. The handler, A/13, at one point commented that the security forces were taking action:

“... because you are involved, had you not been then you would not know about it and [it] would go ahead.”²⁴⁷

7.262 The later CF noted that:

“6137 was upset that the CQA on [T/02] did not take place but he fully accepted that it could not have done so with him being involved.”²⁴⁸

7.263 Although I fully recognise that the T/02 case is an important example of the security forces preventing a UDA attack, it does, in my view, raise questions as to the attitude of the FRU with regard to the desirability of preventing UDA attacks in which Nelson was not directly involved.

The action taken to protect another individual under threat

7.264 After careful examination, I do believe there is an additional case in which the RUC might have taken action to protect a UDA target based on Nelson’s reporting. This relates to the UDA’s targeting of an individual who had provided information to the police. The RUC records include a handwritten annotation next to Nelson’s intelligence reporting which recorded:

“For DHSB [Deputy Head of Special Branch] – re ... warning etc.”²⁴⁹

7.265 For obvious reasons, I am unable to disclose further details as to who this individual might be in view of my obligations under Article 2 of the European Convention on Human Rights.

²⁴⁶ Nelson’s ‘journal’, p. 155

²⁴⁷ TCF 20 May 1988, Time 7.10am

²⁴⁸ CF 23 May 1988, Additional Information, Item 3

²⁴⁹ RUC SB Daily Intelligence Book

- 7.266 Although I have not found any other examples of executive action being taken as a result of Nelson's reporting, I do not exclude the possibility that there may have been other cases in which Nelson targeted individuals who were working as security force agents. Such people may have been warned of the threat by their handlers. Understandably, in these circumstances the normal recording of such warnings may have been minimised for source protection reasons.

Overview

- 7.267 I am satisfied that Nelson's reporting resulted in the prevention of an attack on T/02; that the security forces did take steps to frustrate an attack on Gerry Adams; and that, as a result of Nelson's reporting, an individual who had provided information to the police was warned that he was being targeted by the UDA.
- 7.268 A review of these cases does, however, raise certain concerns. As a result of Nelson's role in the conspiracy to attack Gerry Adams, the Security Service expressed early misgivings about the Nelson case that I believe should have served as a warning sign of the dangers of running such an agent. In the T/02 case, there are indications in the documentary evidence to suggest that the attack might have been allowed to go ahead had Nelson not been directly involved in it. The information provided by Nelson about the targeting of the individual who had assisted the police appears to have prompted far greater willingness on their part to take action than was ever shown in response to the wealth of other threat intelligence provided to them in MISRs throughout the period 1987–89.
- 7.269 The detailed examination in this chapter of the activities of Brian Nelson – and the exploitation of his intelligence by the security forces – raises fundamental issues about both the FRU and the RUC SB. I consider this issue further when considering the 'accountability gap' in the Nelson case in Chapter 8.

Assessment of the impact of Nelson's re-recruitment

- 7.270 It is important to produce an overall assessment of Brian Nelson's activities whilst working as an agent of the FRU during the period 1987–89. As a result of my analysis of the available evidence, I am satisfied that Nelson played some part in at least four murders,²⁵⁰ ten attempted murders and numerous conspiracies to murder. I also believe that Nelson's collation and widespread dissemination of targeting material is likely to have had a broader and more deadly impact that is difficult to quantify.
- 7.271 On the other hand, I believe that Nelson's information resulted in the security forces taking action in three cases to seek to prevent a UDA attack. Whilst these cases are important, there were specific circumstances in each instance which led to the security forces taking action to seek to prevent the attacks.

²⁵⁰ The murders of McDaid, Slane and Craig are outlined in this chapter. Nelson's involvement in the murder of Patrick Finucane is outlined in Chapter 21.

7.272 In my view, Nelson's return from Germany had the net effect of serving to increase the UDA's capacity to target and attack republicans. His activities throughout these years must be seen in the light of the fact that he was re-recruited and consciously re-infiltrated into the UDA by the FRU in 1987. FRU documentation shows that Nelson was paid a total of £46,428 from the point of his re-recruitment until his arrest in January 1990.²⁵¹

Assessment of Nelson's motivation

7.273 I look at the accountability of different State bodies in Chapter 8. Before doing so, however, I consider it to be essential to establish as far as possible Nelson's motivation in targeting republicans during this period. Was he, as he and A/05 have claimed, motivated by a desire to report intelligence to the FRU in order to save life? Or, rather, was he motivated by a desire to see 'legitimate' republican targets killed and only the lives of 'innocent Catholics' saved?

7.274 In dealing with this issue, I am conscious that Nelson may, in practice have been motivated by a number of factors in working as a UDA Intelligence Officer and a FRU agent. The CFs and Nelson's 'journal' included references to Nelson being motivated by the excitement of being a FRU agent and by the financial rewards of his role. The key issue for me to consider, however, is Nelson's objective when carrying out targeting for the UDA.

Claims that Nelson was motivated by saving life

7.275 In his evidence in mitigation at Nelson's trial, A/05 provided the following opinion on Brian Nelson's motivation and loyalties:

"... there's absolutely no doubt in my mind that Brian Nelson was not loyal to the UDA, Brian Nelson was loyal to the Army. He wished to help the Army in its attempts to counter terrorism and to save life, he wished to do that. That was his prime motivation." [Emphasis added]²⁵²

7.276 A/05 has pointed specifically to Nelson's full reporting of intelligence to the FRU as evidence of his desire to save lives. In his 2002 statement to the Stevens III Investigation, A/05 stated that:

"His [Nelson's] actions cannot be consistent with a view that his motivation was to see Republicans killed. Had this been his intention he would not have been reporting to FRU."²⁵³

7.277 The contemporaneous FRU documents included a number of references to Brian Nelson wanting to save the lives of Catholics whom he did not perceive to be 'legitimate' republican targets. In November 1988, for example, Nelson expressed his unhappiness at the UDA's plan to murder a Catholic priest, T/21. An East Det FRU report sent in response to tasking from the Security Service included the following section on Nelson's view of the targeting of T/21:

²⁵¹ A/16 to ACC Fitzsimons, *Payments to 6137*, 7 August 1990

²⁵² Trial transcript, *R v Brian Nelson*, 29 January 1992, A/05 evidence in mitigation

²⁵³ A/05, statement, 2002, para 84

“Targeting appears to be against specific Republican personalities and there appear to have been recent unsuccessful attempts on PIRA personalities. [L/28] and [L/20] are very keen to see [T/21] murdered for the publicity. Source cannot see how anything good could come of this and it would be a retrograde step for the Loyalists. Source agrees that the UDA/UFF would certainly get publicity but this would all be bad.” [Emphasis added]²⁵⁴

7.278 In Nelson’s ‘journal’, he provided a detailed account of his efforts to save the life of a businessman whom the UDA had mistakenly decided was a member of PIRA. He also outlined his disgust at certain sectarian or random murders carried out by the UDA during this period.²⁵⁵

7.279 Having conducted a thorough examination of the FRU documentary records, I can find only one reference which would suggest that Brian Nelson did not wish to see *anyone* (including republicans) killed as a result of his targeting. The CF dated 18 July 1989 included the following comment:

“... the source stating that though he is Intelligence Office [sic] of West Belfast UDA and was heavily involved in active targeting, he never wants to get anyone actually killed. This was, he stated, the main reason for working for this office.” [Emphasis added]²⁵⁶

7.280 Whilst this solitary entry might tend to lend support to A/05’s claim that Nelson was motivated by a desire to save life, this CF entry is in stark contrast to earlier entries which tend to show that Nelson’s desire was indeed to murder ‘legitimate’ republican targets.

7.281 A proper analysis gives the answer as to why there seems to be a shift in the language in which this CF recorded events. As I have outlined earlier in this chapter, by July 1989 Nelson had been assigned a new handler, in the form of Colour Sergeant A/10, who imposed a new regime. It is, therefore, not altogether surprising that a new tone entered the language of the CFs at this stage.

The FRU Contact Forms

7.282 Despite the isolated example illustrated above, I am satisfied that a thorough examination of the contemporary documentary records establishes that Brian Nelson had a consistent criminal motivation in wanting to see ‘legitimate’ republican targets killed. Such a motivation would, of course, be consistent with his plea of guilty to five conspiracies to murder.

7.283 Prior to the murder of Patrick Finucane, there is in fact no reference in the FRU records to support the proposition that Nelson did not wish to see republicans killed. All the contemporaneous material points in the opposite direction.

²⁵⁴ OC East Det FRU to HQ FRU, *Stormont Tasking*, 24 November 1988, para 5

²⁵⁵ Nelson’s ‘journal’, p. 106

²⁵⁶ CF 18 July 1989, ‘Motivation’

7.284 The FRU CFs prior to the change of handler in April 1989 demonstrate, in my view, that Nelson wanted to focus the UDA's targeting on 'legitimate' terrorist targets rather than 'innocent Catholics'. The following references in the FRU CFs are of particular relevance:

- In a CF dated 6 April 1988, the handler recorded that Nelson "*wants the UDA to attack legitimate targets which means proper planning and targeting must be done. This has not happened in the past and is only just beginning to happen with 6137 in his current position as Intelligence Officer.*"²⁵⁷
- In a CF dated 3 May 1988, it was again noted that Nelson "*wants to see UDA as a professional, organisation and wants rid of those people who are only in the UDA for their own gain as criminals or racketeers. 6137 wants the UDA only to attack legitimate targets and not innocent Catholics.*"²⁵⁸
- The CF dated 2 June 1988 includes the comment that Nelson "*wants to see an end purely to sectarian murders and to concentrate on specific targeting of legitimate Republican terrorist targets.*"²⁵⁹
- The CF dated 4 August 1988 includes the observation that Nelson's "*appointment enables him to make sure that sectarian killings are not carried out but that proper targeting of PIRA members takes place prior to any shooting.*"²⁶⁰
- The CF dated 15 August 1988 noted "*It is obvious that 6137 does want a prestigious target to be hit by the UDA but he is being over enthusiastic in his quest to gain intelligence.*"²⁶¹
- In a CF dated 5 September 1988, the comment was made that Nelson did "*not like sectarian killings and as the Intelligence Officer for West Belfast Bde UDA ... wants to see specific targeting carried out on legitimate targets.*"²⁶²
- The CF dated 1 November 1988 included the observation that Nelson "*would like to see the UDA as a professional organisation active against Republican terrorists and not a body made up of racketeers and criminals lining their own pockets. [Nelson] has seen the light at the end of the tunnel during this month by the death of James Pratt Craig, the biggest racketeer.*"²⁶³
- In a CF dated 7 April 1989, Nelson is said to have wanted "*to see the UDA carry out professional operations against targets.*"²⁶⁴

7.285 In his submission to my Review, A/05 stated that such references in the CFs should be seen in the light of the pressures of work that handlers faced at the time. He stated that:

²⁵⁷ CF 6 April 1988, Item 9

²⁵⁸ CF 3 May 1988, Item 5

²⁵⁹ CF 2 June 1988, Item 4

²⁶⁰ CF 4 August 1988, Item 7

²⁶¹ CF 15 August 1988, Item 3

²⁶² CF 5 September 1988, Item 7

²⁶³ CF 1 November 1988, Item 5

²⁶⁴ CF 7 April 1989, Item 6 [see Volume II, pp. 25–26]

“Handlers may not always have chosen the right expression, clause or turn of phrase ... It is essential to review the paperwork with this background in mind and look at the whole picture of reporting as opposed to a few isolated and rare comments, which paint an inaccurate picture in particular in relation to Nelson’s motivation.”²⁶⁵

7.286 However, the MoD’s own ‘Problem Areas’ document, which shows all the indications of having been compiled by Lt Col A/16, one of A/05’s successors at the FRU, highlighted the potential implications of the comments in the CFs regarding Nelson’s motivation. The document recorded the following assessment of a passage in the CF dated 5 September 1988:

“The motivation paragraph states that Nelson does not like sectarian murders but wants to see specific targeting on legitimate targets ... Murder is murder. There is no such thing as a legitimate target.”²⁶⁶

7.287 As a general rule, I have been struck by the diligent and thorough manner in which the FRU documented their handling of Nelson as an agent. Whilst I do take A/05’s comments into account, I am not persuaded that so many clear references in the CFs as to Nelson’s motivation can be explained simply by the claim that handlers used the wrong language.

7.288 I am reinforced in this view when examining the totality of Nelson’s actions during this period. In my view, Nelson’s desire to see what he perceived to be ‘legitimate’ targets killed clearly translated across to his actions in specific cases. I have outlined in detail earlier in this chapter Nelson’s involvement in serious criminal offences, including the murders of Terence McDaid and Gerard Slane.

7.289 Most of the CFs did not include the handler’s assessment of Nelson’s motivation in carrying out specific targeting or conspiracies. There were, however, some striking examples in the CFs which illustrated Nelson’s desire to see republicans killed. The clearest examples are detailed below:

- Nelson was initially distressed about the murder of Terence McDaid in May 1988 but was then reported to be *“quite content”* when subsequently told that McDaid was *“traced as PIRA”*.²⁶⁷
- Nelson was *“upset that the CQA on [T/02] did not take place”*²⁶⁸ in May 1988 (T/02 was an active republican).
- Nelson *“desperately wanted the shoot [of Alex Maskey in July 1988] to go ahead because [L/01] was involved”*.²⁶⁹ When speaking on the telephone to his handler, Nelson described the murder attempt as *“exciting”* and said he was *“mad, we only missed him by 20 seconds”*.²⁷⁰

²⁶⁵ A/05, submission to the Review, p. 6

²⁶⁶ MoD *Problem Areas* document, Volume 2, Flag 1, paras 1–2

²⁶⁷ See paras 7.127–134

²⁶⁸ CF 23 May 1988, Item 3

²⁶⁹ TCF 17 July 1988 – see paras 7.211–217

²⁷⁰ *Ibid.*

- Nelson was expecting his handlers to bring a drink to celebrate his role in the murder of James Pratt Craig. Although Craig was a loyalist, he was suspected of links to PIRA and Nelson regarded him as a racketeer.²⁷¹
- Nelson actively facilitated the UVF in their attempts to attack two long standing UDA targets, Thomas Keenan and Alex Maskey. The FRU CF dated 7 April 1989 reported that “[Nelson] feels that if the UDA are not going to act then it is better that the UVF do it than no one”.²⁷²

7.290 Nelson’s behaviour in each of these cases was utterly inconsistent with a desire to save the lives of those republicans he was targeting. That targeting was clearly carried out with a genuine desire to assassinate republicans, and not with a view to providing intelligence to the authorities so that their lives could be saved.

Security Service records regarding Nelson’s motivation

7.291 The Security Service records provide some interesting insights into the motivation of Nelson whilst working as a FRU agent. As I have already noted, a Service officer met Nelson together with his FRU handlers in June 1988. His note of the meeting included the following account of comments made privately by FRU officers:

“... FRU admitted that 6137 was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of ‘justifiable’ actions, and to an extent he may attempt to use his agent role to gain intelligence from FRU. This confirms DHSB’s comments that 6137 has sometimes been caught out by RUC information ... which contradicts his own.” [Emphasis added]²⁷³

7.292 This account reinforces the clear impression provided by the CFs that Nelson pursued his intelligence work for the UDA enthusiastically, and drew a clear distinction between ‘justifiable’ actions against republican targets and ‘unjustifiable’ actions against those he would describe as ‘innocent Catholics’.

7.293 The recollections of a Security Service agent some time after the arrest of Nelson provide a further insight into his mindset during the period. The agent concerned had some direct dealings with Nelson over the previous decade and, unlike Nelson, was perhaps motivated by a desire to frustrate loyalist terrorist activity. He made the following comments to his handlers:

“Nelson is a bad bastard, unreliable and dangerous. I could have told you this a long time ago and saved you all a lot of trouble.”²⁷⁴

²⁷¹ See paras 7.180–185

²⁷² CF 7 April 1989, Items 2–5 – see paras 7.38–39

²⁷³ Security Service telegram, 11 July 1988 [see Volume II, p. 305]

²⁷⁴ Security Service intelligence reporting

Overview

7.294 I am satisfied that the net impact of Brian Nelson's activity as an agent of the FRU materially increased the UDA's capacity to target republicans. Moreover, I believe that Nelson was consistently motivated by a desire to see the UDA murder republican targets. He only wished to save the lives of those he deemed to be 'innocent Catholics'. I am also satisfied that Nelson's motivation in this respect was entirely clear to the FRU throughout the period 1988–89. I turn now to consider the accountability of the relevant agencies of the State in the Nelson case.

Chapter 8: Accountability in the Nelson case

The accountability gap

- 8.1 The accountability gap is the divide that opened up between the positions taken up by the Force Research Unit (FRU) on the one hand and the Royal Ulster Constabulary (RUC) on the other as to the responsibility for the failure to exploit Nelson's intelligence to save lives. I have analysed in detail the statements and arguments that they have both put forward. It is clear to me that their conflicting arguments have created an accountability gap in which neither organisation is prepared to accept responsibility for what happened.
- 8.2 Simply stated, according to A/05, the object of the exercise in using Nelson as an agent was to pass on to the RUC's Special Branch (SB), in the form of Military Intelligence Source Reports (MISRs), the names of individuals targeted for assassination so that the SB, who enjoyed primacy as to the use of such intelligence, could take appropriate action to frustrate crime, save lives and carry out arrests. It was meant to be an exercise solely aimed at frustrating loyalist terrorism. This was the FRU position.
- 8.3 On the other side of the divide was the position adopted by the RUC SB to explain the number of attacks where no steps were taken by them to frustrate planned assassinations. The RUC position was that information, required by them to discharge their duties, was withheld from them by the FRU.
- 8.4 The RUC SB blamed the FRU and vice versa. Both sides cannot be telling the truth in this critically important matter. Either the FRU were permitting the killing of certain targeted individuals to go ahead at the hands of the Ulster Defence Association (UDA) by not passing the information on to the RUC SB, or the SB, having received the required information from the FRU, were failing through negligence or design to take the necessary steps to save lives.
- 8.5 The unravelling of the evidence to try and reach the truth seems to me to rest on two factors:
- (i) a proper analysis of the MISRs sent on to the RUC SB and the information contained therein, together with the life-saving steps taken by the RUC, if any; and
 - (ii) an examination of the reaction of both the FRU and the RUC when a number of those who were meant to be protected were in fact attacked.
- 8.6 I should note that, when considering the Nelson case, many commentators have tended to focus on the FRU's culpability in relation to the failure to save lives as a result of Nelson's activity as an agent.

8.7 In a Parliamentary debate in June 1992, the then Shadow Secretary of State for Northern Ireland, Kevin McNamara MP, expressed the following view:

“There has been a recent case in which military disrespect for the authority of the RUC reached frightening proportions – I refer to the case of Mr Brian Nelson.”

8.8 Mr McNamara concluded that it seemed “*clear that the Nelson operation yielded next to nothing to the RUC*”.¹ This view has been reiterated a number of times in media coverage of the case. John Ware, for example, provided the following view on the alleged failure of the FRU to pass information to the RUC:

*“... it seems that whatever Nelson told his army handlers, they didn’t pass it on to the RUC. Stevens found a ‘wealth’ of detailed intelligence in the secret files. Summaries were relayed to Special Branch, but they had been deliberately diluted. RUC Special Branch officers said in statements to Stevens that the summaries were worthless because they were so bland. By failing to pass vital information on to the RUC, [the] unit had also contravened a 1986 directive from the Commander Land Forces.”*²

8.9 It is my task to determine whether that criticism was reasonable. Was the blame being fairly placed at the door of the FRU?

The FRU perspective

8.10 The theory behind Nelson’s targeting of individuals was to ensure their protection by the RUC. Nelson would inform his handlers about a planned assassination, those details would be recorded on a Contact Form (CF), and the FRU would create a MISR to be sent to the RUC SB, who would then exploit this intelligence to frustrate the killing. This was supposedly how targeted individuals from the republican community were to be saved. This is, potentially, a persuasive argument. For it to be a compelling argument there would have to be evidence of the RUC SB exploiting the intelligence supplied by the FRU and the FRU’s state of knowledge as to such exploitation.

8.11 All the FRU officers interviewed by the different Stevens Investigations have emphasised the importance they placed on the provision of Nelson’s intelligence reporting to the RUC. In his 2002 statement, A/05 outlined his belief that the passing of information to the RUC for exploitation was pivotal to the FRU’s role. He stated that:

*“FRU’s aim was always to get sufficiently detailed information to allow the RUC not only to prevent substantive crime but also to arrest the terrorists and thus cause attrition to the organisation.”*³

¹ Hansard, HC Deb, 10 June 1992, vol 209, cols 380–381

² John Ware, ‘Time to come clean over the Army’s role in the “dirty war”’, *New Statesman*, 24 April 1988, p. 16

³ A/05, statement to Stevens III Investigation, 2 December 2002

8.12 A/05 claimed that the FRU expected that the RUC would take action as a result of the intelligence that had been provided to them. He stated that the “*FRU expected [the RUC] to take appropriate action to prevent the planned crimes we reported to it*”.⁴

8.13 In relation to the Nelson case specifically, A/05 stated that the FRU had passed detailed intelligence to the RUC. He described the position as follows:

*“It is quite clear to me that the intelligence Nelson produced through his targeting was detailed, clear and exploitable. If action was not taken to prevent the attacks, the fault does not lie with the FRU.”*⁵

8.14 The FRU position was supported by the Ministry of Defence (MoD) during the discussions regarding the prosecution of Nelson (see Chapter 24). The Private Secretary to the Defence Secretary wrote to the Attorney General’s office on 28 March 1991 stating that the MoD believed it to be: “*inconceivable that ... [RUC SB] ... took no action at all on [Nelson’s] information*”. The MoD felt that it was not for them to:

*“... answer for Special Branch because they are responsible for initiating action to exploit intelligence and they have not chosen to share that responsibility with the Army.”*⁶

8.15 The strength of the MoD’s views on this issue was further illustrated by an internal note sent by the Assistant Chief of Staff of the Army’s Intelligence Section (ACOS G2) to the General Officer Commanding (GOC) Northern Ireland. After becoming aware of the Chief Constable’s view that Nelson’s intelligence had served the purpose of saving lives on only one or two occasions, ACOS G2 noted:

*“Is the Chief Constable now maintaining that we were allowed to risk our FRU soldiers lives (and that of an agent who has already been tortured once) in gathering what the Special Branch regarded as worthless intelligence?”*⁷

The RUC perspective

The views of Sir John Hermon and the RUC Source Unit

8.16 A number of different statements have been put forward by RUC officers with respect to the intelligence provided by Brian Nelson. The accounts provided by the former Chief Constable, Sir John Hermon, and by those working in the RUC Source Unit during Nelson’s time as a FRU agent, provide a broadly consistent picture in relation to the RUC’s perspective.

8.17 Sir John Hermon refuted the evidence given by A/05 in court during the Nelson case that the FRU passed on all of Nelson’s intelligence to the RUC. He commented as follows on the BBC Panorama programme ‘Dirty War’ in 1992:

⁴ Ibid., para 64

⁵ Ibid., para 87

⁶ MoD to Attorney General’s Office, 28 March 1991 [see Volume II, pp. 268–274]

⁷ Note from ACOS G2 to GOC undated [see Volume II, pp. 298–301]

“... [A/05] to whom we have referred, and I must personalise him, is not correct in saying that all information or intelligence was being passed to the RUC, which I am satisfied, and have satisfied myself, was not.”⁸

8.18 He went on to say that:

“... to a degree at least, the running of an agent went badly wrong and if it was seen, and when it was seen, it should have been identified and remedial steps taken to correct anything that had happened, which was not done.”⁹

8.19 RUC officers working in the Source Unit provided similar accounts to the Stevens Investigations. They, in fact, went further by indicating that they did not believe Nelson to have been providing any valuable intelligence at all. R/10, Head of the Source Unit during the period 1987–89, stated that he believed Nelson to have been a “*low-level informant*”.¹⁰ His successor, R/11, said that he believed most Army sources to have been “*rubbish*”. He did not think that Nelson’s intelligence was “*particularly high class*”, which would explain why his reporting of threats to individuals was not acted upon by the RUC.

8.20 A Detective Sergeant in the RUC Source Unit, R/07, stated that, in relation to Nelson’s intelligence, he could not:

“... recall receiving specific information relating to an imminent close quarter assassination or actionable targeting taking place.”¹¹

8.21 The accounts of those working in the RUC Source Unit tend to imply that the RUC must have received only very limited intelligence from the FRU. I am satisfied that Nelson was not a “*low-level informant*” as suggested by one RUC officer,¹² given that he was at the heart of the most dangerous UDA Brigade and was sufficiently trusted to attend UDA Inner Council meetings on occasions. Nelson was also clearly providing the FRU with a wealth of information relating to ‘actionable targeting’.

The inconsistency of the Deputy Head of Special Branch

8.22 The statements made by Brian Fitzsimons, the Deputy Head of Special Branch (DHSB) during the period 1987–89, require close examination for a number of reasons. Fitzsimons was generally acknowledged to be the key figure directing the RUC SB’s operations during this period and was the essential liaison point for A/05 and senior Security Service officers such as the Director and Co-ordinator of Intelligence (DCI) and the Assistant Secretary Political (ASP).

8.23 In September 1989, Mr Fitzsimons told a Security Service officer privately that Nelson was being “*badly handled and poorly exploited*”. He appears to have suggested that the Security Service take over the handling of Nelson.¹³ The

⁸ Panorama, ‘Dirty War’, transcript

⁹ Ibid.

¹⁰ D/CI R/10, statement to Stevens II Investigation, 6 December 1993

¹¹ DS R/07, statement to Stevens I Investigation, 12 December 1990

¹² See, for example, Chapter 10 in which the intelligence provided by William Stobie was described by the SB as of a ‘medium’ grade. Nelson was, in my view, clearly a much more highly placed agent than Stobie.

¹³ Security Service, Head of G8, note of discussion with Chief Superintendent Fitzsimons, 18 September 1989

DHSB's comments in this regard would appear to represent a dual critique of both the FRU, who were responsible for handling Nelson, and the RUC, who were responsible for exploiting his intelligence.

8.24 Despite these apparent reservations, Mr Fitzsimons initially provided an extremely positive assessment of Nelson to the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) at the point in time when he was considering whether to prosecute Nelson. Fitzsimons' note of 10 July 1990 is released alongside my Report and considered in detail in Chapter 24.

8.25 The note gave the DPP(NI) a positive testimonial of Nelson as a man who, at great personal risk to himself, provided the security forces with high grade intelligence that enabled the RUC SB to mount effective operations against the UDA and other Protestant paramilitary terrorists. As for targeting assassinations of prominent republicans and innocent Roman Catholics, and threats to members of the security forces, Assistant Chief Constable (ACC) Fitzsimons noted that, "*all of this information was suitably actioned to frustrate the terrorists' intentions both North and South of the border*".

8.26 In his statements to the Stevens Investigation dated 16 and 17 October 1990, ACC Fitzsimons broadly maintained this view of Nelson's value to the security forces. Whilst noting that the RUC SB had no involvement in the day-to-day running of Nelson, Fitzsimons acknowledged that it was the RUC's role to exploit any intelligence. He stated that Nelson was "*an agent of major importance*" and that he was aware of "*a regular flow of intelligence from Nelson for the time he worked as a FRU agent*".¹⁴

8.27 However, by January 1991, ACC Fitzsimons' position had undergone a dramatic change. In a report dated 29 January 1991, he retracted his July 1990 comments to the DPP(NI).

8.28 ACC Fitzsimons' January 1991 report now included the claim that a "*considerable percentage of Nelson's reporting was not passed to the Police*". On occasions when it was passed to the RUC, he noted that:

*"Nelson's intelligence was always heavily caveated by [the] Army to emphasise its sensitivity and the importance of source protection had to be borne in mind whenever action was taken. Additionally, it was frequently of an historical nature which aided post-incident investigation but not specific operational action. On occasions it was found to be erroneous or in conflict with other source material."*¹⁵

8.29 As I describe in Chapter 24, ACC Fitzsimons nevertheless feared that exposure of these issues at Nelson's trial could highlight the "*ineffectiveness of the security forces in countering terrorism*", and could, "*in the hands of unscrupulous propagandists*", give "*credence to claims of police collusion with terrorists*".

¹⁴ ACC Fitzsimons, statement to Stevens I Investigation, 16 and 17 October 1990

¹⁵ ACC Fitzsimons, report to DPP(NI), 29 January 1991 [see Volume II, pp. 233–235]

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- 8.30 Considered together, these contradictory statements and observations made by such a senior officer cause me the greatest concern as to where the truth lies and as to the officer's motives in not being consistent and frank when providing information to the DPP(NI).
- 8.31 In particular, ACC Fitzsimons' July 1990 report to the DPP(NI) failed to incorporate concerns over the Nelson case that he had articulated privately in September 1989. His report to the DPP(NI) in January 1991 contradicted his July 1990 report and his statements to the Stevens I Investigation in October 1990. The contradictory nature of these statements does, therefore, raise serious concerns about the accuracy of the claims made by the RUC regarding Nelson's lack of value as an agent.

Was information in fact passed from the FRU to the RUC?

- 8.32 First, it is necessary briefly to outline the system for the recording and dissemination of FRU intelligence. As previously noted, the FRU recorded the detail of all debriefs with agents on a CF. The CFs contained exhaustive detail about the intelligence provided by the source, alongside information about the source's security, motivation, finance and welfare. The CFs are the most detailed record of intelligence that I have seen as part of this Review. They generally contain a greater degree of detail than the equivalent 'Contact Notes' or telegrams produced by the Security Service, and the handwritten 'debrief forms' produced by the RUC SB.
- 8.33 The FRU also recorded a summary of the intelligence in another document, a MISR. According to one of Nelson's main handlers, the Officer Commanding (OC) of the Detachment determined what information went into the MISR.¹⁶ The MISRs were disseminated to the broader intelligence community in Northern Ireland, including the RUC SB's Source Unit and the Tasking and Co-ordinating Group (TCG). Even with the passage of time, the Stevens Investigation was able to find signed receipts for some MISRs indicating that the RUC had received the documents. In the light of this, I believe it is reasonable to assume that the vast majority of MISRs issued by the FRU must have reached the RUC.
- 8.34 Each MISR included an assessment of the sensitivity of the information being disseminated. The most sensitive reports would be issued in a form known as a 'MISR supplement' and classified at the highest level of sensitivity. Many of the MISRs produced as a result of Brian Nelson's reporting fell into this category.
- 8.35 The MISRs produced by the FRU were, by their nature, a summary of the intelligence recorded in the CFs. I do not believe there was anything inherently wrong with the fact that the MISRs summarised the intelligence in this way. Even in a summarised form, these documents were generally much more informative and detailed than the equivalent SB50 documents produced by the RUC SB. The RUC were, of course, also able to follow up any MISR by requesting further details from the FRU or, indeed, tasking Nelson via the FRU to find out further details.

¹⁶ A/13, statement to Stevens I Investigation, 6 December 1990, p. 5

8.36 Alongside this formal documented process of dissemination, there was clearly also oral communication between the FRU and the RUC Source Unit. FRU officers have indicated that Nelson's intelligence would routinely be communicated to the Source Unit over a secure telephone call prior to the formal issuing of a MISR.

Analysis of the dissemination of intelligence

8.37 In the light of the clear disparity between the FRU and RUC positions on this key issue, I have conducted a detailed analysis of the intelligence provided by the FRU to the RUC. In producing this analysis, I have considered the following three essential issues:

- (i) the overall pattern of the passage of intelligence from the FRU to the RUC as revealed in the MISRs and the RUC Daily Intelligence Book;
- (ii) a detailed analysis of the specific information passed by the FRU to the RUC in advance of the UDA attacks on individuals; and
- (iii) the practice adopted in other agent cases and the question as to whether the FRU were generally withholding information from the RUC and/or only running "low-level" informants.

8.38 I have analysed the MISRs produced by the FRU and the RUC Daily Intelligence Book to seek to establish the overall pattern in relation to the provision of information from the FRU to the RUC.

8.39 In order to substantiate the statements made by RUC SB officers, I would have expected to find only a minimal number of MISRs being passed to them by the FRU. In fact, it is clear that the FRU were regularly passing MISRs to the RUC SB as a result of Nelson's intelligence. Over the course of the 1987–89 period I have been able to find no examples of FRU meetings with Nelson which did not subsequently result in a MISR of some description being sent to the RUC. I have found threat intelligence of UDA targeting in relation to over 400 individuals that was passed to the RUC through MISRs.

8.40 FRU officers have also maintained that written information passed to the RUC was supported and supplemented by regular oral communication with the RUC Source Unit. In his 2002 statement, A/05 noted that he would have "*no doubt [Source Unit records] would confirm the continuous supply of information by the FRU to the RUC SB*".¹⁷

8.41 Assessing the level of oral communication between organisations several decades ago is inevitably a difficult exercise. However, I am assisted considerably in this task by the existence of the contemporaneous records provided in the RUC Daily Intelligence Book.

8.42 I note that Justice Cory, in briefly considering the Daily Intelligence Book in his report, concluded that:

¹⁷ A/05 statement, 2002, para 56

“... Special Branch paid virtually no attention to his [Nelson’s] intelligence reports ... there is only an occasional reference to Nelson in the Intelligence book ...”¹⁸

8.43 I have conducted a complete analysis of the Daily Intelligence Book from December 1988 until the start of the Stevens I Investigation in September 1989. Figure 2 provides a full summary of all Nelson’s intelligence recorded in the RUC Daily Intelligence Book during this period. To assist the analysis, I have categorised Nelson’s intelligence under four broad headings: general intelligence about the UDA and its intentions; intelligence about individuals being targeted by the UDA; intelligence relating to UDA weapons and ammunition; and intelligence relating to ‘contacts’ within the security forces passing information to the UDA.

Figure 2: The RUC’s written records of Nelson’s intelligence, December 1988 to September 1989

Date of entry	Entries	Intelligence recorded
14 December 1988	3	Individuals being targeted by UDA General intelligence (x2)
19 December 1988	1	General intelligence
23 December 1988	8	Individuals being targeted by UDA Weapons General intelligence (x6)
9 January 1989	6	Individuals being targeted by UDA General intelligence (x5)
17 January 1989	4	Individuals being targeted by UDA Weapons General intelligence (x2)
19 January 1989	4	Individuals being targeted by UDA General intelligence (x3)
30 January 1989	6	Weapons (x2) General intelligence (x4)
1 February 1989	5	Individuals being targeted by UDA (x4) General intelligence
6 February 1989	7	Individuals being targeted by UDA General intelligence (x6)
7 February 1989	1	Individuals being targeted by UDA
13 February 1989	1	Individuals being targeted by UDA
14 February 1989	7	Individuals being targeted by UDA (x2) General intelligence (x5)
16 February 1989	4	Individuals being targeted by UDA UDR contact General intelligence (x2)

¹⁸ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 84, para 1.247

Date of entry	Entries	Intelligence recorded
20 February 1989	4	Individuals being targeted by UDA General intelligence (x3)
28 February 1989	6	Ammunition Individuals being targeted by UDA General intelligence (x4)
13 March 1989	21	Individuals being targeted by UDA (x3) Weapons (x2) General intelligence (x16)
20 March 1989	5	Individuals being targeted by UDA (x3) General intelligence (x2)
21 March 1989	8	Individuals being targeted by UDA RUC contact General intelligence (x6)
24 March 1989	6	Individuals being targeted by UDA RUC contact General intelligence (x4)
3 April 1989	5	Individuals being targeted by UDA (x2) General intelligence (x3)
12 April 1989	2	Individuals being targeted by UDA (x2)
14 April 1989	12	Individuals being targeted by UDA (x4) RUC warning of threat Weapons General intelligence (x6)
17 April 1989	5	Individuals being targeted by UDA (x3) General intelligence (x2)
19 April 1989	1	General intelligence
26 April 1989	5	Individuals being targeted by UDA (x2) General intelligence (x3)
27 April 1989	1	Individuals being targeted by UDA
8 May 1989	4	Individuals being targeted by UDA (x4)
16 May 1989	3	Individuals being targeted by UDA (x2) General intelligence
17 May 1989	1	General intelligence
18 May 1989	5	Individuals being targeted by UDA General intelligence (x4)
22 May 1989	3	General intelligence (x3)
30 May 1989	3	Individuals being targeted by UDA Weapons General intelligence
31 May 1989	1	Individuals being targeted by UDA

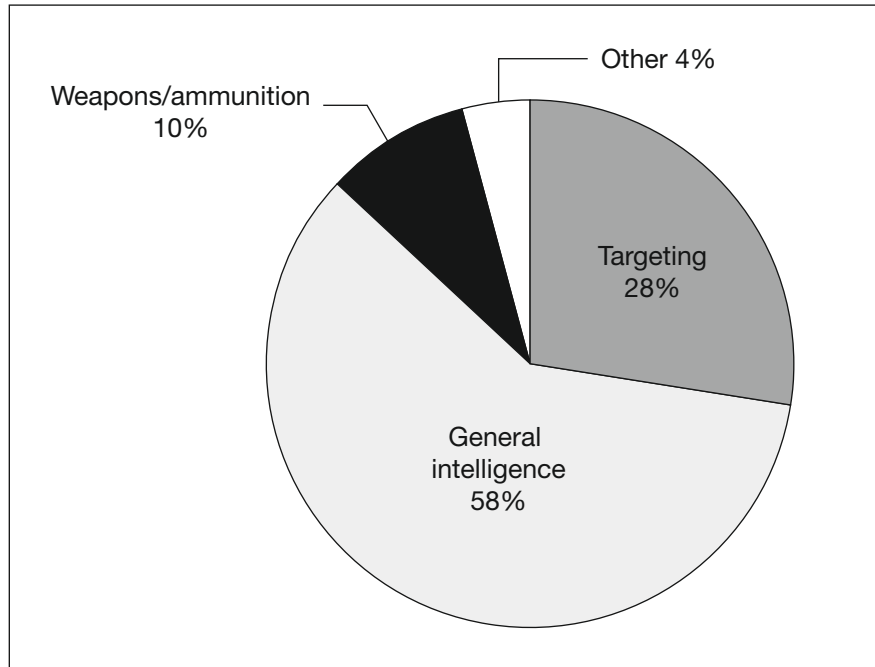
Date of entry	Entries	Intelligence recorded
7 June 1989	7	Individuals being targeted by UDA (x3) Army soldier contact General intelligence (x3)
9 June 1989	1	UVF weapons
15 June 1989	1	UVF weapons
19 June 1989	2	General intelligence (x2)
20 June 1989	2	Weapons General intelligence
21 June 1989	1	General intelligence
24 June 1989	2	Individuals being targeted by UDA Weapons
26 June 1989	6	Individuals being targeted by UDA Weapons (x2) General intelligence (x3)
28 June 1989	1	Weapons
4 July 1989	1	General intelligence
7 July 1989	2	Weapons (x2)
15 July 1989	4	Weapons (x2) General intelligence (x2)
19 July 1989	1	Weapons
22 July 1989	2	Individuals being targeted by UDA General intelligence
14 August 1989	1	Imminent indiscriminate targeting
15 August 1989	1	General intelligence
17 August 1989	1	General intelligence
21 August 1989	1	Weapons
24 August 1989	1	General intelligence
25 August 1989	5	Weapons General intelligence (x4)
31 August 1989	1	Individuals being targeted by UDA
4 September 1989	1	General intelligence
5 September 1989	1	UDR leak
14 September 1989	4	Individuals being targeted by UDA/UVF (x2) Weapons General intelligence
15 September 1989	1	Individuals being targeted by UDA
18 September 1989	2	Individuals being targeted by UDA General intelligence
20 September 1989	1	General intelligence

Date of entry	Entries	Intelligence recorded
21 September 1989	2	General intelligence (x2)
22 September 1989	1	General intelligence
23 September 1989	4	Individuals being targeted by UDA (x2) General intelligence (x2)

8.44 Figure 2 shows that 219 entries were made in the Daily Intelligence Book in relation to information provided by Nelson over this period. Intelligence from Nelson was being provided to the RUC SB, on average, once every four to five days.

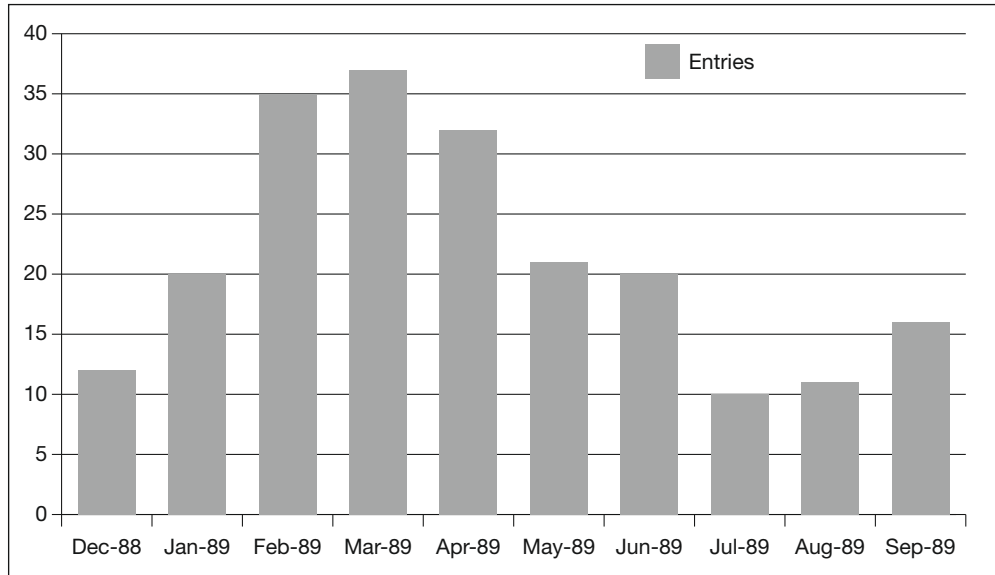
8.45 Much of Nelson’s information came under the category of general intelligence about UDA personalities and intentions. This was probably the case in relation to most agents, who would always be asked by their handlers to provide as much background information as possible to enable the intelligence agencies to build up a detailed picture of paramilitary organisations. The records also show that the Source Unit received a significant quantity of intelligence from Nelson relating to UDA targeting. Figure 3 shows the nature of the intelligence from Nelson being recorded by the SB.

Figure 3: Content of Nelson’s intelligence as recorded in RUC Daily Intelligence Book, December 1988 to September 1989



8.46 Figure 4 plots the flow of information from the FRU to the RUC regarding Nelson during the same period.

Figure 4: Nelson's intelligence as recorded in the RUC Daily Intelligence Book, December 1988 to September 1989



8.47 I am satisfied that a significant amount of intelligence reporting from Nelson was also being passed orally by the FRU to the RUC. Some of this intelligence was clearly recognised as being important by the RUC at the time. Overall, I believe that the evidence provided by the MISRs and the Daily Intelligence Book provides further support for the FRU's contention that they were, as a general rule, passing Nelson's reporting on to the RUC.

Threat warnings prior to UDA murders and attempted murders

8.48 My analysis of the MISRs and the Daily Intelligence Book has established the broad pattern in relation to the passage of information from the FRU to the RUC. Extensive information was being passed to the RUC throughout Nelson's time as a FRU agent. The information being passed by the FRU to the RUC included a wealth of threat intelligence relating to the UDA's targeting of identified individuals.

8.49 However, I must also consider the question as to whether the MISRs sent by the FRU to the RUC were diluted to such an extent that they prevented the RUC from taking any positive action to protect lives. If the FRU merely provided the RUC with the names of individuals under threat, the action that could be taken to protect those individuals would be somewhat limited in scope. If, however, the FRU provided detailed intelligence on the nature of the UDA's targeting of specific individuals, then the RUC would have been in a much stronger position to exploit the intelligence to save lives.

- 8.50 In order to make findings on this specific point, I have analysed the information passed by the FRU to the RUC in specific cases.
- 8.51 In Chapter 7 I set out an illustrative sample of Nelson's personal involvement in a number of murders, attempted murders or conspiracies to murder. For the purpose of this analysis, I have outlined at Figure 5 the nature of the intelligence held by the FRU in advance of UDA attacks alongside the nature of the intelligence held by the RUC in advance of each attack.

Figure 5: Intelligence provided by Nelson in relation to attacks

Murders¹⁹

Gerard Slane (murdered on 23 September 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and murder	MISRs sent pre-murder	RUC action taken
FRU	X	X	X					2 days	1	None ²⁰
RUC	X							10 days		

James Pratt Craig (murdered on 15 October 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and murder	MISRs sent pre-murder	RUC action taken
FRU	X	X		X				9 days	30	None
RUC	X	X		X				5 days		

Loughlin Maginn (murdered 25 August 1989)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and murder	MISRs sent pre-murder	RUC action taken
FRU	X	X						7 months	1	None
RUC	X	X						7 months		

NB For the murder of Terence McDauid (10 May 1988) see conspiracy to murder Declan McDauid (p.198)

¹⁹ This table seeks to provide an indication of the FRU/RUC's knowledge, prior to attacks, of the UDA's targeting of an individual (based on intelligence provided by Nelson). For example, an 'X' marked next to 'Address' means that the agency concerned were aware, prior to an attack, that the UDA knew the target's address.

²⁰ See Chapter 7 for an analysis of the exploitative action taken by the RUC as a result of intelligence supplied by Nelson

Attempted murders

T/27 (attempted murder on 27 September 1985)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X	X	X	X	X	8 days	6	None
RUC	X	X	X	X	X			4 days		

T/14 (attempted murder on 7 December 1987)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X							2 weeks	1	None
RUC	X							2 weeks		

T/33 (attempted murder on 12 March 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X			X		3 days	2	None
RUC	X	X	X			X		1 day		

T/02 (attempted murder on 20 May 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X	X	X	X	X	25 minutes	7	Attempt frustrated by security forces' presence ²¹
RUC	X	X	X	X	X	X	X	Same day		

Alex Maskey (attempted murder on 22 May 1987)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X							4 days	0	None
RUC								N/A		

NB Although previous CFs show that the UDA had considered targeting Maskey in 1985,²² during Nelson's period as a FRU agent he reported only that they were targeting a car whose registration the FRU then traced to Maskey.²³ The table above does not refer to intelligence relating to the second attempt on 17 July 1988, as Nelson did not inform his handlers of his role in this attempt until after the event.

²¹ See also Chapter 7 in relation to the action taken as a result of the targeting of Gerry Adams and another individual, although the records in these cases are less clear

²² CF 29 August 1985 and 5 September 1985

²³ CF 18 May 1987

T/28 (attempted murder on 17 August 1988) ²⁴										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X	X	X	X	X	7 weeks	20	None
RUC	X	X	X	X	X	X	X	6 weeks		

T/16 (attempted murder on 20 September 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X			X	X		5 months	1	None
RUC	X	X			X	X		5 months		

T/12 (attempted murder on 2 October 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X		X	X				3 weeks	1	None
RUC	X			X				3 weeks		

²⁴ T/28 was actually attacked by the UVF, not the UDA (see Chapter 7)

Patrick Monaghan (attempted murder on 9 November 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X		X	X		2 days		
RUC	X	X (incorrect)						11 days	1	None

James Peter Morgan (attempted murder on 14 November 1988)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X			X		7 days		
RUC	X	X	X					4 days	3	None

T/22 (attempted murder on 17 January 1989)										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X				X		10 months		
RUC	X	X				X		10 months	2	None

NB In early January 1989, Nelson gave 14 intelligence cards on Sinn Féin members to L/28. When debriefed by the FRU, Nelson provided the names of ten individuals but could not remember the other four. L/22 later returned the 'P card' on T/22 to Nelson.²⁵

²⁵ CF 25 January 1989

T/25 (attempted murder in April 1989) ²⁶										
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Time between last report and attempt	MISRs sent pre-attempt	RUC action taken
FRU	X	X	X	X		X		c. 3 weeks	1	None
RUC	X	X		X				c. 3 weeks		

Conspiracies to murder

Thomas Keenan (conspiracy to murder, June 1987 to July 1989)									
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Number of MISRs sent	RUC action taken
FRU	X	X	X	X	X	X	X	37	None
RUC	X	X	X	X	X	X	X		

Declan McDaid (conspiracy to murder, September 1987 to April 1988)									
What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Number of MISRs sent	RUC action taken
FRU	X	X	X	X	X	X		7	None
RUC	X	X	X	X	X	X			

²⁶ Nelson heard about the attempted murder on 10 April 1989, though it is not clear exactly when the attempt had taken place (CF 12 April 1989)

Brian Gillen
(conspiracy to murder, November 1987 to October 1989)

What was known about the UDA's targeting?	Name	Address	Photo	Movements	'Recce'	Team	Method	Number of MISRs sent	RUC action taken
FRU	X		X	X	X	X	X	30	None
RUC	X		X	X	X	X	X		

Analysis of Nelson's involvement

- 8.52 Figure 5 is necessarily a summary of a more complex and detailed intelligence picture and should therefore be considered alongside the fuller accounts of the individual cases provided in Chapter 7. I do, however, believe that this analysis illustrates the broad pattern in relation to the provision of threat intelligence from the FRU to the RUC.
- 8.53 If it were the case, as Sir John Hermon and journalists such as John Ware have alleged, that the FRU were withholding detailed intelligence from the RUC, then I would have expected to find a clear disparity between the FRU's knowledge in relation to the UDA's targeting and the RUC's knowledge in relation to that targeting. However, I am satisfied that, as a general rule, there was no such disparity in knowledge. The evidence broadly supports A/05's claim that a significant amount of exploitable intelligence was passed by the FRU to the RUC. It follows that the impression given by the RUC to the DPP(NI) that the RUC were receiving little worthwhile intelligence from the FRU regarding Nelson was, in fact, incorrect and misleading.
- 8.54 There were, however, exceptions to this general pattern. Although some information was passed to the RUC in the T/27, Slane, Monaghan and Maskey cases, significant intelligence about the UDA's targeting was not passed on. Figure 5 and my detailed consideration of the Slane case in Chapter 7 demonstrate that the intelligence not provided to the RUC in these cases was critical information that could have potentially helped to protect the individual under threat.
- 8.55 I should note, however, that the lack of any RUC Daily Intelligence Book prior to December 1988 means that it is difficult to be certain that the FRU did not pass more detail to the RUC orally as opposed to through a written MISR.
- 8.56 It is also true to say that there were variations in the level of detail included in the MISRs during Nelson's period as a FRU agent. Some of the MISRs produced included virtually every detail of the CFs, whilst others were much more heavily summarised versions of the intelligence.
- 8.57 The fact remains, however, that in almost every case of murder and attempted murder outlined in Figure 5, the FRU had provided intelligence to the RUC indicating a UDA threat against each identified individual. In most cases, multiple MISRs had been issued to the RUC prior to the UDA attack. Some of the intelligence provided by the FRU was so detailed that the RUC must have clearly known that the UDA had effectively completed their targeting and that the individual concerned was in potentially grave danger. As I outlined in Chapter 7, the RUC took no steps to protect any of the targets highlighted in Figure 5 (with the exception of T/02).

Information passed by the FRU to the RUC in other cases

- 8.58 The statements provided by RUC personnel to the Stevens Investigations suggest that the intelligence received by the RUC SB from the FRU was generally of minimal value in helping to frustrate terrorist activity in Northern Ireland. A/05's position, however, is that the FRU were regularly passing valuable intelligence to the RUC.
- 8.59 I have no doubt that the FRU were, as A/05 has claimed, regularly passing valuable intelligence to the RUC SB. It is probably true to say that the Army had more low-level 'eyes and ears' agents than other agencies.²⁷ However, it is clear that East Det FRU were passing a wealth of information to the RUC SB throughout the period 1987–89, including very valuable tactical intelligence. The RUC Threat Book shows action being taken on 26 separate threats to life as a result of intelligence on republican paramilitaries provided by East Det during the course of 1988 alone.²⁸ The RUC SB's negative view of the value of FRU intelligence as a whole does not, therefore, appear to have been justified, and may merely be a reflection of inter-agency rivalry.

Conclusions on the provision of information from the FRU to the RUC

- 8.60 I am satisfied that, in the majority of cases, the FRU were passing significant and exploitable intelligence to the RUC on the basis of the information provided by Brian Nelson to his handlers. The passage of information was by no means perfect and it is clear that there were significant breakdowns in communication in some cases. The broad pattern does, however, demonstrate that the FRU were providing a wealth of potentially life-saving intelligence to the RUC.
- 8.61 The implications of this finding are significant. The RUC were responsible for taking executive action on intelligence to protect individuals and save lives. The RUC must, therefore, bear a substantial responsibility for the failure to protect the vast majority of the UDA targets identified by Nelson. The subsequent statements made by RUC officers to the Stevens Investigations can only be explained as an attempt to minimise the culpability of the RUC.
- 8.62 This finding does, however, prompt two further critical questions:
- (i) Should the FRU have known that the RUC were taking no action to save lives?
 - (ii) Why were the RUC not taking action as a result of Nelson's intelligence?

Should the FRU have known that the RUC were taking no action to save lives?

- 8.63 FRU personnel are clear that they expected the RUC to take action as a result of the intelligence they provided. They also appear to maintain that they sent the intelligence to the RUC in the expectation that action would be taken, but did

²⁷ Note of meeting with retired RUC officers, 25 July 2012; A/05, written submission to the Review

²⁸ RUC Threat Book entries for 1988

not consider it to be their role to pursue this further with the RUC to ascertain whether the intelligence was in fact being exploited. This stance was supported in subsequent MoD correspondence cleared by the Secretary of State for Defence.

8.64 I have outlined above the system for disseminating intelligence between the FRU and the RUC SB. Most of the MISRs relating to Nelson were in the form of MISR ‘Supplements’, which were classified at the highest level of sensitivity due to source protection considerations. Each of these MISRs would include the caveat “*No ... action to be taken without direct reference to OC East Det FRU*”.²⁹

8.65 It was therefore clear that, though the exploitation of the intelligence was a matter for the RUC SB, the FRU would have expected to be consulted about any such exploitation. This caveat was necessary because the manner in which such intelligence was exploited by the RUC could have had implications for the safety of the FRU’s own agent.

8.66 The question thus arises as to why I have been unable to find any concerns raised by the FRU with the RUC as to the non-exploitation of Nelson’s intelligence. If the FRU had presumed that the RUC were taking action on this intelligence, then they would surely have queried the action being taken by the RUC in order to satisfy themselves that Nelson was not likely to come under suspicion within the UDA. As the submissions that I have received emphasise, nothing imperilled an agent more than a planned murder suspected to have been frustrated by the security forces.

8.67 The Attorney General, Sir Patrick Mayhew, raised this very issue in a discussion with the DPP(NI) and the Chief Constable in April 1991. The note of this meeting records the following comment:

*“The Attorney expressed surprise that the Army was under the impression it was [that the RUC were taking action], given the caveat which had been put on the MISRs that information should not be used without reference back to them.”*³⁰

8.68 I explored this question both with the retired RUC officers I met and with A/05. R/15 told me that:

*“... he would consider it negligent of FRU to have produced actionable intelligence but then not to have followed it up. In such an event he would consider FRU not to have acted in accordance with responsible intelligence management. They had the capacity to ask and the duty to follow up on intelligence they had passed on but he could not personally recall any instance of them doing so.”*³¹

8.69 A/05, however, told me that the caveat put in place on the MISRs by the FRU was not always observed by the RUC SB and that it did not prevent the RUC from taking action to exploit intelligence without informing the FRU. A/05 told me in his oral evidence that:

²⁹ See, for example, MISR 16 February 1989 [see Volume II, p. 16]

³⁰ Note of meeting between Attorney General, Chief Constable and DPP(NI), 24 April 1991, para 2

³¹ Note of meeting with retired RUC officers, 25 July 2012, para 103

“At the time, I would not have expected RUC SB to have consulted us in every case where they were considering the exploitation of our information. In complex cases ... where the agent was reporting from a very restricted circle of knowledge, exploitation – be it in the form of seizures of arms or arrests – could have serious consequences for an agent, in terms of an internal security inquiry.

In these cases, there would have been consultation over how the exploitation was going to take place. But I have to say that had they wished to exploit in a way that would have placed our agent in danger, in our opinion, there is little that we could have done to stop them exploiting in the way that they thought best.”³²

8.70 A/05 specifically stated that the FRU would not expect to be consulted about the action the RUC SB were taking as a result of some threat intelligence:

“Threat warnings against individuals, where there was no other information to suggest that an attack was about to take place, were either not worthy of exploitation at all or would not have required consultation with us, prior to exploitation. The decision was theirs [the RUC SB].”³³

8.71 In considering this issue, and the different explanations that have been put forward, it is necessary to consider the pattern of Nelson’s activity that I outlined in Chapter 7. These cases themselves suggest it is unlikely that the FRU were completely unaware of the fact that the RUC were not generally exploiting Nelson’s intelligence. I would have expected to see some communication between the FRU and the RUC after the UDA carried out an attack that had been accurately predicted and facilitated by Nelson. I have been unable to find any examples of such communication.

8.72 In addition to these broader contextual considerations, I have also uncovered documentation suggesting that the FRU must have been aware that Nelson’s intelligence was not being exploited by the RUC. In a CF dated 10 January 1989, A/13 effectively accepted that exploitation of Nelson’s (referred to here by his source number, 6137) information had been minimal:

“The time has come for Nelson to be hit with the facts. At the next meeting ... handler will explain what Nelson has done for the office, the last information to be exploited was an attempt on [T/02’s] life which had to be aborted because 6137 managed to get himself involved.” [Emphasis added]³⁴

8.73 In the month before the murder of Patrick Finucane, there was an apparent acceptance that the FRU’s well-paid, strategically positioned and highly valued agent had not in fact produced intelligence that helped to save lives. Whilst the FRU appear to have put this down partly to Nelson being unaware of when attacks would take place, rather than to RUC inaction, this nevertheless amounted to an admission that Nelson’s actions as a FRU agent were not serving the purpose of saving lives.

³² Transcript of meeting with A/05, 7 September 2012, p. 66

³³ Ibid., pp. 66–67

³⁴ CF 10 January 1989

8.74 A document produced by the FRU several weeks afterwards appears to reinforce the impression given by the CF of 10 January. The FRU produced an annual report on Nelson's record on 31 January 1989. The report noted that Nelson had supplied:

“... [a] very high level of intelligence information regarding the targeting of PIRA/PSF/INLA personalities. He has also reported on daily UDA/UFF [Ulster Freedom Fighters] activity and has helped to move weapons, although exploitation has been nil due to no prior knowledge by [Nelson] ... [Nelson's] access can be improved if [Nelson] becomes aware of when attacks are to take place. At present [Nelson] could still be targeting a personality when the CQA team move in.” [Emphasis added]³⁵

8.75 This document was distributed to the FRU Operations Officer and Commanding Officer (CO). The admission that exploitation of Nelson's information had been 'nil' suggests a recognition on the FRU's part that Nelson's information was not, in fact, being exploited by the RUC to protect individuals and frustrate terrorist activity.

8.76 In summary, my view is that the FRU should have known at the material time that the RUC were not taking any action as a result of the vast majority of Nelson's intelligence.

Why were the RUC not taking action on Nelson's intelligence?

8.77 An important question for my Review to consider is why the RUC took so little action as a result of Nelson's intelligence reporting.

8.78 My analysis of the intelligence being passed by the FRU to the RUC disproves some of the explanations put forward by the RUC to the DPP(NI). Critical actionable intelligence was being provided by the FRU to the RUC on a regular basis. Nelson was clearly a reliable agent and the intelligence he provided on the UDA's planned assassinations was often shown by events to be accurate.

8.79 Justice Cory highlighted the RUC's attitude towards the FRU as an important factor explaining why Nelson's intelligence was not acted on. Cory stated that:

“This attitude may well have had the effect of screening out much of the information FRU transmitted to SB.”³⁶

8.80 The RUC's attitude towards FRU intelligence was undoubtedly a factor in the failure to exploit Nelson's information. I am, however, not persuaded that this was the critical factor behind the failure of the RUC to exploit Nelson's intelligence. As I note in Chapter 9, the RUC Threat Book shows that the RUC were taking effective action to save lives as a result of threat intelligence provided by the FRU from republican agents when the targets were security force personnel. If the RUC were willing and able to take action in these cases, it follows that there was clearly no uniform approach on their part to dismiss FRU intelligence.

³⁵ Brian Nelson's FRU annual report, 31 January 1989

³⁶ Cory Collusion Inquiry Report, p. 89, para 1.250

8.81 The MoD themselves speculated on the RUC's motives, with ACOS G2 asking: *"were the RUC operating a policy of selective action dependant [sic] upon an individuals record?"*³⁷

8.82 In his strongly worded document sent to the GOC, ACOS G2 criticised the RUC in the following terms:

*"Failure to maintain records of actions taken in this sensitive area is indictive [sic] of gross inefficiency or a deliberate attempt to conceal the nature and extent of operations mounted by the RUC. Could the RUC weather an investigation into the possible negligence of his [sic] Special Branch to take the appropriate action to save lives? Probably not."*³⁸

8.83 However, setting aside the observations of those who may be partisan and in order to make a finding on this critical issue, I believe it is necessary to examine the RUC's broader approach to threat intelligence to ascertain whether any explanation for their actions emerges. This is considered in Chapter 9.

Assessment of the FRU

8.84 In view of my conclusion that the RUC bears a significant responsibility for the failure to exploit intelligence to protect UDA targets, I must make an overall assessment of the FRU's responsibilities in relation to Brian Nelson.

8.85 In producing such an assessment, I am conscious that, although it was the RUC's responsibility to exploit intelligence, the FRU were responsible for the re-recruitment of Nelson, his subsequent handling, his tasking and his remuneration. It is also accepted by all parties that the RUC SB did not receive access to FRU CFs providing the full account of meetings with Nelson, so the nature of the relationship between Nelson and his handlers would have been apparent only to FRU officers.

The FRU strategy to focus the UDA on 'PIRA activists'

8.86 I start from the position that there is no doubt that the FRU tasked Nelson to focus both his and the UDA's targeting on 'known PIRA [Provisional Irish Republican Army] activists'. As noted in Chapter 6, in his written submission to my Review, A/05 explained the rationale for this tasking through reference to his October 1990 statement to the Stevens I Investigation. In this statement, he explained:

"... we carefully developed Nelson's case in conjunction with SB with the aim of making him the Chief Intelligence officer for the UDA. By getting him into that position FRU and SB reasoned that we could persuade the UDA to centralise their targeting through Nelson and to concentrate their targeting on known PIRA activists, who by the very nature of their own terrorist position were far harder targets. In this way, we could get advance warning of planned

³⁷ ACOS G2, undated note to GOC, 'Questions', para 5 [see Volume II, pp. 298–301]

³⁸ Ibid.

attacks, could stop the ad hoc targeting of Catholics, and could exploit the information more easily because the harder PIRA targets demanded much more reconnaissance and planning, and this gave the RUC time to prepare counter measures. In the event, this concentrated targeting also resulted in far fewer attacks, because despite a great deal of reconnaissance, the PIRA targets often proved to be too difficult.”³⁹

8.87 I considered this issue further in my meeting with A/05 on 7 September 2012. At the meeting, A/05 explained that:

“... by involving the UDA in targeting PIRA activists, we were engaging them in work that was really rather nugatory because the targets by their positions and locations were too difficult.”⁴⁰

8.88 I sought to explore with A/05 the way in which this tasking was communicated to Nelson by his handlers. The transcript of the meeting includes the following exchange:

“Chairman [of the Review]: But what I would like to know is how you communicated ... to Nelson that you wanted the targeting by the UDA to be centralised upon PIRA activists?

...

[A/05]: I think the best way of answering that is to say that as a rule, we would not normally discuss with our agents our full strategy for the running of the case. The important thing, as far as Nelson was concerned, was that he was tasked to report everything he possibly could ...”⁴¹

8.89 A/05’s oral evidence did not make clear how Nelson was tasked to focus on PIRA activists, though the implication of A/05’s comments is perhaps that Nelson was not explicitly told that these targets would be more difficult for the UDA to attack.

8.90 The CFs generally referred only to Nelson’s motivation (rather than the FRU’s strategy in tasking him) but there are periodic references prior to the change of handler in April 1989 which suggest that Nelson was indeed tasked to focus the UDA on PIRA targets. The CF dated 6 July 1988 included a section on ‘Case Development’ which noted that *“currently the BDE is preoccupied with getting rid of Craig and hopefully when this is finished [Nelson’s] activities against PIRA will increase”*.⁴² The CF dated 17 November 1988 dealt with Nelson’s opposition to the UDA’s targeting of T/21 and noted that, *“Handler asked [Nelson] why he did not suggest [to the UDA] someone from PSF or PIRA hierarchy”*.⁴³ These CFs corroborate A/05’s statement that Nelson was tasked to focus targeting on PIRA figures.

³⁹ A/05, statement to Stevens I Investigation, 9 October 1990

⁴⁰ Transcript of meeting with A/05, 7 September 2012, p. 18

⁴¹ *Ibid.*, p. 21

⁴² CF 6 July 1988, Additional Information, ‘Case Development’, Item 7

⁴³ CF 17 November 1988, Item 24

8.91 In so far as Nelson was carrying out the targeting of 'PIRA figures', he was doing so as a result of the tasking provided to him by the FRU. Although I do believe that Nelson chose to withhold some information from his handlers, there is no suggestion by the FRU that Nelson was pursuing an agenda of his own. I had the following exchange with A/05 on this point during our meeting on 7 September 2012:

"Chairman: [L]ooking back, is there any possibility that Nelson could have had an agenda of his own?"

[A/05]: Even looking back, I do not believe that. We certainly didn't believe it at the time.

...

I do not believe he had another agenda that was contrary to ours and the wealth of the reporting, the detail of the reporting that he gave to us, on a very regular basis, shows that he was a reliable agent and did not have an alternative agenda, except that [agenda] which we had given him."⁴⁴

8.92 There is, therefore, no sense at all in which Brian Nelson could be described as a maverick or an agent 'out of control'. The key question, however, is whether the FRU tasked Nelson to target PIRA figures in order, as A/05 stated, to engage the UDA in 'nugatory' activity and enable the security forces to take counter-measures to protect these targets, or, as is implied in non-governmental organisation reports, because the FRU themselves had the military objective of seeking to focus the UDA on PIRA targets who were themselves a threat to the State.

The wider use of this tasking by the RUC SB and the Security Service

8.93 In their statements to the Stevens I Investigation, none of the other senior intelligence officers admitted any knowledge of a strategy to persuade the UDA to concentrate their targeting on 'harder' PIRA targets.

8.94 However, from my analysis of other intelligence documents, I do believe it is likely that other intelligence agencies tasked some well-placed loyalist agents on a similar basis. One loyalist agent jointly handled by the RUC and the Security Service during the 1980s, for example, was tasked to occupy the time of UDA members:

"... with more, properly conducted recces, eg. of premises used by Sinn Fein/PIRA."⁴⁵

8.95 The Security Service provided my Review with the following explanation of the rationale behind this tasking:

⁴⁴ Transcript of meeting with A/05, 7 September 2012, p. 37

⁴⁵ Security Service Contact Note

“The aim of this tasking was not to encourage attacks on such targets, but rather to try to ensure that the terrorist’s time was taken up with a smaller number of largely ineffective and, therefore, relatively harmless activities. These types of targets would have been by their very nature difficult for the terrorists to operate against (e.g. hostile locations, strengthened premises and security aware individuals).”⁴⁶

8.96 There are clear parallels between the rationale put forward by the Security Service and the explanation offered by A/05 with respect to Nelson. It should, however, be noted that in the case of the RUC SB/Security Service agent, I have not found any evidence to suggest that this individual was subsequently linked to attacks in the way in which Nelson undoubtedly was.

Analysis of Nelson’s tasking to focus on PIRA activists

8.97 I accept that there could have been potentially legitimate operational reasons for shifting militant members of the UDA towards ‘harder’ PIRA figures in order to reduce their ability to mount attacks. I do not wholly share the Security Service’s and A/05’s assessment that any UDA efforts against such targets would necessarily be ‘relatively harmless’ or ‘nugatory’. Loyalists had demonstrated their capacity to kill republicans during the Troubles. Nevertheless, the UDA’s unsuccessful pursuit of individuals such as Brian Gillen over a number of years was indicative of the difficulties they experienced in targeting such figures. It is certainly true that the number of murders committed by the UDA increased significantly when they reverted to the killing of Catholic taxi drivers and other sectarian targets chosen at random.

8.98 However, if the FRU were proactively seeking to direct Nelson and the UDA towards a certain category of target, then a considerable burden falls upon them to demonstrate that this was purely a tactical device and that they did, in reality, intend those targets to be protected from attack. The most persuasive submissions in the FRU’s defence emphasise the fact that Nelson’s intelligence was generally passed on to the RUC SB. As I have outlined, although there are some qualifications, I accept the broad thrust of this submission.

8.99 This conclusion in itself raises important questions. If the FRU had agreed with Nelson that ‘legitimate’ targets should be attacked, why would they then pass intelligence to the one organisation supposedly tasked with protecting those very targets? Similarly, why would the FRU subsequently provide the RUC with the identities of those believed to have been responsible for UDA attacks? However, these points must be qualified by my earlier conclusion in this chapter that the FRU should have known that the RUC were taking no action as a result of the intelligence that was being provided in the MISRs.

8.100 There are further difficulties with the proposition that the FRU had a proactive, consistent strategy to use the UDA to target and attack republicans. As I noted in Chapter 7, prior to April 1989 Nelson was sometimes provided with information

⁴⁶ Security Service, letter to the Review, 10 August 2012

on republican targets, which, in my view, represents a positive action on the part of the handlers to facilitate Nelson's targeting of such figures. Equally, however, the CFs highlight a number of examples of occasions on which the FRU handlers do not appear to have assisted him in his targeting (Nelson, for example, went to the wrong addresses or targeted people whom the FRU knew were still in prison).

- 8.101 In the event that the FRU had a proactive strategy to use the UDA to attack republicans, one would have expected to see Nelson being provided with the latest human and technical source intelligence on republican targets rather than relying, as he appears to have done, mostly on leaked security force material of varying quality and his own targeting activities.
- 8.102 Professor Richard English in fact raised a similar issue in his report to my Review. He considered the proposition that there had been a proactive policy to use Nelson and the loyalists to kill republicans, but posed the question "*then why did groups like the UDA kill so few leading republicans?*"⁴⁷
- 8.103 The impact of Nelson's actions highlights this difficulty further: if the FRU's objective was to ensure that the UDA killed PIRA activists, then they appear to have failed. In my view, Nelson was involved in the murder of the brother of a PIRA figure (Terence McDaid); someone identified by the UDA as being a republican (Gerard Slane); a loyalist linked to PIRA (James Pratt Craig); and a solicitor (Patrick Finucane). However, the overall impact of his collation and dissemination of targeting information is difficult to assess but may indeed have resulted in the UDA carrying out more attacks on identified republican paramilitaries.
- 8.104 It is certainly important to recognise the limitations of any suggestion that the FRU were using Nelson and the UDA as a proactive means of eliminating republicans. Had the FRU and/or the RUC SB provided more active assistance then I have little doubt that Nelson and the UDA would have succeeded in their objective of killing many more senior PIRA figures.
- 8.105 The change of handler in April 1989 is also potentially significant. After he took over, A/10 repeatedly expressed concern at Nelson's behaviour. He began to provide him with more explicit tasking; and (for the first time in the CFs) considered and discussed the options for exploiting Nelson's intelligence to prevent attacks.⁴⁸ This change took place after the murder of Patrick Finucane but the fact that a change of handler could have such a significant impact does suggest that caution needs to be exercised in accusing the FRU of pursuing a systematic strategy as regards Nelson.
- 8.106 However, even taking these mitigating factors into account, there are in my view certain inescapable conclusions that must be drawn in relation to the FRU. Nelson's return from Germany – for which the FRU were responsible – did, in my view, increase the UDA's 'military' capacity to target and attack supposedly 'legitimate' republican figures.

⁴⁷ Professor Richard English, report to the Review, p. 24

⁴⁸ The change in approach was also picked up by Justice Cory in his Report (p. 54, para 1.157)

- 8.107 As I have noted, the FRU strategy to use Nelson to target PIRA activists hinges entirely on a demonstration that this targeting was, in fact, solely a tactical device intended to *prevent any* UDA attacks. As I outlined in my assessment in Chapter 7, in many cases there was simply no such attempt to prevent UDA attacks. Although the RUC SB must bear primary responsibility for the failure to exploit Nelson's intelligence, I am satisfied that A/05 and the FRU should have known that their strategy was not operating in the way A/05 described in October 1990.
- 8.108 A crucial additional point is that, as I noted at paragraph 7.284, Nelson himself wished to see 'legitimate' republican targets attacked by the UDA. I am satisfied that Nelson implemented the FRU's tasking of the targeting of republicans with the objective of seeing them killed, not in order to report intelligence to the FRU so that the lives of these PIRA activists could be saved.
- 8.109 In the context of the brutal terrorist campaign being waged by PIRA at the time, I strongly suspect that Nelson saw his work for the UDA and the British Army not as one which involved performing a 'dual role' but as one in which he was meeting an objective that was shared by both organisations. In other words, I believe that Nelson felt that by helping the UDA to target republican paramilitaries, he would also be reducing the terrorist threat faced by the British Army.
- 8.110 His motivation in this regard was, in my view, entirely apparent to his FRU handlers from at least April 1988 to April 1989. This awareness of Nelson's motivation makes the instances of handlers passing information to him, and their consistent acquiescence in his dissemination of targeting material, even more concerning.
- 8.111 A further inescapable conclusion is that the impact of Nelson's actions must have been apparent to the FRU long before the murder of Patrick Finucane. Despite his role in the murders of Terence McDaid and Gerard Slane, Nelson continued to be employed as a FRU agent. A/02 told the Stevens I Investigation that he had concerns about Nelson's involvement in criminality during his spell as a handler but that the FRU's policy was never to retire an agent.⁴⁹ This certainly held true in the Nelson case in circumstances when he should clearly have been stood down or withdrawn by the FRU.
- 8.112 I am conscious that the DPP(NI) concluded that none of the FRU personnel should be prosecuted. It is important, however, to note that the DPP(NI)'s decision should not be taken to imply that he did not have serious concerns about the Army's role in the Nelson case. Indeed, an internal analysis produced by the DPP(NI) included highly critical comments in relation to the evidence provided to the Stevens I Investigation by one of Nelson's handlers. The DPP(NI) noted that the evidence pointed to the following:
- (1) The almost total absence of control exercised in relation to Nelson.*
 - (2) The inability (or unwillingness) of certain handlers to realise when Nelson was acting outside permitted limits.*
 - (3) An acceptance that Nelson would become involved in criminal activity and that this was permissible.*

⁴⁹ A/02, statement to Stevens I Investigation, 5 December 1990

(4) *No serious consideration was ever given to terminating Nelson's employment as an informer.*"⁵⁰

- 8.113 The DPP(NI)'s concerns are magnified and reinforced by the evidence that I have considered, which also includes all the material collated by the Stevens III Investigation.
- 8.114 In order to properly assess the role of the FRU, I must also mention the very high priority they placed on 'source protection' in relation to Nelson. The CFs themselves demonstrate the considerable concern felt by the handlers for the security and protection of Nelson. A persistent theme of my Report is the extent to which all the intelligence agencies at the time tended to place an overriding priority on the protection of the source. As a number of submissions to my Review indicated, concern for the protection of a source could, in itself, militate against any desire to exploit their intelligence to protect those being targeted for attack (since such exploitation might in itself endanger the source).
- 8.115 When I met him during this Review, R/15 made an interesting observation which correlates significantly with the concerns expressed by the Security Service in their telegram regarding the Gerry Adams conspiracy (see Chapter 7). R/15 told me that he:

*"... believed that FRU had got themselves into an invidious situation with Nelson. His placement at such a high level within the UDA meant that FRU could not exploit all the intelligence received from him without risk to his being compromised. To that extent, recruiting him as an agent was in a sense self-defeating."*⁵¹

Overview

- 8.116 I have taken full account of all the submissions I have received in defence of the FRU's role and the fact that both the RUC and the Security Service pursued in at least one case a similar tactic of focusing an agent within loyalism on 'difficult PIRA targets'. I am also acutely conscious of the fact that the FRU handled Nelson in an extremely difficult operational environment and that they placed a very high priority on the protection of their agent. Nevertheless, I do draw the following critical conclusions of the FRU's handling of Nelson.
- 8.117 I am satisfied that the FRU tasked Nelson to focus UDA targeting on PIRA figures. In this respect, the FRU were consciously seeking to steer a paramilitary group towards a particular class of target on the basis that they would prove 'hard' for the UDA to attack in practice and that the lives of 'innocent Catholics' would thereby be saved.
- 8.118 Nelson did subsequently enthusiastically target such figures. Although A/05 states that Nelson was tasked to carry out such targeting as a tactical means of preventing UDA attacks, in my view Nelson's objective in carrying out this

⁵⁰ DPP(NI), note on Stevens I Investigation, p. 26

⁵¹ Note of meeting with retired RUC officers, 25 July 2012, para 98

targeting was to see republican figures murdered (as his guilty plea in 1992 effectively acknowledged). Nelson's motivation was clearly apparent to his FRU handlers throughout at least the period April 1988 to April 1989.

- 8.119 The FRU acquiesced in or turned a blind eye to the fact that Nelson's targeting could, and did, lead to people being attacked and killed by the UDA. Nelson continued to be retained as an Army agent despite the illegal nature of his targeting.
- 8.120 On occasions, the actions of the FRU handlers are consistent only with the interpretation that they wished to facilitate Nelson's aim of targeting particular republicans with a view to the UDA attacking them.
- 8.121 However, I do not accept the proposition that the FRU and its CO can fairly be held solely responsible and accountable for the Nelson case to the extent that has been implied by the Stevens Investigations and Justice Cory's Report. In this chapter I have already made the significant finding that the FRU did, in general, pass a considerable amount of potentially exploitable intelligence to the RUC and that the RUC failed to exploit this to seek to prevent attacks from taking place. I must now turn to the responsibilities of senior officers in the Army chain of command and those of the Security Service.

The Army chain of command

- 8.122 When considering the question of accountability for the Nelson case, it is important to analyse the role played by senior Army officers in the chain of command.
- 8.123 I note that A/05 has publicly accepted a certain degree of responsibility for Brian Nelson and his activities (stating at Nelson's trial that he felt a "*personal moral responsibility to Brian Nelson*").⁵² It is, however, a degree of responsibility that falls short of accepting that Nelson was engaged in serious crime directed at assisting the UDA in murdering PIRA activists. Much of the media coverage of the Nelson case appears to have largely attributed responsibility for the activities of Nelson to A/05. In the Panorama programme, 'A Licence to Murder', for example, John Ware stated that:

*"The officer ultimately responsible for [Nelson's activity] was [A/05], he had recruited Nelson, he was commanding officer of the unit that ran him."*⁵³

- 8.124 I consider it essential to my Terms of Reference to establish whether A/05 can fairly be held to shoulder the entire responsibility within the Army structure for the overall handling of the Nelson case or whether, in fact, responsibility should rest more widely. Was A/05 a maverick acting outside of his terms of reference? Or was he, in fact, reporting fully to his superior officers, and the wider intelligence community in Northern Ireland, and receiving their approval for the FRU's activities?

⁵² Trial transcript, *R v Brian Nelson*, 29 January 1992, A/05 evidence in mitigation

⁵³ John Ware, Panorama, 'A Licence to Murder', Part 1, 19 June 2002

The Army command structure

- 8.125 As briefly described in Chapter 6, there were, in effect, three more senior Army officers to whom A/05 reported. ACOS G2 was a senior officer in charge of overseeing Army intelligence matters in Northern Ireland. ACOS G2 reported to the Commander Land Forces, Northern Ireland (CLF), who in turn reported to the most senior Army officer in Northern Ireland, the GOC.
- 8.126 The way in which the military chain of command operated was set out in the 1986 Directive for the Force Research Unit issued by Major General A S Jeapes on 26 July 1986. The Directive stated that:
- “CO FRU is responsible to CLF through ACOS-G2 for the command, control and coordination of all Research operations Province-wide. Detachments of the FRU operating in [Brigade areas] are under command of CO FRU.”*⁵⁴
- 8.127 Under the heading ‘Concept of Operations’, the Directive stated that:
- “No Research operation is to be carried out which does not conform to this Directive or to the Instructions for Source Handling, without prior authority of Commander Land Forces (CLF).”*⁵⁵
- 8.128 Alongside the Directive the more detailed ‘Instructions for Source Control and Handling in Northern Ireland’ were issued on 25 July 1986. An Annex to these instructions explicitly outlined the command and control arrangements for the FRU. The Annex included the following critical instructions relevant to the chain of command:
- “The policy in respect of source handling and the organisation required to deal with Army sources is to be directed by HQNI. The ACOS G2 is responsible to the CLF for all matters of policy relating to the recruitment, security, management and payment of sources.*
- ... All tasking for FRU is to be through ACOS G2.*
- It is unlawful for any person to authorise an illegal act. Where there is any possibility of a source becoming involved in criminality or an area of political sensitivity, ACOS G2 is to be informed, through CO FRU, so that preventative measures can be taken.* [Emphasis added]⁵⁶
- 8.129 It will be seen, therefore, that under the provisions of the Directive, as CO of the FRU A/05 was not to conduct ‘Research operations’ outside its terms without prior authority from the CLF, and under the Annex to the ‘Instructions’ he was required to inform ACOS G2 where there was any possibility of sources becoming involved in criminality, so that “*preventative measures*” could be taken.

⁵⁴ Directive for the Force Research Unit, 1986, para 7

⁵⁵ *Ibid.*, para 4

⁵⁶ *Instructions for Source Control and Handling in Northern Ireland, Annex A, Command and Control*, paras 1–3

The Army HQ's approval of Nelson's re-recruitment

8.130 In Chapter 6 I outlined the process by which Brian Nelson was re-recruited by the FRU in 1987. This analysis is important in illustrating the extent to which senior Army officers were aware of, and approved, the re-recruitment of Nelson by the FRU.

8.131 It is clear that A/05 did inform the then ACOS G2, in significant detail, about the re-recruitment of Nelson. The lengthy note produced by A/05 for ACOS G2 in February 1987 provides clear documentary evidence that senior officers approved the plan to re-recruit Nelson.

8.132 Furthermore, A/05's note makes clear that Nelson was likely to become involved in criminal activity when re-recruited by the FRU. The note records that:

*"[CO FRU] felt that since 6137 had previously been involved as an IO for the UDA, which is a terrorist front organisation, and had also been involved in arms procurement, he would be providing information of supreme interest to the Army and RUC."*⁵⁷

8.133 The document also demonstrates that the CLF, Major General Jeapes, was briefed by A/05 on the plan to re-recruit Nelson and the resulting dispute with the Security Service. The note documents a discussion between A/05, ACOS G2 and the CLF on 12 February 1987 regarding the re-recruitment of Nelson:

"At the monthly update CO FRU briefed CLF and ACOS G2 on the case and outlined the Box 500 [Security Service] interest in the case and their apparent desire to take it over. CLF said he saw no reason why this should happen." [Emphasis added]⁵⁸

8.134 The Security Service documents outlined in Chapter 6 made reference to further discussions between ACOS G2 and the Security Service regarding Nelson and reinforce my view that senior Army officers were closely involved in approving the re-recruitment.

8.135 I am satisfied that the re-recruitment of Brian Nelson by the FRU was approved by ACOS G2 and the CLF, Major General Jeapes. The FRU's intention to use Nelson to penetrate a terrorist organisation and to potentially engage in UDA intelligence work and arms procurement must have been clear to those senior officers at the time.

The Army HQ's knowledge of Nelson's targeting activities

8.136 Establishing senior officers' knowledge of Nelson's subsequent targeting activities is a more difficult exercise. No records exist of the oral briefings provided by A/05 to his superiors in the Army chain of command. The distribution lists for CFs – the most critical documents outlining the handling of an agent – did not

⁵⁷ A/05 note to ACOS G2/ASP, undated but probably February 1987, para 22

⁵⁸ Ibid., para 25

include senior Army officers in Headquarters Northern Ireland (HQNI). I have, nevertheless, been able to analyse the following sources of evidence in relation to this issue:

- (i) the statements made by FRU officers;
- (ii) the statements made by ACOS G2, the CLF and the GOC;
- (iii) ACOS G2's knowledge of Nelson's involvement in the Gerry Adams case;
- (iv) MoD assessments of the operation of the Army chain of command; and
- (v) the MoD assessment of the FRU after Nelson's conviction.

The statements made by FRU officers

8.137 In his 2002 statement, A/05 outlined his understanding of the Army chain of command under which he operated. A/05 also made specific reference to the briefing he provided to senior officers regarding Brian Nelson, as follows:

"... throughout my whole term as Commanding Officer I was required to brief the HQNI staff. It was my task to brief the CLF on a monthly basis and the GOC on a slightly less regular basis. In briefing them both I briefed on the important casework and FRU operations in general. This certainly included updates on the Nelson case. Normally present, but not always, was the ACOS G2 or SO1 G2 who were also kept regularly up-to-date by the Ops Officer. In general, of the two senior officers, CLF probably received more detailed briefings because of the frequency of the meetings and he was certainly aware of the UDA/UFF intelligence records that Nelson took over on becoming Intelligence Officer because when they were extracted, he was taken by me to East Det FRU where he examined the documents in my presence and that of FRU officers and handlers." [Emphasis added]⁵⁹

8.138 In his earlier interviews during the Stevens II Investigation, A/05 had noted that his reporting officers in the military chain of command had never raised any concerns about the conduct of FRU operations. He stated that:

"I am not aware that they [GOC/CLF] had any concerns over the control of FRU operations and have no doubt that if they had they would have told me."⁶⁰

8.139 When I met A/05, I explored in greater detail the extent to which these senior officers monitored the Nelson case. A/05 stated that:

"... 'monitoring' is perhaps not the right word. They were briefed by me. The monitoring that was possible was more by the Security Service because they had regular access to the files, and it was their role to keep an eye on that. As far as the CLF and GOC were concerned, they had an enormous amount of other things to worry about. I briefed them on the intelligence and they

⁵⁹ A/05, statement to Stevens III Investigation, 2 December 2002

⁶⁰ A/05, statement to Stevens II Investigation, 8 October 1993

would not normally have involved themselves in the detail of how we went about our business.”⁶¹

8.140 I asked A/05 specifically about the provision in the ‘Instructions’ which stipulated that ACOS G2 must be informed if a source was becoming involved in “*criminality or an area of political sensitivity*”. The transcript of the meeting records the following exchange:

“Chairman: Do you recall, with regard to Nelson, action having been taken, for whatever reason, so that preventative measures could be put in operation, because of the way he [Nelson] was conducting himself?”

A/05: No. I mean, I would have talked to ACOS G2 regularly. We were in constant contact. I would be in his office quite regularly. I don’t remember that was ever an issue.

Chairman: You don’t recall Nelson being an issue, do you mean, in your talks with ACOS G2?

A/05: No, I don’t. We would have discussed matters, I am sure, as we did discuss lots of intelligence. I don’t remember there being any particular issue over Nelson, in which we [were] required to ... ask his permission to go ahead and do things.”⁶²

8.141 The implication of A/05’s evidence to my Review was that the FRU had not sought to inform ACOS G2 in relation to situations in which it appeared that Nelson was becoming involved in criminality.

8.142 I should note that the FRU Operations Officer in post during this period, A/08, observed that he had never raised any concerns about FRU activity with ACOS G2. He told the Stevens III Investigation in 2001 that:

“Ultimately if I saw something that was irregular, against the law or was unsound then I had access to ACOS G2 in HQNI. Now that never happened but that is how the system worked. It was a sort of safety mechanism.” [Emphasis added]⁶³

8.143 The evidence of FRU officers on this point suggests to me that, despite the stipulation in the ‘Instructions’, FRU officers did not have recourse to ACOS G2 in relation to specific targeting activities carried out by Nelson whilst working as a FRU agent.

The statements made by ACOS G2, the CLF and the GOC

8.144 The ACOS G2 during the majority of the period in which Nelson acted as a FRU agent was General A/20. A/20 was ACOS G2 from November 1987 until September 1989, and acknowledged that he was regularly briefed by A/05 on FRU matters during this time. He outlined the reporting chain within the Army as follows:

⁶¹ Transcript of meeting with A/05, 7 September 2012, p. 44

⁶² Ibid., p. 45

⁶³ A/08, statement to Stevens III Investigation, 19 September 2001, pp. 14–15

“FRU is a Force Unit directly under the control of the GOC and CLF, however, as an intelligence agency the CO or his Operations Officer brief me on a daily basis on any matters of specific relevance to Army operations. The CO briefed the CLF on a monthly basis and when possible I attended those monthly briefings. He occasionally briefed the GOC on a one-to-one basis. Normally, any important intelligence on a daily basis I would pass immediately to the CLF and GOC.” [Emphasis added]⁶⁴

8.145 However, A/20 could not recall Nelson, stating that he could not *“specifically recollect agent 6137 or that we had an agent as described in ... [A/05’s] statement”*. He recalled that he was shown MISRs produced by the FRU but that he would not necessarily see all MISRs.

8.146 A/20 stated that he was unaware that agents were engaging in criminal activity, stating that *“we [the Army] would not allow our sources to take part in illegal acts”*. He did, however, make clear that he had had no concerns about the operation of the FRU during his time as ACOS G2. He said:

“In my judgment in the time that I served in the Province I have no cause to suspect the FRU of any malpractice in their dealings with sources and I have the highest regard for ... [A/05] and his men.”⁶⁵

8.147 ACOS G2 reported to the CLF. The CLF from November 1987 to September 1989 was Major General R J Hodges. In his statement to the Stevens I Investigation in 1990, Major General Hodges did recall A/05’s briefing on loyalist paramilitaries. The former CLF stated that:

“I certainly remember that we had penetrated the UDA organisation. I received information from ... [A/05] about the UDA. I cannot remember that that information was based on an Intelligence Officer.”⁶⁶

8.148 Major General Hodges recalled that he was never informed of the name of an agent and would only have been told the source number. He denied all knowledge of agent involvement in criminality, stating that *“It would be unacceptable to task the agent to operate outside the law”*.⁶⁷

8.149 The CLF reported to the GOC, who from June 1988 to August 1990 was General Sir John Waters. He stated in his 1993 statement to Stevens II that:

“... day to day conduct of military affairs at a tactical level was the responsibility of CLF. The commander of the FRU briefed him on the activities of his unit as appropriate but from time to time he also briefed me.

For the vast majority of the time that I was GOC I wasn’t conscious of Nelson as an individual at all. No doubt, sometimes, the briefings I have already mentioned would have alluded to his number.”⁶⁸

⁶⁴ A/20, statement to Stevens I Investigation, 5 December 1990

⁶⁵ Ibid.

⁶⁶ CLF Major General Hodges, statement to Stevens I Investigation, 3 December 1990

⁶⁷ Ibid.

⁶⁸ General Waters, statement to Stevens II Investigation, 25 August 1993

8.150 The statements made by Army officers to the Stevens I Investigation confirm that A/05 was, as he said, providing regular oral briefings on FRU operations to ACOS G2, the CLF and the GOC and that none of the senior officers expressed any concern about the FRU's activities during this period.

8.151 However, the evidence provided by the FRU officers and the senior officers in the Army chain of command suggests that these senior officers did not have detailed knowledge of Nelson's involvement in criminality and would not have been in a position to monitor the case.

ACOS G2's knowledge of Nelson's involvement in the Gerry Adams case

8.152 In Chapter 7 I outlined Brian Nelson's involvement in the conspiracy to murder Gerry Adams in May 1987 and the steps taken by the security forces to frustrate the attack. It is clear from that analysis that ACOS G2 was fully aware of Nelson's direct involvement in the conspiracy and the consequent concerns of the Security Service. The following passage of the Security Service telegram is of particular relevance:

*"[Assistant Secretary Political] has expressed our joint reservations in strong terms to ACOS G2 and CO FRU who have accepted them. ACOS G2 has given a specific instruction that the attempt on Adams must not succeed."*⁶⁹

8.153 I consider that ACOS G2 acted in an entirely proper manner in seeking to ensure that the attack on Adams did not take place. However, as the Security Service recognised at the time, this incident should have served as a clear warning to the Army HQ of the dangers of Brian Nelson's involvement in UDA activity. In the light of the obvious dangers inherent in Nelson's activity, there was an obligation on ACOS G2 and senior officers to ensure that the case was subsequently closely supervised and monitored. In fact, the prediction made by the Security Service officer – namely that Nelson's activity would lead to the State becoming implicated in conspiracy to murder – is precisely what later transpired.

MoD assessments of the operation of the Army chain of command

8.154 MoD documentation seen by my Review tends to support A/05's contention that senior Army officers were indeed briefed on Nelson's activity as a FRU agent.

8.155 The MoD documents show that questions about the command and control of the FRU were considered by the Department in the aftermath of the Panorama programme 'Dirty War', broadcast in June 1992. Advice provided to the Defence Secretary, Tom King MP, on 11 June 1992 effectively acknowledged that the Army HQNI had paid close attention to the Nelson case. The then Head of GS Sec in the MoD noted that:

"... throughout the relevant period the Army agent handling unit was responsible through the ACOS G2 to the CLF and GOC in HQNI: this remains the formal Army chain of command. The handling of Nelson naturally attracted more attention within HQNI than most other agents because of his unusually

⁶⁹ Security Service, telegram, 21 May 1987, para 4 [see Volume II, pp. 302–304]

high ranking position within the UDA, the importance of the intelligence to which this gave him actual or potential access and the difficult judgments involved in handling an agent whose position in the UDA meant that he was bound to be involved with major crime.” [Emphasis added]⁷⁰

- 8.156 This advice was provided by a senior civil servant who had been involved in the detailed discussions regarding Brian Nelson’s prosecution. The MoD’s assessment is of particular interest to my Review because it clearly acknowledges that senior officers in HQNI took a close interest in the Nelson case, partly because of his involvement in serious crime and the difficult judgements this would require.
- 8.157 The reaction of the Army and the MoD to the arrest and prosecution of Brian Nelson and the criminal investigation of members of the FRU has been of particular significance to my Review. Whilst the evidence may suggest that senior officers were not aware of the extent of Nelson’s involvement in criminal activity prior to Stevens I, this investigation and the arrest of Nelson would have brought into sharp relief the seriousness of Nelson’s actions.
- 8.158 The reaction of the Army to the investigation of Nelson and the FRU in fact demonstrates clearly that A/05 was considered by them to have been a valuable officer and that his unit was justified in handling Nelson in the manner that it did.
- 8.159 It is clear that the Army did not believe A/05 to be a maverick officer and felt that the Stevens team and the RUC may have had an ulterior motive in seeking to pursue A/05. Many of the MoD documents relating to the Stevens Investigation imply that the Army feared that the RUC were using Stevens as a pretext to diminish or take over the role of the FRU.
- 8.160 I should also note here that A/05 clearly continued to be held in high regard by the MoD after he left his position as CO of the FRU. He was subsequently promoted and received honours relating to his time in command of the FRU and his later work. It is unlikely, in my view, that A/05’s subsequent career path would have followed this trajectory if the Army and the MoD had regarded him as a maverick operating outside of, or in breach of, Army Directives set by the military chain of command.

The MoD assessment of the FRU after Nelson’s conviction

- 8.161 The MoD records show that the Department was broadly supportive of the FRU’s actions even after Nelson’s conviction in 1992. A submission dated 4 March 1992 gave the following description of the reasons for the prosecution of Nelson:

“The MoD’s belief is that, broadly speaking, the case arose because the formal and independent nature of the Stevens inquiry (and the relative lack of familiarity of its members with law and order practices in Northern Ireland) caused detailed information to be presented to the legal authorities (both the DPP (NI) and the Attorney General) in a manner which left them little option but to pursue it.”⁷¹

⁷⁰ Head of GS Sec to Secretary of State, 11 June 1992

⁷¹ GS Sec, note on Brian Nelson, 4 March 1992

- 8.162 The submission did outline a small number of, largely procedural, lessons to be learned from the Nelson case but does not make any suggestion that the FRU had operated in a way that the MoD, even in retrospect, felt to be unjustifiable.
- 8.163 It is also clear from the advice provided to the Defence Secretary in 1992 that the GOC had specifically considered the allegations against the FRU but had been satisfied with the FRU's conduct. The June 1992 submission, referred to above, included observations regarding the GOC's examination of the Nelson case. The relevant extracts from the submission are as follows:

“When it became clear that the Stevens team was investigating the activities of the UDA gang of which Nelson was a member, and again when it became known that the Stevens team had arrested Nelson, the GOC was briefed. The GOC commissioned his own internal inquiry and was satisfied with the information reported to him. Both then and during subsequent events the GOC has maintained a close interest in the Nelson case, and in the known facts relating both to the crimes with which he was charged and to the media allegations directed against the Army ...

To date, no cause has been found to take any internal action concerning the performance of individual members of the unit involved in the handling of Nelson and the intelligence he provided: the GOC's internal inquiry is relevant here.” [Emphasis added]⁷²

- 8.164 It is worth recalling that, on 11 March 1991, the Attorney General had written to the Defence Secretary stating that he was “*much troubled by the relationship between the Army and Nelson*”.⁷³ Yet a year later, after Brian Nelson had pleaded guilty to conspiracies to murder that had been reported to his handlers at the time, the Army and the MoD had effectively decided that they were satisfied with the FRU's actions.
- 8.165 This is particularly surprising given that, as I outline in this Report, around this time the MoD produced its ‘Problem Areas’ document. Whilst the distribution list for this document cannot be confirmed, those people within the Army structures who read the analysis would have been well aware of the very serious concerns raised by the Nelson case.

Overview

- 8.166 I am satisfied that the re-recruitment of Brian Nelson as a FRU agent and UDA Intelligence Officer was sanctioned by ACOS G2 and the CLF in 1987.
- 8.167 It is difficult to be certain of the extent to which senior Army officers were aware of the details of Nelson's activities. These officers did not receive the CFs; A/05 and the Operations Officer, A/08, have acknowledged that they did not seek authorisation from these officers for Nelson's involvement in criminality; and the officers themselves claimed to have very little knowledge of Nelson when questioned by the Stevens I and II Investigations.

⁷² Head of GS Sec to Secretary of State, 11 June 1992

⁷³ Letter from Attorney General to Secretary of State for Defence, 11 March 1991 [see Volume II, pp. 236–244]

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- 8.168 Nevertheless, it is clear that the then ACOS G2 was aware of the major issues that had arisen in the context of the Gerry Adams case in May 1987 and the concerns of Security Service officers. ACOS G2 should also have been aware of the requirement in the ‘Instructions’ for him to become involved in agent cases involving criminality. The attitude of the Army and the MoD towards the FRU’s handling of Nelson, even after his conviction in 1992, is indicative of, at least, retrospective approval for the FRU’s actions in the Nelson case.
- 8.169 The overall view I have reached is that there is no evidence to suggest that senior Army officers were aware at the material time of the extent to which Nelson was involved in criminality or of Nelson’s enthusiasm for targeting PIRA figures. I do, however, believe that there was a signal failure by the Army to ensure that the chain of command adequately monitored the Nelson case, particularly in the light of the concerns raised by Security Service officers over the targeting of Gerry Adams in 1987.
- 8.170 It is also important to note that, despite the concerns raised by Sir John Stevens and the Attorney General in 1991, the Army and the MoD appeared to be in denial about the implications of the Nelson case. I explore this issue more thoroughly in Chapter 24 when considering the prosecution of Brian Nelson.

The Security Service and the Nelson case

- 8.171 In Chapter 6 I outlined the Security Service’s role with regard to the re-recruitment of Brian Nelson and the resulting dispute with the FRU. In the light of my findings with regard to the FRU’s handling of Brian Nelson, it is necessary to examine the role of the Security Service in this case.
- 8.172 Justice Cory covered this issue briefly in his Report and concluded that the evidence did “*not reveal any collusive acts of the Security Service in carrying out their supervisory role*”.⁷⁴ In view of my broader Terms of Reference, I have undertaken a detailed analysis of the involvement of the Security Service in the Nelson case after his re-recruitment in 1987.

Security Service involvement in FRU operations

- 8.173 Before considering the Security Service’s involvement in the Nelson case, it is necessary to consider the Service’s role in FRU operations generally. The FRU 1986 Directive included the following reference to Security Service supervision of its cases:

*“The overall direction for source coverage within the Province is the responsibility of the Director and Coordinator of Intelligence (DCI), who exercises this responsibility through the various Intelligence Committees. Within HQNI the Assistant Secretary Political (ASP), who is DCI’s representative, is to be kept informed of the status of current sources on a regular basis. In addition, he is the Security Service’s representative, responsible for the maintenance and safekeeping of all FRU source files.”*⁷⁵

⁷⁴ Cory Collusion Inquiry Report, p. 60, para 1.172

⁷⁵ FRU Directive, 1986

8.174 In addition to the DCI and ASP mentioned in the Directive, the Service had an officer working in HQNI known as the Deputy Assistant Secretary Political (DASP). DASP worked in the Army's All-Source Intelligence Cell, which was responsible for the collation and assessment of all Army intelligence.

8.175 The FRU files were also generally described in evidence to my Review as technically the property of the Security Service. A Security Service secretary stationed within the FRU looked after the files. However, it is clear that the secretary performed only an administrative role. In his October 1990 statement to the Stevens I Investigation, the DCI stated that:

*"The Security Service secretary in FRU has no executive function. This officer's duties relate purely to the maintenance of the files."*⁷⁶

8.176 Whilst there is no dispute about the overall framework governing relations between the FRU and the Security Service, there is no consensus between the two organisations as to the Service's awareness of, and responsibility for, the handling of Brian Nelson. I consider below the conflicting statements of FRU and Security Service personnel in turn.

The statements of FRU personnel

8.177 The CO of the FRU, A/05, has consistently maintained that the Security Service supervised the FRU's handling of Brian Nelson. In his 2002 statement, he said that there was "*close monitoring and support of our work by the Security Service*".⁷⁷

8.178 A/05 emphasised that the Security Service retained control over all FRU files and that the ASP and DASP had access to the FRU documentation. He also outlined the regular briefing he provided to the DCI and ASP, as follows:

*"The ASP or DASP always accompanied me when I went once a month to Stormont to brief the Intelligence Co-ordinator on FRU casework. I also recall that the ASP sat in on my regular briefings to CLF. Sadly both the ASP and the Intelligence Co-ordinator are now dead but I must stress that they knew about Nelson's activities, including the intelligence records [the 'intelligence dump'] because I personally briefed them. They also knew of my approach to the application of the Directive and Instructions and they never suggested it was wrong."*⁷⁸

8.179 A/05 stated that the briefings he provided to the DCI and ASP included:

*"... regular updates on Brian Nelson's reporting, including his current access, and activities as well as major case development points ... There was never an occasion when concern was expressed about Nelson's activities."*⁷⁹

⁷⁶ DCI, statement to Stevens I Investigation, 24 October 1990

⁷⁷ A/05, statement to Stevens III Investigation, 2 December 2002

⁷⁸ Ibid., para 67

⁷⁹ Ibid., para 70

8.180 The FRU Operations Officer, effectively the second in command to A/05, provided a similar account of the Security Service's scrutiny of the Nelson case. He stated:

*"... both ASP and DASP had continuous and full access to all intelligence reports produced including CFs and MISRs. This is illustrative of the level of scrutiny to which we were subjected and the further unimpeded access afforded to Security Service staff."*⁸⁰

8.181 The OC of East Det FRU similarly referred to the Security's Service supervision of the Nelson case. He stated that his activities were "*monitored and scrutinised*" by the Security Service.⁸¹

8.182 The former RUC officers I met during the Review provided some support for the FRU's contention on this specific issue. When I asked who would have been aware at the time that Nelson encouraged the targeting of supposedly 'legitimate' PIRA figures, R/15 told me that:

*"... the SyS [Security Service] officer who oversaw FRU would have been in a position to judge whether this was the case."*⁸²

The statements of Security Service personnel

8.183 The two senior Security Service officers tasked with liaison with Army intelligence were the DCI, John Deverell, and the ASP. Both officers are now deceased, though I have had access to the statements they made to the Stevens Investigation. I have also had access to the statement made to the Stevens III Investigation by the DASP.

8.184 The DCI was interviewed by the Stevens I Investigation on 24 October 1990, stressing that:

*"Executive direction of the FRU lies with its commanding officer within the normal military chain of command."*⁸³

8.185 The DCI gave the following account of the briefings provided to him by A/05 on intelligence matters:

*"The briefing would normally take about an hour and would cover some 15 to 20 cases, one of which might be that of Nelson, though not invariably. I was interested in the intelligence product of the case rather than the actual handling details and I was certainly not 'au fait' with day to day details."*⁸⁴

8.186 I have also seen an internal document sent by the DCI to the Service's Legal Adviser in which he commented on A/05's claim that the Service carefully monitored the Nelson case. In the telegram dated 17 October 1990, the DCI said:

⁸⁰ A/08, statement to Stevens III Investigation, 9 July 2002, para 20

⁸¹ A/01, statement to Stevens III Investigation, 8 November 2001

⁸² Note of meeting with retired RUC officers, 25 July 2012, para 99

⁸³ DCI, statement to Stevens I Investigation, 24 October 1990

⁸⁴ Ibid.

“There is an element of truth in this [A/05’s claim] but it is not really an accurate representation of the realities. It would be wrong to say that we had carefully monitored the case; [A/05] was not a man who sought our advice (or that of anyone else). It is however true that ASP and DASP could always see the files if they wanted them and [A/05] did brief me roughly once a month, although 6137 [Nelson] would be only one of about 15 cases – and by no means the most important or significant.”⁸⁵

8.187 The ASP was interviewed by the Stevens Investigation on 31 October 1990. When asked about his involvement in the Nelson case, he stated that:

“I had nothing whatsoever to do with the agent handling, frequency of meets or [Nelson’s] direction and control. All I saw was the MISR I did not see the de-briefing notes, nor did I ever ask to see them.”⁸⁶

8.188 The ASP put forward an argument similar to that of the DCI with regard to the FRU’s responsibility for running its own agents. He commented that:

“I would like to emphasise that the FRU ran their own agents under the command of their own Commanding Officer and I would not have become involved in the running of any agent engaged in unlawful acts.”⁸⁷

8.189 The DASP during the period 1988–89 made a statement to the Stevens III Investigation in 2001. The DASP described her role as acting as a “*conduit between the Service and the Army*”.⁸⁸ The DASP worked for the ASP, though she stated that she had “*no part in the decision making*” relating to the exploitation of Nelson’s intelligence. When recalling her access to FRU documentation on the Nelson case, the DASP stated that:

“I might have seen the contact forms, I can’t remember, I certainly saw most MISRs.”⁸⁹

8.190 Taken together, there is no suggestion in the statements of the Security Service officers that the Service was able to closely monitor or supervise the handling of Brian Nelson in the manner implied by the statements of FRU personnel. In a submission to my Review, the Security Service also disputed the contention that they were in a position to supervise the Nelson case. The Service stated that:

“We do not agree with the account given by [A/05] in his statement to John Stevens. To state that the Security Service had a ‘supervisory’ role suggests that ASP was able to exercise a degree of command and control over CO FRU. This is simply not the case. Although ASP, and his deputy, could advise the FRU, they were in no way able to dictate to them how they ran their agents.”⁹⁰

⁸⁵ DCI, telegram, 17 October 1990

⁸⁶ ASP, statement to Stevens I Investigation, 31 October 1990

⁸⁷ Ibid.

⁸⁸ DASP, statement to Stevens III Investigation, 9 February 2001, para 1

⁸⁹ Ibid., para 2

⁹⁰ Security Service, submission to the Review, 10 October 2012

8.191 In order to resolve this issue, I have examined the documentary evidence relating to the Service's awareness of Brian Nelson's activities after his re-recruitment in early 1987.

How involved were the Security Service in the Nelson case?

8.192 The documentary evidence held by the FRU and the Security Service enables me to establish the Service's involvement in the Nelson case between May 1987 and the start of the Stevens I Investigation. I am satisfied that both the FRU and the Service kept detailed and reliable records, which enables me to have a high degree of confidence that the Service involvement in this case is captured in the documentary evidence.

8.193 In view of the position taken up by the FRU that the Security Service had access to all CFs and was thus well placed to supervise the activities of Brian Nelson, I asked the Service to conduct a search of their records for evidence of CFs being copied to the Service.

8.194 The Security Service provided my Review with a submission in relation to the extent to which CFs were received by the Service during Nelson's time as an agent. The Service stated that their records suggest that they received only nine CFs relating to Nelson, all of which dated from the period 1985–86. Copies of all these CFs were received by my Review. The Service stated that:

"These [CFs] represent the total number of CFs held on Nelson's personal file. The Security Service would only have received CFs where they had agreed with the FRU that an operational interest existed. For example, all the CFs on 6137's Security Service file relate to the Service's lead responsibility to investigate the acquisition of arms overseas, and to the period when Nelson was in Germany and there was a possibility that this Service would take the case over. The Security Service 6137 file contains no CFs following the decision to permit the Army to run him as an agent in place in 1987.

*Had the Service received other CFs relating to 6137, we would have expected to find them on Nelson's file. The fact that the file contains no further CFs strongly indicates that we were not sent others and were certainly not in routine receipt of them."*⁹¹

8.195 I accept that the Service did not routinely receive CFs on the Nelson case in the same manner that senior officers within the FRU structure undoubtedly did. However, I consider below the documentary evidence of occasions on which Service officers became involved in detailed discussions about Brian Nelson during the period 1987–89.

The Security Service and the Gerry Adams case

8.196 I outlined in Chapter 7 the role of Brian Nelson in a conspiracy to murder Gerry Adams in May 1987. The Adams case is of critical importance in seeking to understand the Security Service's involvement in, and attitude towards, the handling of Brian Nelson.

⁹¹ Ibid.

- 8.197 The Head of the Service's agent-running station in Northern Ireland sent a telegram to F8 in London on 21 May 1987 outlining Nelson's role in the conspiracy to murder Gerry Adams. The crucial section of this telegram is quoted below:

*"We [Security Service officers] have discussed this extensively with [ASP] who shares our view that the operation threatens to get out of control. At the very least if 6137 is to be tasked by the UDA with a range of projects against high profile republican targets and is expected to take an active part in their execution he will inevitably be blown very quickly for precious little intelligence dividend and considerable expenditure of time and money by the Army. At the worst, if the attempt on Adams is to be repeated particularly before the General Election and 6137's involvement in ... plus his links to the Army were to get into the public domain in some way ... then British Intelligence and HMG [Her Majesty's Government] could face accusations of having conspired in the murder of a prospective MP with all the attendant adverse consequences."*⁹²

- 8.198 The telegram shows that both the Head of the Service's operational section and the ASP were directly involved in the discussions about the Adams case. The telegram also records that:

*"DCI is also in the picture and we are confident that the situation is for the moment contained."*⁹³

- 8.199 F8 in the London office responded to this telegram by stating that:

*"We are quite certain that this operation, if it is not to go off the rails, should be run by ourselves."*⁹⁴

- 8.200 The same memo noted the Service's plans to provide further guidance to the FRU on this case, though F Branch noted that *"we doubt whether a whole series of briefings would have the slightest effect"*.⁹⁵

- 8.201 A/05 commented on this document in his meeting with me on 7 September 2012:

*"I think overall, to my mind, this [the Security Service memo] is a very useful document because it shows or demonstrates very clearly the supervisory role that was played by them, when required."*⁹⁶

- 8.202 In my view, this telegram is important in two respects. The first is that it confirms that the Service were anxious to avoid Nelson's involvement in criminal offences and to prevent the UDA from murdering a high-profile republican. The second important implication of this telegram, however, is that it was clearly apparent to senior Service officers by May 1987 that the Nelson case was on the verge of being *"out of control"*. In view of the DCI's responsibility for the *"overall direction"* of intelligence activity, the Service should, in my view, have sought to subsequently monitor the case as closely as it was possible for them to do.

⁹² Security Service telegram, 21 May 1987 [see Volume II, pp. 302–304]

⁹³ Ibid.

⁹⁴ F8 to Head of agent-running section, 27 May 1987

⁹⁵ Ibid.

⁹⁶ Transcript of meeting with A/05, 7 September 2012, p. 27

Subsequent Security Service liaison with the FRU

8.203 Shortly after Nelson's return to Belfast, the Service began to receive its own intelligence indicating that Nelson was likely to be an active and effective Intelligence Officer for the UDA. One intelligence report in May 1987 outlined the likelihood that Nelson would be "*principally involved in the targeting of leading republicans in Belfast*".⁹⁷ The report noted that a UDA member had made the following assessment of Nelson:

*"Nelson is intelligent and effective and should make a significant contribution to the UDA's military capabilities."*⁹⁸

8.204 A further Service note on 10 July 1987 sent to F8 and the Assessments Group stated that such reports:

*"... highlight the danger of 6137 being uselessly and unprofitably drawn into UFF operations, thereby endangering any future career as a source of high-level strategic intelligence on the UDA."*⁹⁹

8.205 When considered in conjunction with the concern over the Gerry Adams conspiracy, it is clear that the Security Service were aware in 1987 that Brian Nelson would be directly involved in carrying out targeting for the UDA.

8.206 The documentation shows that the Service tasked Nelson via the FRU to provide answers to a series of questions and received intelligence back from the FRU during the summer of 1987. As appears to have been the case in most of their operations, the Service were mainly concerned with receiving and analysing high-level strategic intelligence rather than tactical intelligence relating to the day-by-day plans of terrorist groups. The Service also appear to have continued to maintain their interest in either taking over the running of Nelson or handling him jointly with the Army.

8.207 There is no evidence of any Service guidance or direction during the period from October 1987 until the summer of 1988. A later telegram produced on 1 June 1990 did, however, allude to Security Service concerns about Nelson during this period. The telegram stated that, prior to a Service officer meeting Nelson in June 1988:

*"... doubts about the direction of the case persisted and grew and [Security Service] and RUC intelligence began to suggest that [Nelson] might be fabricating or withholding intelligence."*¹⁰⁰

8.208 There is no documentation to indicate why the Service and the RUC believed that Nelson was withholding intelligence. There is also no evidence to suggest that either the Service or the RUC ever communicated these concerns to the FRU.

⁹⁷ Security Service telegram, May 1987

⁹⁸ Ibid.

⁹⁹ Security Service telegram, 10 July 1987

¹⁰⁰ Security Service telegram, 1 June 1990, para 6

The June 1988 debrief with a Security Service officer

8.209 On 27 June 1988 a Security Service officer met Brian Nelson along with the OC of East Det FRU and two handlers. This meeting is significant because it appears to have been the last direct engagement by the Service with the Nelson case for a period of nearly a year.

8.210 The notes of the meeting show that the Service officer debriefed Nelson at length about more strategic issues relating to the UDA and its future direction, as opposed to the tactical detail on UDA targeting that tended to be the focus of FRU debriefing.

8.211 The note of the meeting sent by the officer to G8 included a particularly significant assessment of Nelson and the FRU. The officer stated that:

“Since May 1987 FRU have clearly managed to establish control over the case and there no longer appears to be any pressing need for us to volunteer to take over running the case ... In addition FRU admitted that 6137 was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of ‘justifiable’ actions, and to an extent he may attempt to use his agent role to gain intelligence from FRU. This confirms DHSB’s comments that 6137 has sometimes been caught out by RUC information ... which contradicts his own.”¹⁰¹

8.212 There is, in my view, an inherent contradiction within this assessment. The FRU’s admission that Nelson did not necessarily provide details of ‘justifiable’ actions and attempted to get intelligence from the FRU is, on the face of it, indicative of a serious problem with the running of the agent. This admission is entirely consistent with the wider evidence examined as part of this Review, which demonstrates that Nelson was motivated by a desire to focus UDA targeting on ‘legitimate’ republican figures. In this context, it is surprising that the officer was able to conclude that the FRU had “*clearly managed to establish control over the case*”.¹⁰²

8.213 In the light of the Gerry Adams case referred to above, I believe that the FRU’s comments about Nelson’s character and behaviour should have been a cause for serious concern. Whilst the Service were undoubtedly right to want to avoid taking Nelson on as an agent in view of this revelation, there does not appear to have been any consideration given as to whether to seek to advise the FRU to exercise greater control of Nelson’s activities in any way.

Further contact between the Service and the FRU over Nelson

8.214 The Service appear to have become actively involved in the Nelson case again only after Colour Sergeant A/10 became Nelson’s handler in April 1989. The CFs during this period suggest that the FRU were at this stage actively seeking the guidance and advice of ASP and the Service with regard to the running of Nelson. The two examples below illustrate the FRU’s desire to seek advice from the Service in the summer of 1989.

¹⁰¹ Security Service telegram, 11 July 1988 [see Volume II, p. 305]

¹⁰² Ibid.

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- 8.215 In the CF dated 13 June 1989, the OC of East Det FRU noted that:
- “6137 has successfully completed his tasking to befriend [L/28]. The direction of this case was discussed some months ago with ASP and further discussions are now overdue.”*¹⁰³
- 8.216 On 18 July 1989, the OC of East Det FRU again commented that:
- “... to obtain maximum benefit from this highly placed source, another meeting with ASP is strongly recommended for the near future in order to execute a co-ordinated plan.”*¹⁰⁴
- 8.217 It is clear that some form of consultation with the Service took place during the spring or summer of 1989. In a note dated 9 January 1992 the then Head of the Service’s Northern Ireland agent-running station stated that:
- “... from recollection, it was very informal. There is no write up of it – but I recall we had nothing to offer as we had been unsighted in the case for the previous two years.”*¹⁰⁵
- 8.218 As I noted in Chapter 7, I am satisfied that the handling of Nelson changed significantly after April 1989. The desire on the part of the FRU to seek Security Service guidance on the case during this period is also consistent with this change.
- 8.219 The documents also show that the Service became directly involved in discussions with the FRU about UDA plans to intimidate witnesses in August 1989. A note from the Service’s operational section dated 15 August 1989 recorded a discussion with the FRU about the UDA’s plan to intimidate witnesses appearing at a forthcoming racketeering trial. The note stated that:
- “6137’s FRU handlers are as keen as we to prevent their source being compromised by possible involvement in a criminal act.”*¹⁰⁶
- 8.220 In order to encourage Nelson to recover threatening material that the UDA were believed to be planning to send to witnesses, the Service offered Nelson via the FRU a £500 reward if he was able to retrieve the material. This was undoubtedly a positive intervention on the part of the Service to seek to prevent the commission of a criminal offence and to frustrate the UDA’s planned intimidation of witnesses.

Overview

- 8.221 Although the Service were undoubtedly aware that Nelson was targeting republicans, there is no evidence to suggest that Service officers had necessarily read the CFs that would have demonstrated Nelson’s enthusiasm for attacking such individuals (see Chapter 7). I have found only two occasions on which the Service became actively involved in discussions as to the exploitation of Nelson’s intelligence; in both cases, the evidence shows that Service officers sought to frustrate the UDA’s plan to commit criminal offences.

¹⁰³ CF 13 June 1989, Additional Information, Item 12a

¹⁰⁴ CF 18 July 1989

¹⁰⁵ Security Service telegram, 9 January 1992

¹⁰⁶ Security Service telegram, 15 August 1989

- 8.222 However, whilst I accept that the Service did not have an executive role in the handling of Nelson, I must also consider how they carried out their co-ordinating and advisory duties. This must be considered in the light of the Service's correct assessment in May 1987 that there were major flaws in the FRU's approach to Nelson; the fact that they received intelligence in the summer of 1987 highlighting the possibility that Nelson could add to the UDA's military capability; and the comments made by FRU personnel to a Service officer in June 1988 indicating that Nelson had an inappropriate degree of enthusiasm for carrying out "*justifiable*" UDA targeting.
- 8.223 I have taken into account the channels available to the Service through which they could monitor the case and provide advice and guidance. In view of these circumstances, whilst I agree with Justice Cory that there is an absence of evidence to reveal any collusive acts on the part of the Security Service in carrying out its role in this respect, I have reached the conclusion that the Service failed to carry out its advisory and co-ordinating duties adequately in the Nelson case.

Chapter 9: The response of the RUC to threat intelligence

- 9.1 My findings in relation to the Royal Ulster Constabulary's (RUC's) failure to exploit Brian Nelson's intelligence have raised fundamental questions about the approach of the police to threat intelligence. I have, therefore, conducted a full analysis of the RUC's approach to intelligence indicating that specific individuals were under threat from loyalists during the period 1987–89.

Threat intelligence and Article 2

- 9.2 I consider 'threat intelligence' to include all information received by the intelligence agencies indicating that a specific individual was under threat of harm. The agencies also received more generalised intelligence indicating threats to property or categories of individual, though I have not sought to analyse the exploitation of this type of intelligence.
- 9.3 In many cases, the receipt of specific threat intelligence would, in my view, have had the potential to engage the State's obligations to protect the right to life of its citizens codified in Article 2 of the European Convention on Human Rights (ECHR) (see Chapter 1). Whilst it was not until the entry into force of the Human Rights Act 1998 that the ECHR was incorporated into domestic law, the United Kingdom, as a signatory to the 1950 Convention, has been bound in international law since 1953 to ensure that Convention rights are not breached.
- 9.4 The obligations set out in the ECHR do not stipulate or imply that the State should follow a particular course of action in responding to threat intelligence. The manner in which such intelligence is exploited must necessarily be an operational decision taken by the authorities on a case by case basis. There may even be circumstances in which, even after the Article 2 rights of the individual under threat are weighed in the balance, it is not possible to take any executive action to exploit such intelligence. Nonetheless, I am firmly of the view that the State had an obligation to consider its Article 2 responsibilities when determining how to respond to such intelligence.

The RUC and threat intelligence in the period 1987–89

- 9.5 The RUC policy in relation to threat intelligence was set out in a Force Order issued in 1986. The Force Order, 33/86, was titled 'Threats against the lives of members of the security forces, VIPs or other individuals'. It set out a series of procedures to be followed in the event of threats to different categories of people. As loyalists only rarely targeted members of the security forces or VIPs,

most of their targeting would have come within the category of threats to ‘other individuals’. The Force Order stipulated that in such cases:

“Local SB [Special Branch] concerned will inform the sub-divisional commander in whose area the subject resides/works and the SDC [Senior District Commander] will take whatever action he considers necessary.”¹

9.6 The Force Order had a separate section dealing with ‘imminent’ attacks. This section stipulated that:

“If the information received indicates that an attack on any person is imminent, the member receiving the information will immediately take all necessary action to inform the person at risk.”²

The options for exploiting threat intelligence

9.7 Although the Force Order referred only to the need to warn individuals of the threat against them, in practice there were a number of options available to the RUC when deciding how to exploit threat intelligence to protect those whose lives were in danger. The range of options available to the RUC included the following:

- (i) Warning an individual that their life was under threat from paramilitaries (as stipulated by the Force Order with respect to ‘imminent’ attacks): Such a warning would often be accompanied by advice from the RUC about the individual’s personal security. This would enable the individual under threat to take their own steps potentially to reduce the risk of paramilitaries being able to attack them.
- (ii) Physical security measures: The UK Government ran a scheme to provide specific physical security measures at the homes of prominent figures such as politicians or members of the judiciary. There were also provisions for members of the security forces to be provided with new emergency accommodation if they were forced to move home because of a paramilitary threat against them. In other cases, where home security measures were not an option, police patrols might be stepped up around the home of the individual under threat and advice could be given to the individual to install their own measures.
- (iii) Disruption by the security forces: The suspected hit team could be placed under human or technical surveillance. The RUC could also carry out pre-emptive arrests to disrupt the attack. If the timing and location of the attack was known, then the target area could be flooded with security forces to force the hit team to abort the attempt. My Review has also seen other examples of elaborate, and at times ingenious, methods of disruption employed by the intelligence agencies to prevent attacks whilst leaving the terrorist groups entirely unaware of how they had been thwarted (and thereby protecting the cover of agents).

¹ RUC Force Order 33/86, para 2.6

² *Ibid.*, para 3

The difficulties of exploiting threat intelligence in the 1980s

9.8 Senior RUC officers stressed to my Review the difficulties they faced in seeking to exploit threat intelligence in the 1980s in Northern Ireland. R/15 told me that:

“... it needed to be appreciated that threats were a daily occurrence in Northern Ireland at the time. SB had to focus on what were assessed to be real and immediate threats, and decide on the appropriate action to be taken. Amongst other things, they would have to consider the likely reaction that an individual could have on being informed of a threat against them. The RUC could have protected itself by warning everyone against whom even the vaguest of threats might have been made, but this would not have been responsible policing in an environment in which pressure was commonly brought to bear on people in the community for a variety of reasons, not all of them paramilitary in nature. The police therefore had to sift threat intelligence to determine which ones were real, using their internal knowledge of the organisations involved.”³

9.9 I do take these considerations into account in reaching my conclusions. I am mindful of the need to recognise the limitations of the authorities in seeking to deal with threat intelligence. Prior knowledge of a threat to an individual does not necessarily mean that the State can be expected to prevent that individual from being attacked. It is, however, reasonable to expect the authorities to take proportionate and appropriate steps to seek to reduce the risk to an individual under serious threat.

9.10 The need to protect sources of intelligence in Northern Ireland was certainly of critical importance during the Troubles. The torture and execution of a number of alleged informers by both republican and loyalist paramilitaries is powerful evidence of the dangers that such individuals faced. The safety of agents was rightly taken into consideration when deciding how to exploit threat intelligence.

9.11 I also recognise that many of the most well-known republican and loyalist paramilitaries were undoubtedly alert to the fact that they were potential targets for terrorist attack. By the late 1980s many paramilitaries had installed security doors and alarms at their homes to provide a degree of protection. Some members of these organisations would move house regularly or register vehicles at different addresses to seek to avoid surveillance by the security forces or an opposing terrorist group.

9.12 The RUC would clearly have faced difficulties in seeking to protect such paramilitaries. I am under no illusion that some of the senior PIRA figures referred to in this Report would have had any interest in receiving advice on their personal security from RUC officers in the context of the late 1980s in Northern Ireland. The reality is that PIRA at that time were murdering police officers and conspiring to murder many more.

³Note of meeting with former RUC officers, 25 July 2012, para 82

- 9.13 Whilst I accept the difficulties faced by the RUC in this respect, there is one critical qualification that I must add. I approach this subject from the starting point that the obligations upon the State to protect the right to life of its citizens apply universally. The law makes no distinction between the right to life of an individual actively engaged in terrorism; someone leading a normal, law-abiding life; or indeed an agent providing information to the security forces. However difficult it may have been, the reality is that police officers in Northern Ireland were charged with the task of protecting the lives of individuals who were, in some instances, themselves seeking to murder security force personnel.
- 9.14 Where the protection of individuals under threat may have had implications for the safety of a source of intelligence, then the competing Article 2 rights of each of those concerned should have been carefully weighed in the balance. There was, and is, no legal basis for determining that the right to life of an agent must be given overriding priority over the right to life of an individual under threat, even though it could be argued that protecting the cover of an agent in a specific instance may lead to the saving of more lives at a later date.

The response to threat intelligence in practice: the Threat Book

- 9.15 In the Greater Belfast area, the RUC Source Unit collated a Threat Book recording intelligence relating to specific threats to individuals.⁴ This was a hard-bound document held in the Source Unit. The Threat Book was obtained by the Stevens III Investigation and covers the period April 1987 to October 1991.
- 9.16 There was no official RUC policy dictating that officers should record threats in the Threat Book. In practice, however, in many cases in which the RUC were considering taking action as a result of threat intelligence, there appears to have been a note made of this fact in the Book.
- 9.17 The Threat Book contained details of the ‘threat’, the source of the intelligence, the date of the threat, and the ‘result’. The ‘results’ vary in their content but, with only one or two exceptions where no information was known about the target, action of some description was taken as a result of the threat intelligence. The Book would often note that Force Order 33/86 had been complied with in the handling of the threat intelligence.
- 9.18 Justice Cory and Sir John Stevens both examined the Threat Book in the course of their investigations. Justice Cory stated that the Book indicated:

“... that SB rarely took any steps to document threats or prevent attacks by the UDA [Ulster Defence Association], whereas pro-active steps were routinely taken in connection with PIRA [Provisional Irish Republican Army] and other Republican threats. The failure to issue warnings to persons targeted by the UDA often led to tragic consequences. This is indicative of attitudes within RUC SB. It also constitutes a pattern of conduct that could be equated with collusive behaviour.”⁵

⁴ RUC SB Source Unit, Threat Book, April 1987 to October 1991

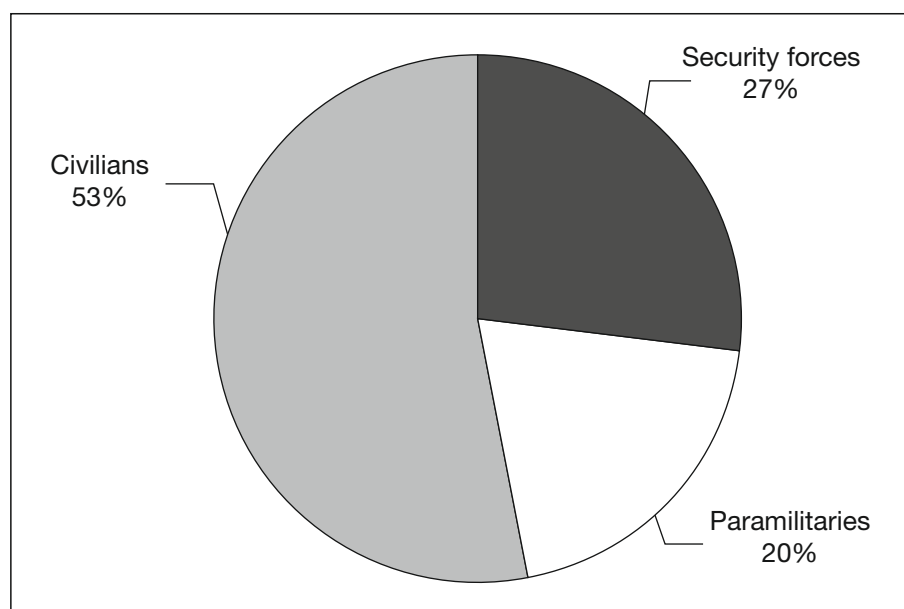
⁵ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 105, para 1.292(c)

- 9.19 Sir John Stevens, in his 'Overview and Recommendations' Report published in 2003, noted that:

*"A further aspect of my Enquiry was how the RUC dealt with threat intelligence. This included examination and analysis of RUC records to determine whether both sides of the community were dealt with in equal measure. They were not."*⁶

- 9.20 Before seeking to analyse the Threat Book, I have sought to analyse the context in which it was produced. Between 1987 and 1989, 55% of paramilitary murders in Belfast were committed by republican groups, whilst 45% were committed by loyalists.⁷ Most of those killed were civilians. Figure 6 outlines the 'status' of those murdered in Belfast during this period.

Figure 6: Status of murder victims in Belfast, 1987–89



- 9.21 It is important to note that, on the basis of the number of murders committed, one would expect the Threat Book to reflect the somewhat higher threat level posed by republican paramilitaries in the Belfast area.
- 9.22 There are other factors I must also consider: PIRA and other republican organisations used Belfast as a base from which to plot murders and attacks elsewhere in Northern Ireland. Loyalists also did this but, as far as I can ascertain, were perhaps more focused on carrying out attacks in their local area. As a result, one might again expect the Threat Book to show an additional bias towards republican threats because of the greater propensity of PIRA to hatch conspiracies in Belfast to murder people elsewhere. Agent penetration is

⁶ Stevens III Investigation, *Overview and Recommendations*, 2003, p. 11, para 2.18

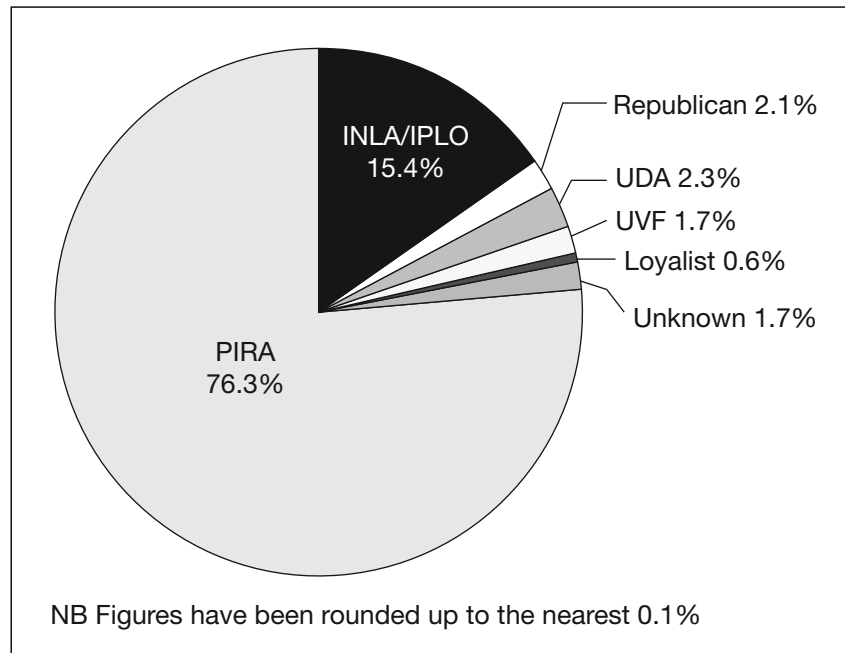
⁷ Cain (Conflict Archive on the Internet) website, Sutton Index of Deaths (to the nearest percentile). The figures in *Lost Lives* (David McKittrick et al., Mainstream Publishing, 2004) suggest that 53% of murders in Belfast during this period were committed by republicans compared with 47% by loyalists. Small differences in such figures might be attributable to the difficulty in classifying where some murders were actually committed.

another potential variable, though both republican and loyalist organisations in the Belfast area were penetrated to a significant extent and I do not believe that I can draw any firm inferences from this consideration.

Summary of the contents of the Threat Book

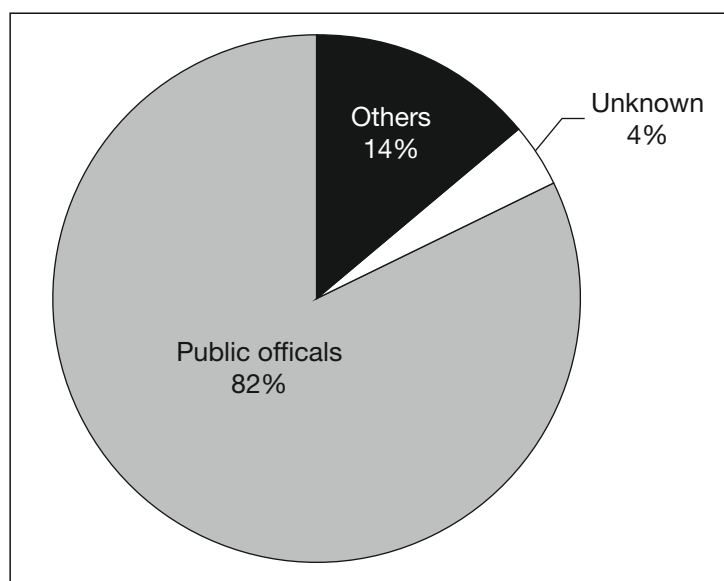
9.23 Figure 7 details the paramilitary threats recorded in the Threat Book during the relevant period for this Review, 1987–89:

Figure 7: Origin of recorded threats, 1987–89



9.24 It is clear that the threats recorded in the Book were focused overwhelmingly on those originating from republican paramilitaries. In numerical terms, the Book recorded 730 instances of republican paramilitary threats to targeted individuals, but only 36 instances of such threats from loyalists.

9.25 As a result of the very high level of recorded threats originating from republican paramilitary organisations, the individuals recorded in the Threat Book tended to be largely what could be broadly classified as ‘public officials’. In Figure 8, the category ‘Public officials’ includes members of the security forces, the judiciary, civil servants, prison service personnel and politicians. The category ‘Others’ includes civilians and paramilitaries.

Figure 8: Targets of recorded threats, 1987–89

- 9.26 The significance of a threat being recorded in the Threat Book was that the vast majority of such threats appear to have been acted upon.

Additional information provided by the Police Service of Northern Ireland

- 9.27 In their submission to this Review, the Police Service of Northern Ireland (PSNI) provided me with an additional document, similar in structure to the Threat Book discussed above, but covering the threat intelligence received across the whole of Northern Ireland between January 1988 and December 1989.⁸ Once again, this book provided a record of threats made, who they were against and the origin of the threat. As with the Belfast-specific Threat Book, many of the records note what action was taken as a result of the intelligence.
- 9.28 It is important to note the context in which this Northern Ireland-wide document was produced. In 1988–89, republicans were responsible for 126 deaths, whilst loyalists were responsible for 42. As was the case in Belfast, across Northern Ireland as a whole most of those murdered during this period were civilians (43%), although a larger proportion of victims were members of the security forces (42%) than in Belfast, with paramilitaries making up 14% of those killed.⁹
- 9.29 The records provided by the Northern Ireland-wide threats document illustrate the same pattern shown by the Belfast Threat Book. Of the threats that it recorded, 85% were from republican paramilitaries, 4% were from loyalist paramilitaries and the remaining 11% originated from unknown or unspecified groups.¹⁰

⁸ PSNI submission to the Review, 6 September 2012, Appendix

⁹ Figures from *Lost Lives*

¹⁰ PSNI submission to the Review, 6 September 2012, Appendix

9.30 As a result of the overwhelming focus on republican targeting activity, most of those under threat were recorded as being members of the security forces. Surprisingly, many of the recorded instances of loyalist targeting referred to threats to members of the security forces. In this particular document, 70% of the known targets of recorded loyalist threats were members of the security forces. In fact, as is evident from Chapter 7, the vast majority of loyalist targeting during this period was focused against republican paramilitaries, and not members of the security forces.

Other sources of evidence on threat intelligence

9.31 Although the Threat Book is an important source of evidence, I have nevertheless sought to examine all the other material available to me to determine whether the RUC may have been taking action in order to protect individuals known to be targeted by loyalist paramilitaries.

9.32 In Chapter 7 I recorded two such examples of exploitative action taken by the RUC, in the cases of Gerry Adams and T/02. In both cases, the Force Research Unit (FRU) transmitted intelligence directly to the Tasking and Co-ordinating Group (TCG) rather than to the RUC SB Source Unit in the form of Military Intelligence Source Reports (MISRs). It is therefore understandable that the Source Unit would not have recorded such information in the Threat Book. I have also found one example of the RUC taking action to protect an individual who had provided information to the police – this was not recorded in the Threat Book, presumably for source protection reasons. Beyond this, however, I can find no other examples of the RUC taking action on threat intelligence and not recording this fact in the Threat Book.

9.33 I also sought to establish if Security Service records might reveal whether the RUC SB were taking further action to mitigate the threat against those being targeted by loyalist paramilitaries. The Service has, however, confirmed in its submissions to my Review that it has no record of the RUC SB having taken any executive action as a result of Service intelligence to protect individuals being targeted by loyalist paramilitaries during the period 1987–89.¹¹ It should be acknowledged that the Service received a significant amount of threat intelligence relating to loyalist targeting and would have expected the RUC SB to consult them if they had decided to take any exploitative action as a result of this. The fact that the Service has no record of any such action being taken during this period consequently strikes me as an important factor which must be taken into account when considering this wider issue.

9.34 It seems clear to me, therefore, that the Threat Book does reflect the overall position: the RUC were taking, comparatively, very little exploitative action as a result of threat intelligence relating to loyalist targeting.

¹¹ Security Service letter to the Review, 13 July 2012

Special Branch explanations for the focus on republican targeting

9.35 As I have noted at paragraph 9.22, one would expect the Threat Book to show a disproportionate weighting towards republican threats, given the greater threat level that PIRA in particular posed. This consideration cannot, however, explain the overwhelming focus of the Threat Book on republican targeting. As Chapter 7 demonstrates, loyalist paramilitaries were clearly actively targeting a number of individuals during this period and were ‘succeeding’ on occasions in carrying out attacks and murders.

9.36 A number of RUC SB officers were questioned during the Stevens III Investigation regarding the focus on republican targeting in the Threat Book. A range of different reasons were put forward by the officers for this. Detective Chief Inspector (D/CI) R/10, who was Head of the RUC Source Unit in the period 1986–89, stated that the Book was designed to deal only with threats to public officials. He stated that:

“Because the Threat Book deals generally with threats against Public Officials, the sources of intelligence tended to come from Republican Sources.”¹²

9.37 D/CI R/10 claimed that a separate book existed which recorded threats made against civilians. No other officers, however, recalled the existence of a second book. D/CI R/11, who took over as Head of the Source Unit in May 1989, stated that:

“To the best of my knowledge there was only one book covering the period from April 1987 to October 1991.”¹³

9.38 The Stevens III Investigation was not able to find a second book and I have similarly been unable to find any evidence that such a document existed. The Threat Book itself did, indeed, on occasion outline the targeting of civilians, which makes the existence of a separate second book dedicated to the targeting of civilians seem unlikely. In view of this, and the statement made by D/CI R/11, I am satisfied that there was only one Threat Book used by the Source Unit in the period 1987–89.

9.39 Another potential explanation put forward by former senior SB officers in their submission to my Review was the nature of UDA targeting. R/15 stated that:

“... it was necessary to look beyond the threats book itself. UDA/UVF [Ulster Volunteer Force] activity involved a lot of talking, and intelligence received about it would have to be assessed to ensure that its value was not being inflated above its true worth. If the assessment was made that intelligence received about a threat did not in fact disclose a real and immediate danger to anyone then the question would have to be asked whether the threat in question needed to be entered in the Threats Book.”¹⁴

¹² D/CI R/10, statement to Stevens III Investigation, p. 2

¹³ D/CI R/11, statement to Stevens III Investigation, p. 1

¹⁴ Note of meeting with former RUC officers, 25 July 2012, para 86

- 9.40 The PSNI also made reference to the nature of UDA targeting in its submission to my Review. The PSNI stated that, in comparison to republican paramilitary organisations, loyalists “*often carried out spontaneous acts of terrorism without preparation, planning, intelligence or targeting*”. This made loyalists “*more difficult to counter from a police perspective*”.¹⁵
- 9.41 The UDA held details on thousands of nationalists and republicans, many of whom it never actively targeted and who could not therefore be described as being under immediate threat. I also accept that some loyalist operations could be mounted in a spontaneous fashion. However, as Chapter 8 showed, agents such as Brian Nelson were able to supply intelligence on detailed UDA targeting, which, in my view, on many occasions clearly indicated a very serious threat to the life of the individual being targeted.
- 9.42 It is certainly true that during the early 1990s, loyalists were carrying out a number of spontaneous killings of randomly selected Catholics. However, during Nelson’s time as an Intelligence Officer in the late 1980s the position was different. Nelson adopted a similar detailed targeting approach to that which seems to have been used by PIRA. In this context it is extremely surprising that none of the individuals being targeted by Nelson was recorded in the Threat Book.
- 9.43 In view of the number of attacks mounted by the UDA during this period, a sample of which are outlined in Chapter 7, I am not persuaded that the nature of their targeting can explain or justify the overwhelming focus on republican threats.
- 9.44 Having discounted explanations that I do not believe can persuasively account for the disproportionate focus on republican targeting, I am drawn to two remaining factors that, in my view, account for the lack of executive action taken in response to loyalist threats:
- (i) agent protection and the perceived implications of warning paramilitaries; and
 - (ii) the paramilitary ‘traces’ of those under threat.

Agent protection and warnings

- 9.45 In Chapter 16 I note that the SB’s and the Security Service’s rationale for not warning Patrick Finucane of a threat to his life in 1981 was that it was “*very unlikely that Finucane could be trusted to keep his own counsel*”. If Patrick Finucane chose to publicise the threat against him, the RUC SB and the Service were concerned that the agent would be put in grave danger. I believe it is likely that this was a common theme influencing decisions as to whether or not to provide warnings to individuals being targeted by loyalist paramilitaries.
- 9.46 The former RUC officers whom I met stressed the potential danger to sources in the event that threat warnings were subsequently publicised. When speaking to me about the Nelson case, R/15 noted that:

¹⁵ PSNI submission to the Review, pp. 13 and 17

“Nelson’s handlers would have been aware that warnings issued consistently on the strength of his intelligence would ultimately expose him to danger.”¹⁶

- 9.47 The records of all the relevant intelligence agencies – the FRU, the RUC SB and the Security Service – consistently show the very high priority placed on source protection and a widespread concern about the implications of taking exploitative action (such as providing warnings to targets) for the safety of the source.
- 9.48 It seems to me likely that the overriding priority given to source protection by the intelligence agencies did result in a reluctance to warn individuals considered not to be ‘trustworthy’. This inevitably resulted in an unequal treatment with regard to threat intelligence. Whilst members of the security forces and VIPs received warnings, many republicans targeted by loyalists may not have been considered to be sufficiently trustworthy to receive such warnings. The intelligence agencies feared that such individuals would publicise threat warnings and thereby endanger their source.

The paramilitary ‘traces’ of those under threat

- 9.49 I am also satisfied that threat intelligence was often handled differently depending on whether the individual being targeted had a paramilitary ‘trace’. This is a persistent theme evident in documents dating back to the late 1970s.
- 9.50 As an example, Security Service memos relating to loyalist targeting of a republican in 1978 reflect the consideration given to the paramilitary links of the target. One telegram referred specifically to the possible reaction of the RUC SB to the exploitation of this intelligence by noting that:

“On past form HSB [Head of Special Branch] is unlikely to trip over himself in his anxiety to safeguard an unpleasant high ranking PSF [Provisional Sinn Fein] member who has been a thorn in the side of the SF [security forces] for years.”¹⁷

- 9.51 This document sets out, in manifestly clear and unambiguous terms, a reported attitude within the RUC SB in relation to threat intelligence. As this comment was included in a Security Service document, I discussed this case with G/07 during the course of this Review. G/07 acknowledged that he found this quotation a “startling form of words”.¹⁸ I had the following exchange with G/07 on this issue:

“Chairman: But I think you would be the first to agree that this is a very unhappy and alarming attitude to find manifesting itself, in the way in which it does.

[G/07]: Yes.

Chairman: And it would be totally consistent with doing nothing in the case of certain people, whose cases we have looked at, who

¹⁶ Note of meeting with former RUC officers, 25 July 2012, para 102

¹⁷ Security Service telegram, 2 May 1978, para 4

¹⁸ Transcript of meeting with G/07, 28 September 2012, p. 61

may have been regarded as a thorn in the side of the RUC? It would be consistent with that, wouldn't it?

[G/07]: *It reflects a mindset, and it is explicit that it is a mindset issue.*"¹⁹

- 9.52 In Chapter 16, I deal with the RUC's and Security Service's responses to intelligence indicating a serious threat to the lives of Oliver Kelly and Patrick Finucane in 1981. The Kelly case in particular is a stark demonstration of a discriminatory approach being taken to threat intelligence depending on the perceived affiliations of the individual under threat.
- 9.53 In relation to the late 1980s, I have examined the detailed Daily Intelligence Book held by the RUC Source Unit during the period from December 1988 to the end of 1989. The Daily Intelligence Book included brief summaries of intelligence received by the Source Unit and was not designed to include records of exploitative action. Nevertheless, in practice the Book did sometimes record the action taken as a result of threat intelligence and does assist in understanding the approach of the RUC SB.
- 9.54 Examination of the RUC records shows a frequent concern amongst SB officers to establish the 'trace' of an individual reported as being targeted. There are a number of examples of this, but one of those targeted by Nelson during the period provides a valuable case study. The FRU passed intelligence to the RUC Source Unit on 20 March 1989 indicating that the UDA were targeting T/25. The handwritten annotation next to T/25's name noted that he was 'traced'.²⁰ The word 'traced' in SB records indicated that an individual had been linked to paramilitary activity.
- 9.55 A further piece of intelligence relating to the threat to T/25 was received from the FRU on 12 April 1989. The Daily Intelligence Book included the note that "[L/05] had a go at [T/25] ... recently and just missed him. To be done again". The Daily Intelligence Book indicated that the Head of Special Branch would need to make a decision about this intelligence. The Book also included the following note in relation to T/25:
- "SB [file number] – PIRA and INLA [Irish National Liberation Army]
Last trace 1988 seen in Bangor with a [PIRA member], Artillery House,
Substantial File at HQ."*²¹
- 9.56 Further intelligence reporting the ongoing targeting of T/25 was received from the FRU in May 1989. The Stevens III Investigation examined this case and could find no evidence that T/25 had ever been warned or that any other exploitative action had been taken by the SB.
- 9.57 It is, in my view, significant that T/25's 'trace' was considered to be such a relevant consideration when noting down intelligence indicating that he was being targeted by the UDA. It is not clear why sightings of T/25 in 1988 should

¹⁹ Ibid., p. 62

²⁰ RUC SB Daily Intelligence Book entry, 20 March 1989

²¹ Ibid., 12 April 1989

be considered so relevant to the question of how to exploit threat intelligence relating to him. The concern shown with establishing the ‘trace’ of a targeted individual is illustrated in a number of examples within RUC records.

- 9.58 The ‘trace’ of an individual was often a broad term used to apply not only to known paramilitaries, but also to those for whom there was only a suggestion of a paramilitary connection. This may have been no more than a sighting in the presence of a paramilitary, something which in a relatively small community would have been far from conclusive proof of being a member, or indeed supporter, of a paramilitary organisation.²²
- 9.59 It should be noted that the RUC introduced new amended Force Orders regarding threat intelligence in 1991 and again in 1998. It cannot be assumed that the approach that was evident in the late 1980s in relation to the threat intelligence persisted beyond this period.²³

The approach to republican targeting of loyalist paramilitaries

- 9.60 Although the nature of my Review requires me to focus on the RUC’s response to loyalist targeting, for the purpose of balance I have also noted the approach taken towards republican targeting of loyalist paramilitaries during this period. Whilst I have not conducted a full analysis of this issue, a number of documents provide indications that the RUC SB had taken a broadly similar approach to intelligence indicating that loyalist paramilitaries were under threat.
- 9.61 Entries in both the Daily Intelligence Book and the Threat Book, for example, referred to a PIRA threat against an initially unidentified loyalist paramilitary target in October 1989. The Threat Book recorded a list of possible individuals who might be the target, with the security ‘trace’ of these individuals also noted. One possible target was listed as “*traced RHC [Red Hand Commando]*”, whilst another was described as “*traced UVF*”. The individual being targeted by PIRA was subsequently positively identified by the SB. The Threat Book recorded the following passage in relation to the discussion of the decision taken as a result of this intelligence:
- “Very heavily traced – discussed with DHSB [Deputy Head of Special Branch] 27/10/89 – No further action – as per DHSB’s instruction 27/10.”²⁴*
- 9.62 Based on the material available to me, I believe that the ‘trace’ of a loyalist being targeted by republican paramilitaries was also taken into account by the SB when receiving threat intelligence during this period.

²² A/05 raised this point in his meeting with me on 7 September 2012, see Chapter 21, para 21.188

²³ See, for example, the *Billy Wright Inquiry Report*, pp. 55–57 which outlines a series of warnings being provided to Billy Wright by the RUC from 1991 onwards, though the Report does also include criticisms of the handling of some threat intelligence

²⁴ RUC Threat Book, p.155

Overview

- 9.63 I noted in Chapter 7 that a broad analysis needed to be conducted to establish why the RUC failed to act on the vast majority of Brian Nelson's intelligence relating to the UDA's targeting of republican figures.
- 9.64 It is clear from a broader analysis that republican threats against members of the security forces were generally dealt with, whereas intelligence relating to the loyalist targeting of republicans was not acted upon except in a small number of isolated cases. I considered a number of potential explanations for this discrepancy, many of which were not sustainable in the light of the overwhelming focus on republican targeting that my analysis has revealed. I am persuaded that there was an overriding priority given to agent protection and that this was a factor in many decisions not to warn republican personalities. Such individuals were likely to have been considered, as was Patrick Finucane in 1981, insufficiently trustworthy to receive such a warning because they may have wished to publicise it.
- 9.65 I am also driven to the conclusion that part of the explanation lies in the fact that the individuals under threat were often known to be people who either engaged in, or supported, the republican terrorist campaign. A senior Army officer privately asked in 1991 whether "*the RUC [were] operating a policy of selective action dependant [sic] upon an individual's record?*"²⁵ Having considered the evidence, I am satisfied that, with a few exceptions, those considered to be a 'thorn in the side' of the security forces were not provided with protection during this period of the Troubles.
- 9.66 I do not believe that the RUC SB were motivated by a sectarian bias in this regard: the limited evidence I have seen suggests that the same considerations also applied to loyalist paramilitaries being targeted by PIRA. The discrepancy in approach is perhaps best characterised as being between threats, generally emanating from PIRA, against the security forces, judiciary or senior officials which were recorded in the Threat Book, and threats against those with paramilitary 'traces', often emanating from loyalists, which were far less frequently recorded (and consequently far less frequently acted upon).
- 9.67 As the organisation responsible for the exploitation of intelligence, the RUC SB must bear the primary responsibility for this approach. However, there is no evidence that either the Security Service or the FRU ever challenged such an approach when they became aware that this attitude was evident and, indeed, on occasions may have welcomed it because it suited their aim of protecting a source. The FRU's reaction to the murder of individuals whom they believed to be paramilitary figures is starkly demonstrated in the McDaid and Craig cases considered in Chapter 7.

²⁵ ACOS G2, undated note to GOC, 'Questions', para 5 [see Volume II, pp. 298–301]

9.68 This approach to threat intelligence was fundamentally incompatible with the State's obligations under Article 2 of the ECHR. I must also consider these findings in the light of the agent participation in criminal offences that I cover in Chapters 7, 21 and 22. The participation of agents in conspiracies to commit serious offences could only be justified by demonstrating that the intelligence derived was ultimately being exploited to save lives. It is clear to me that, in the 1980s in Northern Ireland, some loyalist agents were being permitted to participate in criminal conspiracies to attack individuals but the intelligence they provided was not being exploited to save lives because the conspiracies related to planned attacks against paramilitary figures. In this context, the potential justification for allowing the agents to participate in criminal conspiracies falls away.

Chapter 10: The recruitment and handling of William Stobie

The recruitment of William Stobie

- 10.1 In Chapter 22 of this Report I examine in detail the involvement of the Royal Ulster Constabulary Special Branch (RUC SB) agent William Stobie in the murder of Patrick Finucane. In order to properly examine Stobie's role as an agent, I outline in this chapter his recruitment by the RUC SB, and his record as an agent prior to February 1989.
- 10.2 William Stobie served in the British Army from July 1969 to July 1975 and subsequently in the Territorial Army from 17 November 1983 to 11 March 1985.¹ During this time he obtained basic skills in the firing, stripping down, maintenance and cleaning of weapons. These were skills which he later took to the Ulster Defence Association (UDA) and applied to the role of 'Quartermaster'. In 1987 Stobie received a two-year suspended sentence for possession of firearms, ammunition and explosives.
- 10.3 In November 1987 Stobie was implicated in the murder of Brian Adam Lambert. Lambert, a 19-year-old Protestant, was murdered on 9 November 1987 by the UDA. Stobie was subsequently arrested along with nine other loyalists. Stobie was accused of transporting suspects around on the day. When interviewed by the RUC Stobie admitted that "*He knew that some type of job was on but he didn't know what*".²
- 10.4 Stobie denied being in his van at the time of the shooting. He put forward a somewhat unlikely story of a youth knocking on his door and telling him that he was wanted at the local Community Centre at the time of the shooting.³ Stobie claimed he drove L/21 and L/17 after the shooting as he was asked to do so, but said he knew nothing of the shooting nor who was involved.
- 10.5 Stobie was re-arrested in relation to this murder and detained at Castlereagh Holding Centre on 15 and 16 February 1988. Whilst there he was interviewed by three RUC SB officers: Detective Constables (DCs) R/05, R/08 and R/06. They attempted to recruit Stobie as an agent to provide the RUC SB with information concerning loyalist terrorism.⁴
- 10.6 It is important to note that once he was recruited on 16 February 1988 Stobie was released without charge with regard to the Lambert murder. According to his later account to the journalist Neil Mulholland in 1990, Stobie felt that the RUC knew he was heavily implicated in the Lambert murder. Stobie alleged that when he was recruited:

¹ William Alfred Stobie, Stevens III Investigation 'Profile' document, p. 2

² Statement of RUC CID officer interviewing Stobie, 11 November 1987, p. 5

³ *Ibid.*, p. 3

⁴ DC R/05, statement to Stevens III Investigation, p. 1

“I was up to my neck in that [the Lambert murder] and Special Branch had me by the balls.”⁵

10.7 Stobie gave Neil Mulholland the following account of his involvement in the murder of Brian Lambert:

“... he had supplied the guns for the murder and had driven one of the cars maintaining that it had not been the lead car.”⁶

10.8 It is not relevant to my Review to seek to determine the exact nature of Stobie’s involvement in the murder of Brian Lambert given that Stobie was not, at the relevant time, an RUC agent.

10.9 However, it is important to note that there is no evidence that Stobie was pursued as a suspect in the murder of Brian Lambert after he had been recruited by the SB. It appears that the RUC effectively decided to drop the pursuit of a suspect in a murder investigation in order to recruit the individual as an agent.

Stobie’s record as an agent prior to the murder of Patrick Finucane

10.10 The RUC SB50 intelligence documents show that Stobie reported his activities to his handlers in relation to the storage, cleaning and transporting of weapons for the UDA in West and North Belfast. Stobie has been described as a ‘Quartermaster’ for the UDA, though in practice he was one of a number of people in the Belfast area who stored and moved weapons for the UDA.

10.11 Stobie was in a potentially useful position as an agent to provide intelligence that could be exploited to frustrate terrorist activity. An RUC Chief Superintendent’s summary of Stobie’s work as an RUC agent dated 6 November 1990 recorded that *“the intelligence supplied was of a good standard, and of medium grade”*.⁷

10.12 As I noted in Chapter 4, I accept that the recruitment of agents within terrorist groups was necessary and that such agents would inevitably become involved in criminal activity. However, the justification for running and paying such agents depended on the ability to demonstrate that their actions were having the overall effect of frustrating terrorist activity.

10.13 An analysis of Stobie’s activity prior to the murder of Patrick Finucane demonstrates that Stobie’s work as an SB agent did not generally have the effect of frustrating terrorist activity. Whilst Stobie was a comparatively low-level informant when compared with Brian Nelson, his handling and the lack of exploitation of his intelligence raise some of the same issues as the Nelson case.

10.14 I identified two particularly significant concerns in relation to Stobie’s work as an SB agent during this period. The first was Stobie’s propensity to hand over weapons to UDA terrorists without informing his handlers. The second was the way in which the RUC SB appear to have dealt with Stobie’s intelligence in August 1988 regarding the targeting of republicans.

⁵ Neil Mulholland, statement to Stevens III Investigation, 3 June 1999, p. 5 [see Volume II, pp. 117–132]

⁶ Ibid., p. 4 [see Volume II, p. 117–132]

⁷ Chief Superintendent SB to ACC Special Branch re Stobie, 6 November 1990

- 10.15 On 26 July 1988, Stobie admitted to his handlers that he had been involved in the provision of weapons without informing them. The debrief form included the following account:

“Approx 2 weeks prior to [L/16] being kneecapped [on] 7.7.88 [L/03] asked source to give [L/23] the H+K [Heckler & Koch] pistol. On the Sat after the [L/16] shooting [L/23] gave the H+K back to source.”⁸

- 10.16 The handlers rightly sought to counsel Stobie against providing weapons without informing them. The debrief note included the following passage:

“Handlers briefed source regarding these weapons and our need to know whereabouts and movements of same. He has been tasked to ring in if the weapons are handed out again.”⁹

- 10.17 However, despite this advice, the SB documentary records suggest that weapons continued to move in and out of Stobie’s possession without the SB’s knowledge. On 2 November 1988, for example, Stobie reported that he held a Smith & Wesson revolver.¹⁰ By 30 January 1989, however, he appears to have no longer held the revolver, though there was no record as to what had happened to the weapon. Nor is there any sign that the SB sought an explanation from Stobie as to the whereabouts of this weapon.¹¹

- 10.18 On 23 November 1988, Stobie reported having been given a 9mm Browning pistol by L/07 on 17 November. Stobie had noted down the serial number of the weapon, which his handlers were able to identify subsequently as having been stolen from Palace Barracks (a UDR base). Stobie reported that he stripped the gun, oiled it and returned it to L/07.¹² Stobie was merely reporting this activity retrospectively to his handlers, which meant that the SB had little capacity in practice to exploit the intelligence to prevent the weapon from being used in terrorist activity.

- 10.19 The clear impression provided by the debrief forms is that the RUC SB had very little control over the weapons. In such circumstances, the SB should, in my view, have sought to mitigate the damage that could be caused by Stobie servicing and distributing guns to UDA members. In other cases, the SB successfully used covert techniques to achieve this objective. These techniques were only used in this case in November 1989 after Stobie had warned of a planned UDA attack against the police.¹³

- 10.20 The provision of guns to terrorists for use in shootings is self-evidently an extremely dangerous criminal activity. In my view, such activity by a paid agent could only be justified where the SB could demonstrate that the exploitation of the agent’s intelligence served the purpose of frustrating terrorist activity. That was

⁸ RUC SB debrief form, 26 July 1988

⁹ Ibid.

¹⁰ Ibid., 2 November 1988

¹¹ Ibid., 30 January 1989 [see Volume II, pp. 81–82]

¹² Ibid., 23 November 1988

¹³ RUC SB intelligence documents, November 1989

not the case in relation to Stobie, as the punishment shooting of L/16 illustrated. The RUC were in no position to take any action to frustrate the attack because Stobie had not even informed them that he had handed over the gun.

10.21 The second key concern in relation to the handling of Stobie relates to the way in which SB dealt with threat intelligence in August 1988. The handling of the threat intelligence supplied by Stobie is entirely consistent with the pattern I outline in Chapter 9. Nevertheless, given later events in the Finucane case, it is important to outline specifically how this intelligence was handled.

10.22 On 22 August 1988, Stobie informed his handlers that photographs of T/08 and T/15 had been given to UDA members at a club the previous evening. Both men were long-standing UDA targets. Stobie also told his handlers the following information:

“[L/20] of Woodvale area UDA told source that they were watching [T/43] in Springfield Park. [L/20]’s active team would be – [L/33], [L/57] and [L/25].”¹⁴

10.23 There is no evidence that any action was taken as a result of this intelligence. None of the individuals being targeted was recorded as being under threat in the RUC Threat Book. Indeed, the SB50 produced as a result of Stobie’s intelligence sanitised the information to such an extent that no-one in the SB hierarchy or the Tasking and Co-ordinating Group (TCG) would have known that these individuals were being targeted. In relation to the targeting, the SB50 merely recorded that:

“[L/20]’s team is currently targetting [sic] republicans living in the Springfield Road area.”¹⁵

10.24 It should be noted that three members of the UDA hit team identified by Stobie all subsequently played important parts in the conspiracy to murder Patrick Finucane.

10.25 The only indication that Stobie’s intelligence was exploited was in relation to the information he provided about a member of the Ulster Defence Regiment (UDR) apparently passing information to the UDA. After the RUC SB passed on the intelligence, the UDR Private in question appears to have been dismissed.¹⁶

10.26 There is no evidence that, prior to Patrick Finucane’s murder, any exploitative action was taken as a result of any of Stobie’s intelligence regarding weapons, targeting or the UDA members involved in the West Belfast hit team. I note in Chapter 17 that the RUC SB did disseminate the intelligence provided by Stobie relating to those UDA members whom he believed to have been involved in the murder of Terence McDaid. However, there is no evidence to suggest that the RUC CID ever exploited this information or sought to arrest the individuals suspected of involvement in the attack.

¹⁴ RUC SB handwritten debrief form, 22 August 1988

¹⁵ RUC SB50, 22 August 1988 [see Volume II, p. 77]

¹⁶ RUC SB file on L/03; FRU MISR 2 December 1988

Chapter 11: The flow of information from members of the security forces to the UDA

- 11.1 In Chapter 1 I outlined my working definition of collusion. Collusion must be considered to include members of the security forces knowingly providing information to terrorist groups intent on assassinating individuals. The provision of such assistance to loyalist paramilitaries during the late 1980s has often been referred to as 'leaks'.
- 11.2 Before considering the issue of collusion between members of the security forces and the Ulster Defence Association (UDA) in the murder of Patrick Finucane, I have sought to establish the extent to which members of the security forces were generally assisting the UDA during this period. Some aspects of this issue were investigated by Sir John Stevens in his first investigation, but in view of information which has only subsequently come to light, I have decided that it is necessary to conduct a fresh analysis.

The context

- 11.3 The context in which the security forces operated in Northern Ireland during this period must be considered before analysing the scale and nature of leaks from members of the security forces to loyalist paramilitaries.
- 11.4 In the late 1980s, high levels of security force personnel were maintained in order to tackle the paramilitary violence in Northern Ireland. In 1989, there were over 11,277 full-time RUC officers and 1,605 RUC officers working in the Part-Time Reserve. The Ulster Defence Regiment (UDR) had 2,947 full-time officers and 3,283 part-time officers.¹ The regular British Army had 11,200 officers serving in Northern Ireland in 1989.
- 11.5 The large numbers of security force personnel, many living within tightly knit communities in Northern Ireland at the time, undoubtedly meant that occasional instances of association with paramilitaries and the exchange of information were almost inevitable. Even the Provisional Irish Republican Army (PIRA), which sought to murder members of the security forces, was at times able to cultivate and maintain a limited number of sources working for the security forces in some capacity.
- 11.6 In this context, I agree with the view expressed by Sir John Stevens in 1990 that:

*"It must be acknowledged, that in the present climate, leakages of information from the Security Forces may never be completely eliminated."*²

¹ See document on CAIN website entitled N1-SEC-01

² Published summary of Stevens I Investigation Report, 1990, para 51

- 11.7 I do not, therefore, base any assessment of this issue on the assumption that the security forces should have been able to prevent leaks of any kind to loyalist paramilitaries in the late 1980s.
- 11.8 However, whilst the context of the time may indeed explain why there were leaks to loyalist paramilitaries, it cannot, in my view, justify any assistance being provided by members of the security forces to loyalist terrorists. Nor could it justify an acceptance by the security forces and intelligence agencies that such leaks had to be tolerated as inevitable. The trust of the public in the security forces demands that individuals tasked with upholding the rule of law must adhere to the highest possible standards of conduct and that any allegations as serious as collusion with members of paramilitary organisations must be investigated with the utmost rigour.

The scale and nature of leaks from the security forces

The sources of evidence

- 11.9 I have identified two key contemporaneous sources of evidence that enable me to analyse a sample of the leaks of information from the security forces to the UDA in the late 1980s:
- (i) the Force Research Unit Contact Forms (FRU CFs) recording Brian Nelson's reporting of security force leaks to the UDA in the period 1987–89;³ and
 - (ii) the Security Service's compendium of leaks from members of the security forces to loyalist paramilitaries in the period 1987–89.⁴
- 11.10 I have not considered it necessary or desirable to conduct a mini-investigation into the intelligence reporting of every leak. To fulfil my remit, it is necessary for me to provide only a strategic overview of the prevalence and nature of the assistance given by members of the security forces to loyalist paramilitaries.
- 11.11 In providing such an overview, I have borne in mind the possibility that some alleged leaks may have been examples of loyalist paramilitaries inventing or exaggerating supposed security force 'contacts' in order to increase their standing within the UDA. However, having discounted questionable second-hand reports of leaks, I am satisfied that this was not the case in relation to the majority of the remaining leaks reported in the FRU and Security Service intelligence. UDA members received accurate and sensitive targeting information on republicans; information about the identity of informers; advance notice of arrests and operations; and, on occasions, weapons. In most cases, it was simply not possible for the UDA to receive such accurate information or equipment from any source other than members of the security forces.

³ FRU CFs held on the Stevens Investigation database

⁴ Security Service, compendium of leaks produced in 1989, see cover note written by Head of the Assessments Group (HAG) [see Volume II, p. 326]

- 11.12 I should also note that the sources of the information upon which I am basing my analysis – namely Brian Nelson’s intelligence passed to his FRU handlers and the Security Service’s intelligence drawn from human and technical sources – were considered to be established and reliable by the intelligence agencies at the time. I broadly agree with that assessment. Whilst I do have some reservations about Nelson’s reliability, this mainly relates to his capacity to withhold information from his handlers rather than the veracity of the information that he did provide.
- 11.13 A number of Brian Nelson’s reports of leaks were confirmed by the contemporaneous copies of security force documents that he was able to pass to his handlers. These documents establish beyond doubt that a leak of information had taken place and do tend to suggest that Nelson was reliably reporting security force leaks to his handlers.

Analysis of the scale of leaks

- 11.14 In order to establish the scale of the problem, I have considered the cumulative pattern of leaks to the UDA by combining the FRU and Security Service records. My analysis is based on the leaks recorded in FRU CFs from June 1987 until September 1989 when combined with the Security Service’s record of leaks from the start of 1987 until September 1989.
- 11.15 I have cross-checked the leaks recorded by the FRU and the Security Service and removed any examples that may have been duplicates recorded by both agencies. I have also excluded from consideration any self-evidently dubious reports of leaks or examples of occasions on which members of the security forces may have had legitimate contact with loyalist paramilitaries (for example, for the purpose of public order policing, or to warn an individual of a threat against them). The combined figures show 270 separate instances of assistance provided by members of the security forces to loyalist paramilitaries during the period 1987 to September 1989.
- 11.16 Some leaks, notably in relation to the checking of vehicle registration details, appear to relate to a single security force ‘contact’ who provided assistance to the UDA on a number of separate occasions. The majority of the recorded leaks do, however, appear to relate to different members of the security forces providing assistance to the UDA. The nature of the intelligence received by the Security Service and the FRU tended to mean that the reporting covered a broad spectrum of leaks rather than recording multiple examples of leaks from the same individual. There is, for example, no evidence to suggest that Brian Nelson sought to cultivate a Royal Ulster Constabulary (RUC) or UDR contact to feed him information to assist him in his role as Intelligence Officer for the UDA. Instead, Nelson relied on a wider variety of leaked information from a number of individuals within the UDA who had their own security force contacts.
- 11.17 It should be stressed that the limitations of these sources and the nature of the records mean that this analysis can only provide a restricted sample of the actual scale of assistance provided by members of the security forces to

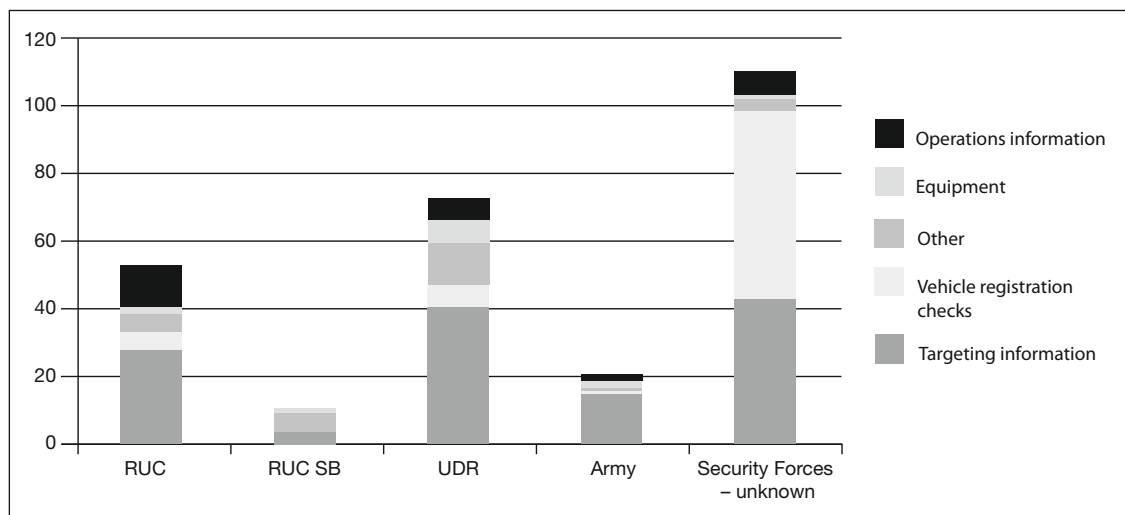
loyalist paramilitaries. As the Security Service noted in their assessment of the compendium of leaks, it is:

“... crucial to be clear that this [the Security Service compendium] does not necessarily represent a full, or even a balanced picture.”⁵

11.18 The figures I have produced are, therefore, likely to represent only a small sample of a wider problem. In particular, the analysis is very heavily weighted towards security force leaks to the UDA in the Belfast area. I should also note that I have analysed the provision of information to Brian Nelson by the FRU and the RUC Special Branch (SB) separately in Chapter 7 and have not included those examples within these statistics.

11.19 Figure 9 outlines this sample of security force leaks to loyalist paramilitaries by type during the period January 1987 to September 1989.

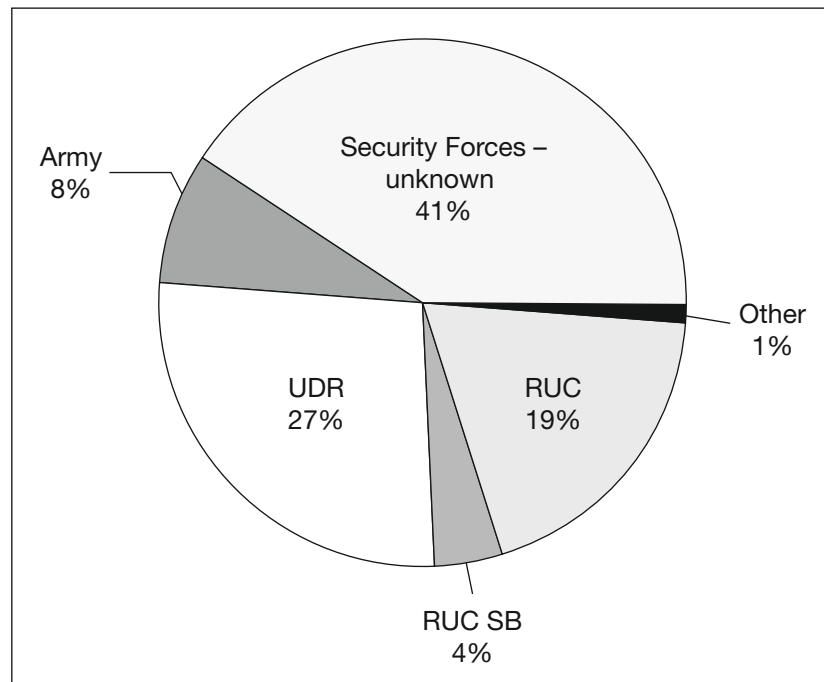
Figure 9: Instances of security force leaks to loyalist paramilitaries by origin and type, 1987–89



11.20 In many instances it is difficult to establish with certainty from which particular branch of the security forces a leak may have originated. Both the RUC and the UDR, for example, had the ability to conduct checks on vehicle registration details and both organisations had access to montage photographs of suspected republican terrorists. Figure 10 suggests that, in cases where it is possible to ascertain the source of the leak, members of the RUC and the UDR were probably responsible in broadly equal measure for the assistance provided to loyalist paramilitaries, with a significantly smaller degree of assistance provided by members of the regular British Army. I should note that I have seen no evidence to suggest that there was any leak from the Security Service during this period.

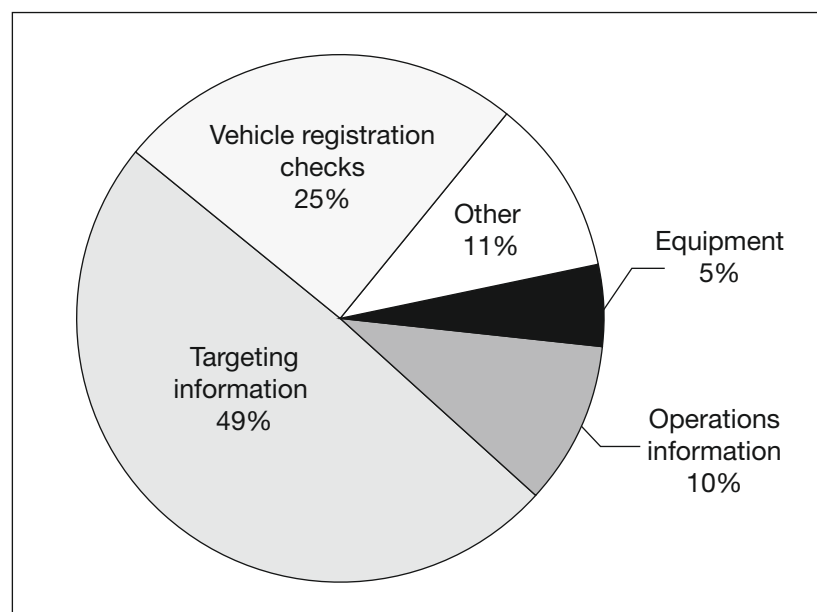
⁵ Security Service, HAG to Director and Co-ordinator of Intelligence (DCI), 29 September 1989 [see Volume II, pp. 323–325]

Figure 10: Origin of security force leaks, 1987–89



11.21 The most common form of leak from members of the security forces to loyalist paramilitaries was targeting information on republican terrorists. This often consisted of security force documents or information communicated verbally providing details about an individual suspected of being a member of PIRA. As shown in Figure 11, nearly half of all recorded leaks referred to targeting information. I have included vehicle registration checks as a separate category of information being passed to loyalist paramilitaries, though in practice many of these vehicle details would have been supplied and used for targeting purposes.

Figure 11: Type of security force leaks, 1987–89



Other sources of evidence

- 11.22 I should note that much of the broader documentary evidence I have reviewed tends to support the impression that a significant degree of assistance was provided by members of the security forces to loyalist paramilitaries during the late 1980s. In order to provide some context to this chapter, I have released documentation in Volume II of this Report outlining the contents of Brian Nelson’s intelligence dump and Security Service assessments produced at the time.
- 11.23 Intelligence assessments produced by the Security Service consistently noted that the majority of UDA intelligence came from security force sources. An assessment produced in 1985 suggested that the UDA had thousands of items of intelligence material and that 85% of this was drawn from security force records.⁶ A Security Service report produced in the spring of 1986 noted that:
- “The flow of intelligence on Republican targets has greatly increased since the AIA [Anglo-Irish Agreement] was signed and the Inner Council now believe that the UDA is in a position to mount an effective campaign.”⁷*
- 11.24 A further Security Service report in 1986 described the targeting intelligence being received by the UDA as coming *“largely from RUC and UDR sources”*.⁸ Intelligence received in October 1987 recorded that the UDA had *“much information on republicans drawn from UDR or RUC contacts”*.⁹
- 11.25 I have not included statistics from the RUC SB Daily Intelligence Book in the above analysis because the records in existence only date from December 1988. Nevertheless, an examination of the Daily Intelligence Book shows that it provides supporting evidence in relation to the scale and nature of the leaks illustrated by the FRU and Security Service intelligence.
- 11.26 In addition to the CFs recording examples of leaks, Nelson’s intelligence dump itself illustrates the scale of leaked security force information reaching the UDA.¹⁰
- 11.27 A large quantity of the information in the dump clearly originated from the security forces. The photographs, for example, were normally of suspects in police custody.¹¹ Nelson also made use of ‘civilian’ material such as maps, the Electoral Roll and newspapers and other publications whilst working as a FRU agent and UDA Intelligence Officer.¹²
- 11.28 The FRU had access to this intelligence dump from the autumn of 1987. On 4 September 1987, the FRU handlers photocopied the files that Nelson had received from L/35. The handlers noted that the files contained:

⁶ Security Service 1985 intelligence assessment

⁷ Security Service, compendium of leaks produced in 1989, para 28

⁸ *Ibid.*, para 31

⁹ *Ibid.*, para 56

¹⁰ I have released alongside my Report a summary of the contents of Nelson’s intelligence dump in October 1987 and an inventory of the dump when it was seized by the FRU in September 1989 [see Volume II, p. 1 and pp. 29–36]

¹¹ See, for example, ‘P cards’ of Patrick McGeown [see Volume II, pp. 40–41]

¹² See October 1987 inventory of the intelligence dump [see Volume II, p. 1]

*“... typed and written lists of Nationalist suspect terrorists. The files also contain air photographs, maps and photographs. A considerable number of the photographs are original copies of the City Sighting List ... A considerable number of the photographs and files appear to originate from RUC sources.”*¹³

11.29 In October 1987, Nelson handed over his intelligence dump to his FRU handlers. A FRU file note included an itemised list of his intelligence cache. The list included “500 A4 RUC P file cards”, RUC statements relating to the arrest of L/35 in 1986, Garda reports, British Army ‘P card’ files and military maps, though the FRU handlers noted that this was only a “sample” of the documents supplied by Nelson. Some of these items, including the “500 RUC P file cards”, were lent to the RUC Source Unit “for evaluation”. Consequently the RUC SB were fully aware that a significant quantity of security force information had fallen into the hands of the UDA.¹⁴

11.30 Nelson gave a detailed description to the Stevens I Investigation as to the source of the UDA’s intelligence. In his statement dated 19 February 1990, he noted that:

*“Information was received in [sic] a number of methods and from a number of sources. Primary source material was in the form of montages obtained from the Military and the R.U.C. This was classed within the UDA as High Grade information as having originated from those two sources. I never knew who originally supplied this material. Handwritten notes containing information about known players would also originate from the Military. I would say that ninety nine percent involved the UDR. Other means of information was gleaned from the use of Scanners to monitor Police Transmission. Other information came from person to person contact on the activities of certain individuals and from Republican Newspapers.”*¹⁵

11.31 Nelson explained that information would also be passed orally by members of the security forces to the UDA. He described this channel of communication as follows:

*“When I mean information passed from mouth to mouth I mean Tucker Lyttle had a contact in Special Branch, [L/03’s] contact is in the UDR and [L/35’s] contact within the RUC. These are to name just a few because many UDA members have friends and relatives within the Security Forces. It lends itself to a vast amount of information.”*¹⁶

11.32 The nature of the intelligence recorded by Nelson makes it difficult to quantify how many individuals in the security forces might have been passing information to loyalist paramilitaries at any given time. RUC intelligence received in November 1988 suggested that “in each UDA ‘area’ there were approximately 20 Police ‘contacts’”.¹⁷

¹³ CF 7 September 1987, Item 8

¹⁴ FRU inventory of the intelligence dump, October 1987 [see Volume II, p. 1]

¹⁵ Brian Nelson, statement to Stevens I Investigation, 19 February 1990

¹⁶ Ibid.

¹⁷ RUC SB intelligence document, November 1988

- 11.33 The source of this information was graded as reliable by the RUC SB at the time, though I am cautious about seeking to draw conclusions on the basis of what might be a somewhat arbitrary estimate. It is certainly clear, however, that each UDA 'area' would have been able to draw on a number of UDR and RUC contacts.

The seriousness of the leaks

- 11.34 As I note later in this chapter, the limited briefing provided to Ministers on this issue tended to suggest that the leaks of information to loyalist paramilitaries related to comparatively 'low-level' material being provided to them by members of the security forces.
- 11.35 It is no doubt true that junior UDR or RUC officers passing on so-called 'low-level' material were responsible for the majority of the leaks in numerical terms. However, I have been struck by the fact that the information that was being passed on did sometimes include sensitive intelligence information based on source reporting or surveillance. For example, in 1985 the UDA had access to a small number of RUC intelligence reports (RIRACs) and Military Intelligence Source Reports (MISRs), both of which were highly sensitive categories of document.¹⁸
- 11.36 In order to illustrate the seriousness of some leaks, I have summarised below the key examples of assistance being provided to loyalist paramilitaries at an ostensibly high level within the security forces.

Alleged high-level leaks in the mid-1980s

- 11.37 In the mid-1980s, the Security Service received intelligence that an unnamed and potentially very senior RUC officer might be assisting loyalist paramilitaries to procure arms. I should note that this arms procurement appears to have been unsuccessful and was unrelated to the separate partially successful importation of arms by loyalists in late 1987/early 1988.
- 11.38 The Security Service discussed the intelligence they had received with the then Deputy Head of Special Branch (DHSB). Security Service telegrams record the DHSB as having said that "*the possibility of a high level RUC contact was a real one*".¹⁹
- 11.39 The DHSB privately mentioned a specific high-level RUC officer who might have been responsible for providing assistance to the loyalist paramilitaries. The reports were sufficiently serious to prompt a Security Service investigation and a series of discussions and memos between the DCI, the Director of the Counter-Terrorism FX Branch, Patrick Walker, and the then Director General, Sir John Jones.

¹⁸ Security Service 1985 intelligence reporting

¹⁹ Security Service intelligence reporting re RUC contact

11.40 The intelligence was insufficiently specific to establish the source of the leak and the investigation appears to have ultimately petered out. However, the subsequent flow and analysis of intelligence did tend to support the theory that a high-level RUC ‘contact’ was assisting loyalists. More than seven months after the initial intelligence, further discussions took place about the loyalist grouping that the RUC contact may have been associated with. The DHSB was recorded as continuing to believe that the reports of a high-level RUC connection were “*quite credible*”.

11.41 Whilst the potential link to a specific officer could not be proven, Security Service officers evidently still believed that the high-level RUC connection was of serious concern. A Service officer noted in an internal memo that:

“... we must resist widening the circle of knowledge [over loyalist arms procurement] throughout the RUC as [the Security Service’s Head of the Assessments Group] wishes to do. The story of [a very senior officer] in the RUC being involved is still so consistent that [a Security Service asset] could end up in real trouble.”²⁰

11.42 Whilst I acknowledge that the intelligence did not enable the individual officer concerned to be confidently identified, I consider that the documentary record as a whole does suggest that it is likely that a high-level RUC contact assisted loyalist paramilitaries to an extent in their efforts to procure arms in the mid-1980s.

Alleged ‘high-level’ leaks to loyalists in the late 1980s

11.43 The FRU and Security Service reports from the period 1987–89 also suggest that a small number of senior police and Army officers may have been providing assistance to loyalist paramilitaries. Reliable and repeated reports covered comparatively senior officers in the RUC through to senior officers in the UDR, though such individuals were not always identifiable on the basis of the intelligence that had been received.

11.44 Several Security Service reports in the summer of 1988 suggested that an individual centrally involved in the loyalist arms procurement in the late 1980s received assistance from contacts in the RUC and the UDR. The loyalist concerned received a tip-off alerting him to the fact that RUC surveillance was in place against an arms movement operation. However, whilst the operation was certainly compromised, the intelligence appears to have been too generalised to enable the source of the leak to be identified, though the Service noted that they were “*confident*” that the leak had not come from the RUC SB. A later report in July 1988 was cited as providing “*a further indication of some RUC protection of his [the loyalist involved in arms procurement] activities*”.²¹

²⁰ Security Service operational section internal memo

²¹ Security Service memo, July 1988

11.45 Again, caution is required when interpreting these reports given the possibility that loyalist paramilitaries might seek to exaggerate the seniority and importance of their security force ‘contacts’, or indeed that security force personnel might exaggerate their own importance when providing information to loyalists. As the Security Service noted in their September 1989 assessment:

“... we must aim off in relation to some of these reports against the possibility that they stem from unfounded ‘big talk’ or exaggeration on the part of paramilitaries about having police contacts in high places.”²²

11.46 Nevertheless, the intelligence reports pointing to assistance being provided by a small number of comparatively senior figures are sufficiently compelling and consistent to lead me to believe that at least some of the reports are likely to be founded in truth.

11.47 It is important to note that some of the more serious leaks of ‘high-level’ information may have emanated from comparatively junior officers working on particularly sensitive areas of RUC operations. Officers working in such sensitive posts, including the Headquarters Mobile Support Unit (HMSU) and the surveillance section, E4A, were linked to loyalist paramilitaries in a series of reliable FRU and Security Service intelligence reports in the period 1988–89. Potential links between E4A and the UDA are outlined in more detail in Chapter 19.

The link between leaks and UDA murders in the late 1980s

11.48 In order to illustrate the seriousness of the leaks provided by members of the security forces to the UDA, I have analysed the links between such ‘leaks’ and UDA murders in the period 1987–89.

11.49 In Chapter 7 I covered at length Nelson’s involvement in UDA attacks and murders. It is clear that in many cases leaked security force information played some part in the attacks. I deal with the murder of Loughlin Maginn separately below. Whilst I have not conducted a full examination of other UDA murders with which Nelson had no involvement, much of the documentary evidence I have reviewed suggests that leaked security force information played a part in a number of other attacks.

11.50 It should be recognised that leaked security force information did not necessarily result in the UDA being able to murder their intended victim. The murder of David Dornan in Lisburn on 25 January 1989, for example, appears to have been a case of mistaken identity after security force ‘contacts’ provided intelligence to the UDA relating to the presence of another individual on the same building site. Reliable intelligence reports later indicated that the UDA had been initially tipped off by a member of the UDR and had ‘confirmed’ the presence of the PIRA figure believed to be on the building site with an RUC contact.²³

²² HAG to DCI, 29 September 1989, para 9 [see Volume II, p. 324]

²³ Security Service, compendium of leaks produced in 1989

11.51 Security force leaks were made even more dangerous by the fact that the UDA tended to assume that security force contacts were providing infallible and immediately 'actionable' information. As the murder of David Dornan illustrated, the UDA might therefore act immediately to carry out attacks on the basis of such 'intelligence' without carrying out the more detailed targeting process that in practice acted as a brake on the rate at which murders were committed.

11.52 A Security Service assessment of the UDA circulated on 24 May 1989 reinforced this impression. The assessment noted that:

*"[The] UDA recognises the need to corroborate intelligence, but if it comes from RUC or UDR sources, it tends to be taken as authoritative."*²⁴

11.53 I have no doubt that most UDA targeting and attacks during the late 1980s could be traced back to initial security force leaks, though that is not to say that loyalists did not occasionally carry out spontaneous killings during this period. The commissioning of the Stevens I Investigation no doubt provided an important deterrent in relation to leaks, though the UDA certainly continued to seek security force information. Security Service intelligence received in late 1990 suggested that the UDA Inner Council had changed their approach to intelligence-gathering but had decided that:

*"Initial leads [on targets] would still come from the UDR or RUC."*²⁵

The limitations of the leaks

11.54 It is important to note that, although security force leaks to loyalist paramilitaries were widespread, they were none the less limited in scope. As I noted at paragraph 11.4, thousands of individuals were serving in the security forces at this time. I am satisfied that the majority of members of the RUC and the UDR did not provide assistance or information of any kind to loyalist paramilitaries.

11.55 The fact that the intelligence agencies and security forces were able to mount a number of successful operations against loyalist paramilitaries during this period also highlights the limitations of the leaks. Loyalist paramilitaries undoubtedly received 'tip-offs' from security force 'contacts' about arrests, surveillance and the presence of informers in their organisations. However, there were equally many successful investigations and arrests conducted without the loyalists' knowledge. Agents such as Brian Nelson were, despite the risks, able to operate for a number of years without being unmasked.

11.56 I should also note that there is no evidence that the leaking of information to loyalist paramilitaries was part of a wider strategy within any branch of the security forces. There is no evidence, either in the records of conversations between loyalist paramilitaries or in the internal documents held by the intelligence agencies, to suggest that authorisation was given to members of the security

²⁴ Security Service assessment of the UDA, 24 May 1989 [see Volume II, p. 201]

²⁵ Security Service, Northern Ireland Intelligence Report (NIIR), late 1990

forces to provide information to loyalist paramilitaries. The only cases that could be said to be exceptions to this relate to the provision of information to Brian Nelson as part of FRU/RUC SB operations to identify the source of leaks, or the operation relating to James Pratt Craig (both discussed in Chapter 7).

Action taken to prevent leaks

- 11.57 In my view, the scale and seriousness of the collusion between some members of the security forces and loyalist paramilitaries should have necessitated urgent and rigorous action on the part of the authorities to pursue those responsible.
- 11.58 I should note that some action does appear to have been taken by the Security Service in the mid-1980s with respect to leaks. The Service established two leak investigations during this period. The first investigation resulted in one Army officer under suspicion being posted back to England. The second leak investigation could not identify the culprit and was subsequently closed by the agreement of the Service and the Army. I am satisfied, however, that both investigations were rigorous and represented genuine attempts to identify the source of leaks to loyalist paramilitaries. Mobile surveillance and other resources were deployed to assist in identifying those responsible for the leaks.²⁶
- 11.59 Limited action does appear to have been taken with respect to some members of the UDR in the late 1980s. Several members of the UDR were convicted for criminal offences relating to loyalist terrorist activity during this period. An RUC SB note on the subversion in the UDR, dated 27 September 1989, cited other action that was taken against UDR officers thought to be passing information to loyalist paramilitaries. The note recorded that:
- “... in some instances UDR members have been transferred to less sensitive posts as a consequence of such reports. In addition, members have been dismissed on occasions from the Regiment.”²⁷*
- 11.60 I have seen some evidence to support this contention. As I noted in Chapter 10, intelligence provided by William Stobie did lead to an individual being dismissed from the UDR. In the light of source protection constraints, and the difficulty in proving specific offences against those suspected of leaking, transferring or dismissing individuals was potentially a reasonable course of action for the security forces to have followed. However, it must be said that, even with respect to the UDR, the action taken was minimal in view of the scale of the problem.
- 11.61 I should also note that the Stevens I Investigation exposed the serious problems inherent in the UDR vetting system. The Stevens team found 1,350 adverse RUC vetting reports on individuals seeking to join the UDR during the period 1988–89. Despite these reports, 351 of these individuals were subsequently found to have been enlisted into the UDR.²⁸

²⁶ Security Service records of leak investigations provided to the Review

²⁷ Briefing note of Brian Fitzsimons, ‘Involvement of UDR personnel in subversive/terrorist organisations’, 27 September 1989 [see Volume II, pp. 318–322]

²⁸ Unpublished Stevens I Investigation Report, p. 42, para 4.3.2

- 11.62 The Police Service of Northern Ireland (PSNI) has provided my Review with an overview of the response of the RUC to reports linking police officers to paramilitary groups during this period. In response to a request from my Review, the PSNI examined all personnel records between 1982 and 1989 to ascertain whether any disciplinary investigations or action had been taken as a result of RUC officers leaking information to loyalists. The PSNI confirmed that there was only one such investigation: this resulted in an officer suspected of involvement in the possession and transportation of firearms for loyalists in 1988 being dismissed from the RUC.²⁹ The PSNI did, though, experience considerable difficulty in tracing disciplinary records from this period.
- 11.63 It is clear that other channels were used by the RUC in order to tackle the issue of leaks. The PSNI has provided my Review with 36 examples of action taken as a result of reports linking police officers to paramilitary activity.³⁰ There are also some indications in the Security Service documentation that additional action may have been taken by the RUC through ‘informal’ channels.
- 11.64 One Security Service document suggests that individual RUC officers may have been informally ‘warned off’ associating with loyalist paramilitaries. Some records also reveal that senior RUC SB officers were concerned about police officers in sensitive posts leaking information but were constrained in their ability to tackle the problem. Security Service records, for example, show that in 1988 the DHSB considered surveillance against a suspect in the HMSU but felt that, given the individual’s operational experience, “*any covert operation against him would be fraught with difficulty*”.³¹
- 11.65 Another Security Service document referred to the “*genuine shock and anger*”³² felt by the DHSB and an SB Detective Chief Inspector when they found out that a surveillance operation in the summer of 1988 had been compromised. They apparently investigated the leak but there is no record to suggest that the source was identified.
- 11.66 However, even taking into account the action that was taken, I have been unable to find any record of investigations being carried out in relation to the majority of intelligence reporting of leaks from RUC officers, though I do acknowledge that some intelligence reporting was insufficiently precise to enable any meaningful investigative action.
- 11.67 Of particular concern is the fact that neither I nor the Stevens Investigations have been able to find any evidence that any action was taken as a result of the recovery of a copied version of Brian Nelson’s intelligence dump in October 1987. The copied version of the dump would itself have illustrated the scale of security force information in the hands of the UDA.

²⁹ PSNI, letter to the Review, 28 June 2012

³⁰ PSNI, submission to the Review re leaks

³¹ Security Service records regarding suspected HMSU officer, 1988

³² Security Service internal telegram, 1988

The background to the Stevens I Investigation

- 11.68 The case that prompted the Stevens I Investigation provides a useful example of the failure to take sufficient action to prevent security force leaks to the UDA.
- 11.69 The link between members of the UDR and the murder of Loughlin Maginn in Rathfriland, County Down on 25 August 1989 has been established for many years. The two UDR officers ultimately convicted in 1992 in relation to the murder had already been arrested and charged by the RUC prior to the Stevens Investigation being established by the Chief Constable on 14 September 1989.
- 11.70 However, there are a number of aspects to the case that do not appear to have been fully explored. The December 1988 UDA break-in to a UDR base in County Down provides, in my view, an illustration of the failure of the intelligence agencies to take action to prevent loyalists from obtaining information and assistance from members of the security forces.
- 11.71 In early December 1988 the intelligence agencies became aware that the UDA intended to enter a UDR base to obtain intelligence on individuals allegedly connected to republican terrorism. Brian Nelson was able to provide some intelligence prior to the UDA accessing the base and provided detailed intelligence to his handlers after the break-in.
- 11.72 Having analysed FRU, Security Service and RUC records, it is clear that a decision was taken by the RUC not to seek to prevent the UDA from obtaining the UDR intelligence material. A Security Service internal note recorded the following discussion with the RUC SB:
- “[L/03] was planning to break into a UDR camp on 2 December to photograph some intelligence reports ... We agreed that this was ... odd ... a view endorsed by D/HSB when I spoke to him subsequently. D/HSB advised that ‘since the UDA already had lots of this stuff anyway’ and that they would find nothing of value there was little to be gained by trying to prevent [L/03’s] activity.” [Emphasis added]³³*
- 11.73 Although it was certainly the case that the UDA had already obtained huge quantities of security force information, in practice the novelty of being able to obtain the intelligence directly from within a UDR barracks appears to have prompted them to place a particular significance on this information. It included a video tape of a UDR briefing that featured a number of individuals, including Maginn. The CF dated 6 December 1988 recorded that Nelson had viewed the video tape and also noted that the UDR members had apparently offered ‘refuge’ in the local barracks to the UDA hit team.³⁴
- 11.74 The UDA targeted a number of individuals featured on the tape but subsequently selected Maginn as a target. Nelson does not appear to have been involved in the targeting of Maginn but he did certainly encourage attacks to be made against those featured on the video tape. The CF dated 4 January 1989 recorded the following comment being made by Nelson (referred to here by his source number, 6137) to L/03:

³³ Security Service intelligence report, extracted for file on 9 January 1990

³⁴ CF 6 December 1988

“6137 suggested that if no attacks resulted on any of those mentioned on the video tape the UDR personnel who supplied it would not supply anymore.”³⁵

- 11.75 The video tape of the UDR briefing was subsequently shown to journalists by the UDA and ultimately prompted the Stevens I Investigation. The implications of the UDR/UDA links exposed in the CFs are acknowledged in the Ministry of Defence’s (MoD’s) own ‘Problem Areas’ document:

“The video was filmed in a UDR briefing room. This video led directly to the murder of Loughlin McGinn [sic]. [L/03] also goes on [as recorded in the 6 December 1988 CF] to say that a hit had been already planned in the Castlewella area.

It was also explained that if the hit team could not escape they would be given refuge in barracks by certain members of the UDR.

This is potential dynamite. Should this become public knowledge the Security Forces, particularly the Royal Irish Regiment’s credibility would be severely damaged.”³⁶

- 11.76 I should also note that the threat to Loughlin Maginn may also have increased as a result of information apparently leaked by an RUC officer to the UDA. The CF dated 30 August 1989 included the following account of a UDA meeting on 24 August attended by Nelson:

“Once [L/45] had been handed the material he stood up and said, I received this from an SB officer in Lisburn but some of it is mixed and if we were to target everyone in this we’d end up shooting one another.”³⁷

- 11.77 It is not clear whether L/45 was exaggerating when claiming that his contact was an SB officer, though it is certain that he must have had an RUC contact of some sort because I have seen a copy of the montage photographs that were provided by L/45 to Nelson (and subsequently by Nelson to his FRU handler). The handler commented on the CF that:

“It is interesting to note that one of the PIRA suspects named on the top sheet of paper was Loughlin Maginn who was assassinated later that evening.”³⁸

- 11.78 I should also note that L/45 was later able to tip off the UDA command on 6 January 1990 that its members would be arrested by the Stevens Investigation on 8 January. This information was accurate and seems likely to have been provided by an RUC ‘contact’ with advance knowledge of Stevens’ arrest plans.³⁹

- 11.79 In summary, my examination of the background to the murder of Loughlin Maginn reveals that no attempt was made by the security forces to prevent the UDA from breaking into the UDR barracks and gaining the intelligence; that Brian Nelson subsequently encouraged UDA attacks on those featuring on the video tape;

³⁵ CF 4 January 1989

³⁶ MoD *Problem Areas* document, Volume 2, Flag 10, paras 12–14

³⁷ CF 30 August 1989, Item 20

³⁸ CF 30 August 1989

³⁹ See Chapter 24, paras 24.81–86

and that an RUC officer was reported to have been involved in leaking further targeting material on Maginn. The RUC did, however, arrest two UDR men involved in the murder. Both men were subsequently convicted of the murder in 1992.

The findings of the Stevens I Investigation

11.80 I am conscious that my finding with respect to the passing of information from members of the security forces to loyalist paramilitaries conflicts with the conclusion reached by the Stevens I Investigation. In the published summary of his May 1990 Report, Sir John Stevens stated that:

*“... the passing of information to paramilitaries by members of the Security Forces is restricted to a small number of individuals and is neither widespread nor institutionalised.”*⁴⁰

11.81 Sir John also found that the type of document being leaked to loyalist paramilitaries was restricted to comparatively low-level montage photographs. The summary of the Stevens I Report included the following conclusion:

*“It should also be pointed out at this stage that terrorist recognition information documents such as photo montages are classified under the lowest security rating. During the Enquiry no documents of any higher security classification have been recovered, or indeed come to notice, as having been in the hands of any terrorist organisation.”*⁴¹

11.82 Sir John also suggested that the leaking of montage photographs may have already largely ceased by the time his investigation had begun. His 1990 Report noted that:

*“The latest date of any document traced to the possession of Loyalist paramilitaries by the Enquiry is June, 1988.”*⁴²

11.83 These three specific conclusions were all highlighted by the Chief Constable Sir Hugh Annesley in his public statement when publishing the summary of the Report on 17 May 1990.⁴³

11.84 However, as I outline in Chapter 24, the obstruction of the Stevens I Investigation meant that Sir John Stevens had been deprived of critical evidence that might have altered his conclusions. Brian Nelson’s intelligence dump, for example, had only been handed over in January 1990 and Sir John did not get access to the FRU CFs until October 1990, five months after the publication of the Report’s summary. Analysis of the CFs would have quickly shown that the leaking of documents to loyalists had continued well beyond June 1988. The Security Service compendium of intelligence on leaks was sent to the DHSB, Brian Fitzsimons, but he never showed the document to Sir John Stevens.

⁴⁰ Published summary of Stevens I Investigation Report, p. 6, para 11

⁴¹ Ibid., para 9

⁴² Ibid., para 10

⁴³ RUC Chief Constable public statement, 17 May 1990

11.85 In view of this, I wrote to Sir John Stevens during this Review to ask him what his current position was on the question of leaks.⁴⁴ In his reply, Sir John highlighted the fact that documents had initially been withheld from him and noted that this placed him in “*an extremely difficult position*”. He stated that:

“On the basis of all the intelligence gathered by all three enquiries, I do believe from these records that leaks of information [from] the security forces was far more widespread and extensive than expressed in my initial findings.”⁴⁵

Intelligence assessments of leaks and collusion

11.86 I have considered the assessments made by the Security Service and the FRU with regard to leaks from members of the security forces to loyalist paramilitaries. Consideration of these assessments leads me to believe that both agencies were aware at the time of the scale of the links between the UDA and members of the RUC and the UDR.

11.87 The contemporaneous documentary evidence suggests that both the Security Service and the FRU were concerned that links between the RUC and the UDA could result in their intelligence agents and techniques being exposed to loyalists. John Deverell, the then Director of the Counter-Terrorism FX Branch, highlighted the difficulties of running agents in a memo dated 18 February 1987 regarding the re-recruitment of Brian Nelson:

“It has to be recognised however that [the Security Service’s agent-running section] has the main responsibility for independent coverage of the Loyalist target – which is difficult enough in view of RUC susceptibilities.”⁴⁶

11.88 As a broader contextual point, it is interesting to note that the rationale for establishing independent Security Service coverage of loyalist paramilitaries in 1972 appears to have been based on concerns that the RUC were, at that time, too close to loyalist paramilitaries.⁴⁷ In relation to the late 1980s, there is no doubt that the primacy of the RUC SB – and the consequent obligation on the Security Service and the FRU to share all intelligence with the SB for exploitation – was a cause of concern with respect to the perceived ‘susceptibility’ of the RUC to leak information to loyalist paramilitaries.

11.89 The FRU certainly held fears with respect to Nelson being unmasked as a result of information being fed to the UDA by RUC officers. In the yearly report produced with regard to Nelson’s work as an agent during 1988, the FRU noted that:

“It is a constant worry that information passed by 6137 eventually gets back to the UDA via the RUC. 6137 regularly feels himself under suspicion when this occurs.”⁴⁸

⁴⁴ Rt Hon Sir Desmond de Silva letter to Lord Stevens of Kirkwhelpington, 14 August 2012

⁴⁵ Lord Stevens of Kirkwhelpington to Rt Hon Sir Desmond de Silva, 4 October 2012

⁴⁶ Security Service Director FX memo to F8, 18 February 1987

⁴⁷ Security Service paper, *The Intelligence Organisation in Northern Ireland*, para 4.2

⁴⁸ Nelson yearly report for 1988, 31 January 1989

11.90 This was perhaps justified in the light of events in August 1988, when Nelson was interrogated as a result of the RUC SB feeding information to the UDA suggesting that someone “close” to L/01 was providing information to PIRA.

11.91 In October 1989 the Security Service produced an assessment of collusion between the security forces and loyalists alongside their compendium of leaks. The Security Service assessment was sent to the DCI by the HAG on 3 October 1989. The assessment stated that:

“Despite the limitations of the intelligence, the attached material points clearly to some collusion and some unauthorised passage of information. There is no evidence in the intelligence of any organised conspiracy from within the RUC ... the UDR or the Regular Army to provide the paramilitaries with official information on Republican suspects.” [Emphasis in original]⁴⁹

11.92 The assessment went on to consider the origin and nature of the collusion, as follows:

*“Intelligence of collusion refers about equally to the UDR and the RUC and there is occasional reference to the Regular and the Territorial Army. Most reports concerning the passing of montages and photographs and also to collusion in supplying the loyalists with SF weapons, involve the UDR or Army as opposed to the RUC. However in references to the passage of general information and to warnings to the paramilitaries of impending security force operations, the RUC predominates.”*⁵⁰

11.93 Privately, the Army adopted a highly adverse attitude towards the RUC’s response to this issue. An undated note from the Assistant Chief of Staff of the Intelligence Section (ACOS G2) to the General Officer Commanding (GOC) Northern Ireland suggested that the Chief Constable was likely to be concerned about the potential public exposure of RUC leaks to loyalist paramilitaries. The note stated that:

*“FRU consistently reported to the RUC the passage of montages and other Security Force material to the UDA ... The Army was not only involved in this activity, but also the RUC.”*⁵¹

11.94 ACOS G2 went so far as to outline a series of questions posed by the FRU intelligence regarding RUC leaks to loyalists:

“Questions:

- a. What was done about this intelligence when it was first received by the RUC Source Unit in Belfast?*
- b. When was the Stevens team informed about RUC leaks to PPMs? – if so, was this as result [sic] of FRU material.*

⁴⁹ HAG to DCI, 3 October 1989, para 5 [see Volume II, p. 328]

⁵⁰ Ibid., para 7

⁵¹ ACOS G2 to GOC, undated note, *Intelligence in N Ireland* [see Volume II, pp. 298–301]

- c. *What investigation by Stevens was carried out into all this additional material provided by FRU?*
- d. *Could the Chief Constable weather an investigation into this area? Probably not. Is it FRUs detailed reports that have caused the Chief Constable concern. (The intelligence concerning RUC leaks to PPMs was provided by Nelson. The 'file' is attached for information.)*⁵²

11.95 These comments are perhaps even more extraordinary in the light of the fact that the 'file' of leaks compiled by the FRU was, in fact, only a small sample of the intelligence provided by Nelson with respect to leaks from the RUC to loyalist paramilitaries.

11.96 Less openly hostile sentiments had already been expressed in Cabinet-level correspondence on this issue. A letter from the Defence Secretary's office to the Attorney General's office dated 28 March 1991 noted that:

"... if it is true that Special Branch were not acting on Nelson's information, one could expect the trial to ventilate the questions of why they ignored threat warnings and reports of leaks." [Emphasis added]⁵³

UK Government Ministers' knowledge of the scale of the leaks

11.97 My Review has established that the security forces were aware of the extent of leaks of information to loyalist paramilitaries. The scale of the leaks was such that it could have potentially had public policy implications. The leaks were undoubtedly so serious in their nature that Government Ministers should have received regular briefings on the issue.

11.98 However, my analysis of the briefing of UK Government Ministers by the intelligence agencies suggests that Ministers were, in fact, given very little indication of the scale of the problem. Security Service records demonstrate that a small number of intelligence reports highlighting leaks from members of the security forces to the UDA were disseminated to Ministers around the time of the Anglo-Irish Agreement in 1985. The Secretary of State for Northern Ireland during the period from September 1984 to September 1985, Douglas Hurd MP, received at least two intelligence reports linking UDR and RUC officers respectively to the UDA during this period.⁵⁴

11.99 Tom King MP, who served as Secretary of State for Northern Ireland from September 1985 to July 1989, received a report linking the members of the Ulster Clubs to the security forces, and the more general intelligence in the spring of 1986 (quoted at paragraph 11.23) which indicated that the flow of information from members of the security forces to the UDA had increased since the Anglo-Irish Agreement.⁵⁵

⁵² Ibid.

⁵³ Private Secretary of the Secretary of State for Defence to Attorney General's office, 28 March 1991 [see Volume II, pp. 268–274]

⁵⁴ Security Service, compendium of leaks produced in 1989, including distribution lists

⁵⁵ Ibid.

11.100 However, thereafter I have been unable to find any evidence of Ministers being provided with significant intelligence briefing on the matter of leaks from members of the security forces to loyalist paramilitaries. There is no record to indicate why reporting to Ministers might have diminished, though it is possible that the overall success of the security forces, and particularly the RUC, in withstanding loyalist mobilisation against the Anglo-Irish Agreement meant that the issue was viewed with less concern by the intelligence agencies.

11.101 In his written statement to my Review, Security Service officer G/07 stated that:

*“No records have been identified which indicate whether or not Ministers were briefed by the Security Service on ‘leaks’ from RUC/UDR/Army to loyalist paramilitaries.”*⁵⁶

11.102 My analysis of the briefing provided at the outset of the Stevens I Investigation suggests that Ministers were essentially unaware of the scale of leaks from members of the security forces to loyalist paramilitaries. The key briefing in this respect was the Security Policy Meeting (SPM) that took place on 26 September 1989. This SPM was attended by the Secretary of State, the Chief Constable, the GOC, the DCI and others.

11.103 Prior to the SPM, the GOC, General Sir John Waters, wrote to the Secretary of State for Northern Ireland outlining the Army’s position on security reforms being sought by the Irish Government. In his letter dated 24 September, General Waters included the following comment on the issue of leaks to loyalist paramilitaries:

“The next area, ‘leaks’, has attracted the most media attention but has at its roots faulty perceptions. I of course am not minimising the harm that these montages can do in the wrong hands, nor indeed condoning their illegal dissemination. However I think that the correct perspectives should be applied. Firstly there is no question that ‘information’ leaks per se are under scrutiny. The problem has been confined to leaked or stolen photographs.” [Emphasis in original]⁵⁷

11.104 General Waters emphasised again that the issue of leaks related to montage photographs rather than any wider transmission of ‘information’. He informed the Secretary of State that:

*“In essence we are, with MoD and the RUC, getting on positively with the control of recognition aids – but I am still nervous about the word ‘information’ which, if mischievously broadened, could be a running sore unless confined to the area of recognition aids. I hope that you agree.”*⁵⁸

11.105 The minutes of the SPM dated 26 September suggest a similar line being pursued by the Chief Constable. The Chief Constable was recorded as having told the Secretary of State that:

⁵⁶ G/07, written statement to the Review, 27 September 2012, p. 7

⁵⁷ GOC to Secretary of State for Northern Ireland, 24 September 1989

⁵⁸ Ibid.

“The [Stevens] inquiry was presently focusing entirely on members of 7/10 UDR and the signs were that no other parts of the Army or the RUC or other agencies were directly implicated.” [Emphasis added]⁵⁹

11.106 In fairness, it should be noted that the SPM did discuss measures designed to prevent leaks. Nevertheless, the GOC’s recorded comments tended to emphasise the limited nature of the problem of leaks to loyalist paramilitaries. He stated that the leaks related to comparatively low-level terrorist ‘recognition aids’ and that:

“There was no evidence that ‘security’ material (and certainly not security files) had gone missing.”⁶⁰

11.107 Any analysis of Brian Nelson’s intelligence material or the Security Service’s papers on leaks would have quickly demonstrated that loyalists certainly had gained access on occasions to some high-level ‘security material’.

11.108 I have sought to establish whether the Security Service subsequently briefed Ministers on the leaks detailed in the compendium produced by the Assessments Group. An internal memo from the DCI to the London office noted that the purpose of compiling the compendium of leaks was to:

“... arm ourselves in case the NIO [Northern Ireland Office] ask us for briefing on what we know of the scale and nature of the problem.”⁶¹

11.109 However, the Security Service has confirmed to my Review that there is no record of this briefing having been shared with the Northern Ireland Office. In the absence of such briefing, Ministers would have had little means by which to question the information they were receiving from senior Army and RUC officers suggesting that the problem was low level and confined to a specific branch of the UDR.

Overview

11.110 The scale and nature of the ‘leaks’ from members of the security forces to loyalist paramilitaries during the late 1980s has never properly been acknowledged. The leaks of information certainly involved much contact between junior UDR and RUC officers and members of the UDA. However, there is evidence to suggest that the leaks could also originate from comparatively senior officers and, on occasions, relate to sensitive intelligence information.

11.111 The Security Service made a detailed assessment in 1985 that 85% of the UDA’s intelligence came from the security forces. Having examined a very large volume of material relating to UDA activity in the late 1980s, I am satisfied that the proportion of their intelligence originating from the security forces would have remained largely unchanged by February 1989. I have no doubt that the UDA were heavily reliant on RUC and UDR leaks to carry out its targeting and attacks during this period.

⁵⁹ SPM (89) 7th meeting, 26 September 1989 [see Volume II, pp. 313–317]

⁶⁰ Ibid.

⁶¹ Security Service telegram, DCI to G8/0, 20 September 1989

- 11.112 The nature of these findings should not be held to impugn the reputation of the majority of those who served in the RUC and the UDR to uphold the rule of the law in extraordinarily difficult circumstances. Nevertheless, although only a minority of officers engaged in such activity, the leaks can only be described as widespread in their extent.
- 11.113 I am satisfied that leaks to loyalist paramilitaries were not institutional in the sense that there was an official or unofficial policy or strategy to authorise the provision of information to such groups. However, there was certainly an institutional failure on the part of the RUC and the UDR to take the necessary action to tackle the issue of leaks prior to the Stevens I Investigation. Both the RUC SB and Army intelligence were fully aware of the extent of leaks, but the action taken to combat such leaks was, in my view, inadequate in view of the scale of the problem.

PART 2: THE MURDER OF PATRICK FINUCANE

Chapter 12: Overview of the murder of Patrick Finucane

- 12.1 It is necessary to outline the events of 12 February 1989 when Patrick Finucane was murdered by Ulster Defence Association (UDA) gunmen in his North Belfast home. This Review focuses in detail on analysing the role played by agents and employees of the State in the murder. These agents included the Army agent Brian Nelson, the Royal Ulster Constabulary Special Branch (RUC SB) agent William Stobie and Kenneth Barrett, a member of the hit team who was recruited by the RUC SB after the murder.
- 12.2 I do not, however, subscribe to the view that the murder of Patrick Finucane can solely be explained by reference to the acts or omissions of agents of the State. The actions of a particularly violent UDA gang were central to the murder and it is important for me to summarise the role that these terrorists played.
- 12.3 The material upon which I have relied in producing this account is a combination of Kenneth Barrett's accounts to Stevens III in 2002 and 2006, and details of the wider intelligence picture collated by the Stevens III team.
- 12.4 I should also note that the account below is not intended to establish the criminal liability of any of the named or ciphered individuals mentioned in this Report. This is solely an account based on my analysis of the available material and without reference to the strict rules of evidence of the criminal justice process that would have to be satisfied to establish the guilt of any individual. Kenneth Barrett's involvement has, however, been established because he pleaded guilty to the murder in 2004.¹

The UDA preparations for the attack

- 12.5 In Chapter 22 I outline the role of the agent William Stobie in providing a gun for use in the murder. During the evening of 12 February 1989, a local UDA Quartermaster, L/30, moved the murder weapons to a 'safe house' in the Shankill Road area, around four miles from Patrick Finucane's home. The weapons moved to the 'safe house' were a 9mm Browning pistol and a .38 Special or .357 Magnum revolver.
- 12.6 At about 7.00pm on 12 February 1989 three members of the West Belfast UDA hijacked a Ford Sierra mini-cab. Two of those responsible for the hijacking may have been L/22 and L/05. The mini-cab was then delivered to the 'safe house' where the weapons were stored and the hit team was waiting.

¹ Barrett did not, however, at the time of his trial indicate the exact nature of his involvement in the murder. I have, therefore, set out in this chapter the role that I believe he played.

The shooting of Patrick Finucane

- 12.7 The hijacked mini-cab was used to transport Kenneth Barrett, L/25 and L/29 to Patrick Finucane's home just off the Antrim Road. Barrett drove the vehicle. On arrival at the house at around 7.25pm, L/25 and L/29 left the vehicle. At this time Mr Finucane was eating dinner with his wife and three children in the kitchen of their home.
- 12.8 The inner front door to their home had a mortice lock, which L/25 and L/29 appear to have forced open by kicking it.² On hearing the noise Patrick Finucane got up and opened the kitchen door, and Geraldine Finucane saw one of the masked men approaching. She activated a panic alarm located behind the door.³ Mr Finucane tried to shut the door but he was shot by the two men. Fourteen shots were fired in total, including two fired through the glass-paned door. Patrick Finucane was fatally injured and his wife was hit by a bullet in the ankle.
- 12.9 The subsequent post mortem examination concluded that Patrick Finucane's death was caused by bullet wounds to his head, neck and trunk. Six bullets had struck his head, one or more of which had been fired at a range of 15 inches or less. A subsequent forensic examination identified eleven of the bullets as having been fired from the 9mm Browning pistol, and two from the .38 Special/.357 Magnum.

Events subsequent to the shooting

- 12.10 Kenneth Barrett waited outside the address in the mini-cab until the shooting was over, and then drove off south with the other two UDA men.⁴ They travelled to the Woodvale area where the mini-cab was abandoned. The men subsequently drove off in a back-up car (probably a blue Ford Escort). They travelled to L/20's house in Highfield and changed clothes. Barrett stated that their clothing would normally be burned after an attack. At some stage in the evening, L/25 and L/29 returned the guns, probably to either L/30 or L/33, who subsequently gave them to L/20. William Stobie reported seeing Barrett and L/25 arrive later at a UDA club.⁵
- 12.11 Mrs Finucane contacted the police at approximately 7.30pm, reporting that men had burst into her home and shot her husband, whom she believed to be dead. Police officers arrived at the scene shortly after 7.40pm having heard the report being passed to Belfast Regional Control, which received further notification of a panic alarm being activated in the area.
- 12.12 The Ford Sierra was discovered by police in the Woodvale area at 9.15pm on the same evening. Its doors were unlocked and the keys left in the ignition. Its taxi sign was found in the boot.

² Examination of the crime scene identified a shoe mark on the inner door of the hall

³ Statement given by Geraldine Finucane to her solicitor, Peter Madden, 21 February 1989

⁴ Eyewitness account of the Finucanes' neighbour

⁵ See Chapter 22

Chapter 13: The theft of the UDR weapon in 1987

13.1 In Chapter 11 I provided an overview of the scale and nature of the assistance provided by members of the security forces to the Ulster Defence Association (UDA) during the late 1980s. One particularly concerning aspect of the assistance provided to the UDA came in the form of members of the Ulster Defence Regiment (UDR) providing paramilitaries with weapons held in their own barracks. This is of particular relevance to my Review because one of the guns used to murder Patrick Finucane was a UDR weapon sold to the UDA in 1987.

The theft of the gun by a UDR Colour Sergeant

13.2 In the early hours of Tuesday 25 August 1987 Colour Sergeant (C/Sgt) A/23, a full-time serving member of the Ulster Defence 10th Regiment (C Company), returned to Palace Barracks in Holywood after a night of heavy drinking. Having first obtained the keys of a van, he entered the main guardroom dressed in civilian clothing and requested the keys for the armoury from the Regimental Police. The Regimental Police, having checked A/23's identity card and that he was authorised to take the armoury keys, handed them over. A/23 duly signed for them in the armoury store log sheet. Thirty minutes later, A/23 returned the keys to the Corporal on duty who then saw him driving a red van out of the barracks.¹

13.3 The Corporal noted that the van's rear doors were insecure and alerted the gate sentry, who stopped C/Sgt A/23 to inform him of that fact. A/23 secured the doors and continued to drive out of the barracks. It later transpired that the van was loaded with 18 assorted weapons and rounds of ammunition which A/23 had stolen from the armoury.²

13.4 In the early hours of 25 August 1987, after leaving the barracks with the stolen weapons, A/23 drove to the Cavehill Road where he made contact with various members of the UDA, one of whom was Kenneth Barrett. There, save for a .38 Special revolver and 25 rounds of ammunition which A/23 retained for himself, the stolen weapons were transferred into Kenneth Barrett's car.³

13.5 The weapons stolen by C/Sgt A/23 were as follows:

- 7.62mm L4A4 machine gun (serial No. 14592)
- 7.62mm L4A4 machine gun (serial No. 16989)
- 1" Pyro pistol, Mark 5 (serial No. 16038)

¹ RUC report, 10 November 1987

² Ibid. (The authorised removal of such weapons would have required sanction from Battalion Operations; further, their authorised transportation would have required a convoy of three vehicles – the conveyance vehicle with an armed soldier, and escort vehicles to the front and rear.)

³ Ibid.

- 1" Pyro pistol, Mark 5 (serial No. 5188)
- 11 x 9mm Browning pistols (serial Nos.: 22450; 23201; 4097; 21349; 9097; 22675; 3540; 14443; 11733; 21468 and 4931)
- Webley Osprey air rifle (serial No. 9279)
- Webley Osprey air rifle (serial No. 8421)
- .38 Smith & Wesson revolver (serial No. D470530) with 25 rounds of ammunition
- 19 x 9mm pistol magazines
- 17 x IT sights.

13.6 Having transferred the weapons, A/23 was paid £3,000 by the UDA in £50 and £20 notes. This sum was considerably below the weapons' estimated value of approximately £7,700. Having made the sale, A/23 then crossed over the border and booked into a hotel in Dundalk.

The arrest of Colour Sergeant A/23

13.7 The theft of the weapons was discovered on Wednesday 26 August 1987, during the daily check of the armoury at the barracks. C/Sgt A/23 was arrested in Dundalk the same day by the Garda. He gave a statement under caution, detailing the theft of the weapons and how he sold them to the UDA.⁴ In April 1988 he was sentenced to a total of five years' imprisonment at Belfast Crown Court.

13.8 Following the Stevens III Investigation, in 2003 Kenneth Barrett was charged with handling stolen goods in respect of the weapons, to which he pleaded guilty.

13.9 Significantly, one of the weapons that was stolen by A/23 on 25 August 1987 was the 9mm Browning pistol serial No. BL67A 4931 which was subsequently confirmed to be one of the two weapons used in the murder of Patrick Finucane some 18 months later on 12 February 1989.⁵ This weapon was recovered on 4 July 1989 from an address in Bellevue Street, Belfast.

13.10 A/23 claimed that he acted on impulse to "*cause embarrassment to the battalion*"⁶ because he had been reprimanded by his Company Commander for his drinking and gambling, and had been granted only a small temporary loan which did not resolve his financial problems. However, this explanation does not sit easily with the statement that Kenneth Barrett later gave to the journalist John Ware, in which he claimed that he instigated the theft and paid A/23 £3,000 to steal weapons, and that an RUC officer had rung someone in the Ulster Freedom Fighters (UFF) to say the weapons were on their way.⁷

⁴ Statement made by C/Sgt A/23 to Garda Siochana, 26 August 1987

⁵ Letter to Stevens I Investigation, 12 March 1990

⁶ Statement made by C/Sgt A/23 to Garda Siochana, 26 August 1987

⁷ Kenneth Barrett, comments to John Ware, 21 August 2001

- 13.11 The evidence is therefore contradictory as to whether the weapons were stolen from Palace Barracks to order or whether A/23 acted, as he claimed, on impulse. Certainly A/23 was in debt and, whilst he was under the influence of drink at the time of the theft, it seems unlikely that he would have stolen the weapons purely on impulse, without at least some understanding of how he was going to dispose of them and what reward he could expect for them. These are factors which tend to suggest that some prior planning of the theft had taken place.

Warning signs prior to the theft

- 13.12 A/23 had enlisted in the UDR in 1971, having previously served for six years with the Royal Ulster Rifles. In 1971 he had been a vigilante in the Woodvale Defence Association, the same branch of the UDA which Kenneth Barrett was associated with in the late 1980s. During 1972 A/23 was a member of the UDA, though he claimed to have ceased activities in late 1972 and that his membership lapsed in 1973.⁸
- 13.13 Prior to the events of 25 August 1987, A/23 had no previous convictions, though early on in his military career he had lost possession of his personal protection weapon (PPW), which had been issued to him in November 1974.⁹ A/23 initially reported that the weapon had been stolen from him on 10 January 1976, alleging that two masked men had forced their way into his home. He later admitted that this was untrue and that he had in fact been robbed of his PPW whilst drinking in a UDA club frequented by members of paramilitary organisations, to which – in breach of orders – he had taken his weapon. Two years prior to this, in February 1974, A/23 reported that he had been stopped by two men on his way to Girdwood UDR Camp who had stolen his privately purchased Browning pistol, for which he held a firearms permit.
- 13.14 A military investigation and report following the theft in 1976 of A/23's PPW concluded that he was not thought to be a member of the UDA and, notwithstanding the theft, was still considered to be a conscientious member of the UDR.¹⁰ However, he was found not to have taken sufficient care to protect his PPW and was warned against drinking in known paramilitary clubs. He was not issued with a further PPW.
- 13.15 A/23 worked his way up the ranks and by 1987 was one of several designated persons entitled to draw weapons. However, by August 1987 he was known to have considerable financial worries, exacerbated by his heavy drinking and gambling. Indeed, A/23 described himself prior to the theft as being aggrieved due to the fact that when he had sought a loan from the Company Commander he was told to cut down on his smoking, drinking and gambling, and was given only a small loan that was to be deducted from his month's pay.¹¹ In these

⁸ Colour Sergeant A/23, *Antecedent History*

⁹ Issued to him after he witnessed a bank robbery in which he had recognised someone involved

¹⁰ Colour Sergeant A/23, *Antecedent History*

¹¹ Statement made by C/Sgt A/23 to Garda Siochana, 26 August 1987

circumstances, it is extremely surprising that such an individual was entrusted as one of signatories for the key to the UDR armoury at Palace Barracks.

The subsequent disposal of the Browning pistol

- 13.16 There is a further extraordinary development with regard to the Browning pistol stolen from the UDR barracks that was subsequently used to murder Patrick Finucane. As stated at paragraph 13.9, that pistol was eventually recovered on 4 July 1989 during a search conducted by the Royal Ulster Constabulary (RUC) at an address in Bellevue Street, Belfast. The gun, after being submitted to the RUC's laboratory for forensic testing, was subsequently returned to the Army in 1995, rather than being preserved as an exhibit in any future murder investigation.¹²
- 13.17 Whilst this was in accordance with the RUC procedure operating at the time, it later became apparent that, following its return to service, the slide and barrel of the weapon were replaced at least once. It appears that alterations occurred at some point after its return to the Army from the laboratory via Weapon Control on 28 September 1995 (from whence it was re-issued for service on 6 August 1996) and before it was re-submitted to the laboratory for further testing on 2 July 2001.¹³
- 13.18 I have seen no evidence to suggest that this failure to preserve the murder weapon intact as a potential exhibit was due to any sinister ulterior motive. However, the RUC's decision to return the Browning pistol to the Army in the full knowledge that it had been used in the murder of Patrick Finucane was extremely regrettable. It meant that it was later not possible, due to the subsequent modifications that had been carried out on the weapon, to link it forensically with the murder.

Overview

- 13.19 C/Sgt A/23's theft of the weapons is clearly a story of warning signs being ignored. His record had a number of concerning aspects, combining as it did his past membership of the UDA and the loss of his PPW in unsatisfactory circumstances. A/23 had given at least one false account of that theft. Even assuming these issues were considered too historic to be of real concern, occurring as they did more than 11 years previously, once A/23's personal problems with alcohol, gambling and debt became known to his Company Commander, it should have caused warning bells to ring with regard to him being an armoury key signatory.
- 13.20 Further, and perhaps more significantly, the facts of the theft reveal the inadequate security surrounding weapons. The fact that C/Sgt A/23 could sign out the armoury key at any time of the day or night without any need for further authorisation or explanation, and the ease with which he was able to remove the weapons from the armoury unchallenged and to drive the vehicle containing

¹² Report regarding Finucane murder weapon

¹³ Ibid.

them out of the barracks unchecked, all point to a woeful failure by the UDR to maintain adequate control over its weapons and prevent them from falling into the hands of terrorists.

- 13.21 This is particularly concerning given that such thefts had occurred previously. In Chapter 6 I outlined the concerns of senior Army officers about the theft of weapons from Coleraine UDR base in February 1987.
- 13.22 The security failure in relation to the Palace Barracks theft was to have a number of serious consequences. The weapons stolen by C/Sgt A/23 were used in a number of murders and attempted murders, including the murder of Patrick Finucane. It was a failure that was not effectively addressed and several further similar thefts took place. In January 1989, for example, four weapons were stolen from Malone Barracks in Windsor Park, Belfast. This theft included two SA80 self-loading rifles, which were particularly dangerous weapons to fall into the hands of terrorists.¹⁴
- 13.23 There is, however, insufficient evidence before me to show that units within the UDR deliberately facilitated the ‘theft’ of weapons that then fell into the hands of loyalist terrorists. Further, my consideration in this Review of the theft of weapons from the security forces has been limited to the theft of the weapon that came to be used, some 18 months later, to murder Patrick Finucane; I have not reviewed in detail other such incidents and their surrounding circumstances. Nevertheless, it does appear to have been extraordinarily easy for loyalist terrorists to acquire weapons from UDR sources.

¹⁴ Report of Stevens Investigation officer, 19 October 1999

Chapter 14: The comments made by Douglas Hogg MP

14.1 On 17 January 1989 Douglas Hogg MP – then the Parliamentary Under Secretary of State at the Home Office – made the following statement during the course of a House of Commons Standing Committee debate about the Prevention of Terrorism (Temporary Provisions) Bill that was going through Parliament:

“I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA.”¹

14.2 Mr Hogg’s statement caused immediate controversy, both in Parliament and elsewhere. During the ensuing debate he went on to say that:

“I do believe that is true, and I am stating it, on advice. It is something that the Committee should know.”²

14.3 Mr Hogg reiterated during the debate that:

“I am advised as a Minister that those are the facts. I believe them to be true and I state them as facts on advice that I have received.”³

14.4 In response to the Minister’s comments, Mr Seamus Mallon MP made the following prophetic observation:

“I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins’ bullets as a result of the statement that has been made tonight. That shows the seriousness of the matter ... We have thrown a blanket over many lawyers in the North of Ireland, and it will be on the head of this Minister and Government if the assassin’s bullet decides to do, by lead, what this Minister has done by word.”⁴

14.5 Mr Mallon was also clear in his belief that Mr Hogg had been persuaded to make his statements to the Committee by those who had advised him, stating that:

“I believe that the Minister is a patsy ... He has been told to come to Committee and to say this ... The Minister has been fed this information and conned into making a statement which, because of his own honesty, I believe that he will regret.”⁵

14.6 Less than a month later Patrick Finucane was murdered in his home by the Ulster Defence Association (UDA). As British Irish Rights Watch (BIRW) noted in their Report, ‘Deadly Intelligence’, “[t]here was immediate speculation that there had been official collusion in this shocking murder”.⁶

¹ Hansard, Standing Committee B debate, 17 January 1989, col 508

² Ibid., col 509

³ Ibid., col 514

⁴ Ibid., col 519

⁵ Ibid., col 520

⁶ BIRW Report, *Deadly Intelligence*, para 1.2

- 14.7 I shall consider in this chapter the circumstances in which Mr Hogg came to make his statement and the reaction to what he said. I shall also set out my findings in relation to the allegation that the Minister’s statement and Patrick Finucane’s subsequent murder were linked.

The circumstances surrounding Douglas Hogg’s comments

The RUC briefing of 24 November 1988

- 14.8 Douglas Hogg visited Belfast on 24 November 1988. The visit programme shows that he was to meet with senior Royal Ulster Constabulary (RUC) officers from 11.30am to 2.00pm.⁷ Those scheduled to attend the briefing session were Chief Constable Sir John Hermon, Senior Assistant Chief Constable Blair Wallace, the Assistant Chief Constable (ACC) responsible for the CID, ACC Monahan, and the ACC responsible for the RUC Special Branch (SB). Blair Wallace told me that the then Deputy Head of Special Branch, Brian Fitzsimons, had attended in place of the ACC responsible for the RUC SB.⁸

- 14.9 Mr Hogg’s Private Secretary accompanied him to the meeting and subsequently drafted a detailed minute noting points that needed to be followed up. Her minute included specific reference to a discussion about solicitors practising in Northern Ireland:

“The RUC referred to the difficulties caused by the half dozen or so solicitors who are effectively in the pockets of terrorists, and who made good use of their right to insist on access to documents. This was put rather nicely, I thought, by the argument that such solicitors are defending the organisation, rather than the individual. Again, illustrative examples were promised ...”
[Emphasis added]⁹

- 14.10 I accept the minute as an accurate account of what was said at the briefing. It is clear that the “*illustrative examples*” that were promised by the RUC were required for inclusion in Mr Hogg’s briefing for the Committee Stage of the Bill.

- 14.11 Blair Wallace’s recollection was that solicitors were not discussed whilst he was present at the briefing. He told me that he, ACC Monahan and Brian Fitzsimons:

“... were not admitted until it had already been going for 30 minutes. They were there to discuss any additions to the emergency provisions that were to be sought in Parliament for use in combating terrorism. BW [Blair Wallace] said that he personally had not made any reference to solicitors nor did he hear anyone else at the meeting do so. He left the meeting before its

⁷ Internal Home Office minute from F4 Division to Douglas Hogg’s Private Secretary, 22 November 1988 [see Volume II, p. 202]

⁸ Note of meeting with former RUC officers, 25 July 2012, para 112

⁹ Undated minute from Douglas Hogg’s Private Secretary to F4 Division [see Volume II, pp. 203–204]

conclusion, and there were further meetings later that afternoon at which he was not present.”¹⁰

The RUC’s follow-up action after the meeting

- 14.12 The RUC records include a series of internal notes regarding the briefing provided to Douglas Hogg and the follow-up action required. A handwritten note signed by the Chief Constable included the following observation:

“This was a good visit and I agreed that full co-operation will be given to Mr. Hogg who will see the SB [illegible] of this legislation through Parliament.”¹¹

- 14.13 In a note dated 28 November 1988, the Senior ACC subsequently asked the Head of the SB to:

“... prepare family connections to PIRA [Provisional Irish Republican Army] of Solicitors:

(1) Oliver Kelly

(2) Patrick Finucane

No sensitive material to be included.”¹²

- 14.14 The fact that the Senior ACC’s commission identified Oliver Kelly and Patrick Finucane suggests that these two individuals may have been referred to specifically at the briefing with Mr Hogg, though it is not possible to be sure of this.

Did the RUC intend the briefing to be made public?

- 14.15 An important question for me to consider is whether those present at the meeting intended that the comments about solicitors should subsequently be made public. The statements made by Douglas Hogg and Sir John Hermon respectively have been contradictory on this point.

- 14.16 When he spoke to Stevens III detectives on 16 May 2000, Sir John Hermon was adamant that he had specifically asked Mr Hogg *not* to disclose that information. Sir John stated that he had:

“... asked the Head of S.B. to look at the problem of solicitors in particular the fact that they may [have] involved themselves in terrorism. Mr Hogg was told of these concerns but I personally asked him not to tell MPs/Parliament but to keep it to himself.”¹³

- 14.17 Sir John went on to say that he *“was very irritated that Hogg later mentioned about solicitors being involved with terrorists”*. His view that the briefing had been provided in confidence appears to be supported by BIRW in their Report, which

¹⁰ Note of meeting with former RUC officers, 25 July 2012, para 112

¹¹ Handwritten note from Chief Constable to Chief Superintendent [see Volume II, pp. 205–208]

¹² Note from Senior Assistant Chief Constable to Head of SB, 28 November 1988 [see Volume II, pp. 205–208]

¹³ Stevens III Investigation, meeting with Sir John Hermon, 16 May 2000

states that “Hogg was told in the strictest confidence that there was concern over two or three lawyers” [emphasis added].¹⁴ However, the Report does not put forward any evidence in support of that view.

14.18 Mr Hogg, on the other hand, has stated that the purpose of the briefing on 24 November 1988 was to assist him in justifying the Government’s policy to the House of Commons. He told the Stevens III Investigation that:

“I was there to brief myself in connection with a Bill for which I was responsible member and going to speak in the House of Commons. The idea that I had been told this stuff and would not use it in the House of Commons is bizarre.”¹⁵

14.19 I consider that Mr Hogg’s claim in this regard is borne out by the Home Office minute of the briefing. The minute refers to various topics on which the Minister was plainly seeking information “for his use in defending the Government’s position in the House”, and to requests made for “suitable illustrations” that were to be “included in Mr Hogg’s briefing for Committee Stage”.¹⁶

14.20 In relation to one of those topics I note that the Chief Constable had made an observation on which he had specifically said that he was “happy to be quoted”. The Private Secretary had consequently noted the observation in the minute “as possible material for a line to take”.¹⁷

14.21 The contemporary notes produced by the Chief Constable and the Senior ACC also, in my view, suggest an awareness on the part of the RUC that the Minister might wish to disclose any information that he was provided with.

14.22 The Chief Constable’s note demonstrates that he knew that Mr Hogg would be taking the RUC SB related provisions through Parliament. The Senior ACC’s direction that “no sensitive material” was to be included in the ‘profiles’ of Oliver Kelly and Patrick Finucane also suggests that he was aware that the Minister might disclose the information in some form. Ministers such as Mr Hogg were cleared to receive sensitive intelligence material. There was, therefore, no need to direct that sensitive material should not be included in the briefing unless the RUC were aware that the Minister wanted the material for the purpose of public disclosure.

14.23 On the basis of the documents that I have reviewed, I am satisfied that it was understood by all concerned that Mr Hogg wished to refer to the issue of solicitors in Northern Ireland during the course of forthcoming debates in the House of Commons.

The Metropolitan Police Service briefing on 8 December 1988

14.24 For completeness, I should also add that the SB of the Metropolitan Police Service (MPS) briefed Douglas Hogg in connection with the Bill on 8 December 1988.

¹⁴ BIRW report, *Deadly Intelligence*, para 11.9

¹⁵ Taped interview with Stevens III Investigation, 29 November 2000

¹⁶ Undated minute from Douglas Hogg’s Private Secretary to F4 Division [see Volume II, pp. 203–204]

¹⁷ *Ibid.*

- 14.25 The Private Secretary's minutes of that meeting indicated that the MPS shared the RUC's concerns about the alleged links between solicitors and terrorists, recording that there was "*a particular risk in relation to those solicitors, known to support the terrorist cause, who might gain access to ... information*". It was also noted that "*care was needed to ensure that solicitors sympathetic to a terrorist cause were not able to frustrate [an] investigation*".¹⁸
- 14.26 Once again, Mr Hogg appears to have made it clear during the briefing that he was seeking information to which he could refer in public to justify the Government's position. In particular, the minute of the meeting that took place on 8 December 1988 concluded with the observation that he had found the comments made at the meeting "*useful and interesting*", and that he would be grateful "*if the police would provide all possible assistance in the search for examples to use in support of the Bill*".¹⁹

The amendments to the Bill proposed by the Law Society

- 14.27 On 4 January 1989 the Law Society sent Douglas Hogg two suggested amendments to Clauses 17 and 18 of the Bill. As drafted, those clauses created new offences in relation to, first, making a disclosure likely to prejudice a terrorist investigation, and, second, withholding information about acts of terrorism without reasonable excuse.²⁰
- 14.28 The amendments proposed by the Law Society were designed to provide solicitors acting in the course of their professional duties with specific defences to these offences. Both amendments were subsequently tabled by Peter Archer MP and William Cash MP during the Bill's Committee stage.

Further briefing by the RUC

- 14.29 The Law Society's suggested amendments to the Bill – which the Government proposed to resist – and the approaching Committee stage of its progress through Parliament, appear to have prompted Home Office officials to pursue the "*illustrative examples*" that the RUC had promised at the 24 November 1988 meeting.
- 14.30 A minute dated 13 January 1989 from F4 Division of the Home Office to Douglas Hogg's Private Secretary referred to the interest the Minister had taken in "*the problem of solicitors with terrorist connections*", and forwarded "*notes ... on two such solicitors*".²¹ The two solicitors were Patrick Finucane and Oliver Kelly. This material had been provided to the Home Office through the Northern Ireland Office, who received the RUC briefing on 11 January 1989.
- 14.31 The RUC's briefing notes concerning Patrick Finucane comprised two pages covering his "*Relatives with PIRA Connections*" and "*Personal history*". RUC documentation shows that the briefing notes had been cleared at all levels of

¹⁸ Minute from Douglas Hogg's Private Secretary to a Home Office official, 8 December 1988

¹⁹ *Ibid.*, para 7

²⁰ Letter from the Law Society to Douglas Hogg MP, 4 January 1989

²¹ Minute from F4 to Douglas Hogg's Private Secretary, 13 January 1989 [see Volume II, pp. 209–213]

the SB hierarchy. I have released this briefing alongside my Report in order to illustrate the RUC's adverse view of Patrick Finucane.²²

14.32 The briefing notes indicate the extent to which the RUC identified individuals as subversives based on association. I note that in the case of Patrick Finucane's mother, for example, her attendance at 'H Block' demonstrations in London appears to have been sufficient in itself to warrant her inclusion as a relative of his "*with PIRA Connections*".

14.33 The "*personal history*" section of the briefing note details Patrick Finucane as originating "*from a staunchly Republican family*", his being a partner in the firm of Madden & Finucane, his membership of the Association of Socialist Lawyers and his election to the Executive Committee of the Northern Ireland Civil Rights Association. It mentions Mr Finucane becoming joint treasurer for the Smash H-Block Committee during 1980 and notes that he:

*"... regularly visited the hunger-strikers, ie Bobby Sands etc, giving legal advice and whilst doing so associating closely with Gerry Adams, PSF [Provisional Sinn Fein]."*²³

14.34 It concludes with a mention of the speeches he had made concerning the legal system in Northern Ireland, and ends with the comment that:

*"Finucane has continued to support the Republican cause using his expertise in an advisory capacity and associating closely with PIRA/PSF personnel."*²⁴

14.35 The briefing notes are further evidence of the extent to which the RUC had formed the opinion that Patrick Finucane was a subversive threat rather than a lawyer carrying out his professional duties. I should note that during the course of this Review I have not seen any evidence which would persuade me to displace the conclusions made previously by Detective Superintendent Alan Simpson, Sir John Stevens and Justice Cory that Patrick Finucane was not a member of any terrorist organisation.

14.36 I do not believe that there was any material in the briefing notes on Patrick Finucane that could substantiate the serious allegation that the RUC made to Mr Hogg on 24 November 1988 that some solicitors were "*effectively in the pockets of terrorists*" and/or "*involved in terrorism*".²⁵

14.37 I should record that, although the RUC's letter to the Northern Ireland Office of 11 January 1989 enclosing the briefing notes on Patrick Finucane and Oliver Kelly did not expressly state that they were to be treated in confidence, it is clear from the protective marking on the notes themselves that they were classified as 'confidential' and 'secret'. Ordinarily that would indicate that the RUC had not intended the specific content of the notes to be made public.

²² RUC, briefing note re Patrick Joseph Finucane [sic] [see Volume II, pp. 209–213]

²³ Ibid.

²⁴ Ibid.

²⁵ Undated minute from Douglas Hogg's Private Secretary to F4 Division [see Volume II, pp. 209–213]

- 14.38 In the event, of course, Mr Hogg did not name any individual solicitor in his statement to the Committee. The Minister indicated that he had carefully considered the manner in which he disclosed the information, telling the Committee:

“Do I rest on [the] general statement, or do I start pointing fingers at particular people? I have thought about the matter carefully ... I shall not identify specific instances, specific individuals or specific cases. I shall go no further than what I have said – that is, that a number of solicitors in Northern Ireland are known to be sympathetic to one or other terrorist organisation.” [Emphasis added]²⁶

The briefing of Douglas Hogg by Home Office officials

- 14.39 I have also considered the briefing material that Home Office civil servants provided to Douglas Hogg to establish what advice, if any, they gave him regarding disclosure of the briefing relating to solicitors that he was given by the RUC. In his statement to Stevens III, dated 28 September 2000, and in his written submission to my Review, Mr Hogg stressed that his comments would have been made in the context of the advice he received from his officials. In his written submission to my Review, Mr Hogg stated that:

*“When preparing for the Bill I received extensive advice and information from Home Office officials ... That advice would have been both written and oral. It was my practice to hold meetings before a committee session in order to determine the response that I was to give to the Committee. In the course of such meetings what I was to say in the debate would be the subject of discussion and advice. I anticipate that I did this before the meeting when I made the remarks in question. Such would have been my normal practice and I believe that I recall doing so.”*²⁷

- 14.40 Home Office documents confirm that Mr Hogg received both written and oral briefing prior to the Committee stage of the Bill. Officials provided Mr Hogg with draft speaking notes for each provision in the Bill scheduled to be debated, including the amendments to Clauses 17 and 18 that had been tabled by Peter Archer and William Cash.
- 14.41 The Private Secretary’s note of the oral briefing provided by officials on 16 January 1989 makes no reference to the briefing Mr Hogg had been given by the RUC nor to the role of solicitors in Northern Ireland. Neither did the speaking note provided for his use when introducing the Clause 17 powers make any reference to that issue.²⁸
- 14.42 Clearly, the speaking note relating to the amendments proposed by William Cash and Peter Archer on Clauses 17 and 18 is particularly relevant. Had Home

²⁶ Hansard, Standing Committee B debate, 17 January 1989, col 509

²⁷ Douglas Hogg, letter to the Review, 8 September 2012

²⁸ Speaking note, Amendments to Clauses 17 and 18 [see Volume II, pp. 214–218]

Office officials felt that the Minister should make public reference to the alleged difficulties relating to solicitors in Northern Ireland, no doubt the draft speaking note would have included text to that effect. In fact, however, whilst the note alludes generally to the possibility that a solicitor might frustrate a terrorist investigation by acting in a manner contrary to his professional duties, it makes no reference to that being a problem specific to solicitors in Northern Ireland who were sympathetic to the IRA.

- 14.43 The speaking note was a lengthy document providing a detailed and balanced analysis of the issue. It advised the Minister to resist the amendments, describing the issues involved as “*difficult*” and “*complex*”, but noted that in relation to Clause 17 he “*may wish to consider [the issues] further if pressed*”.²⁹
- 14.44 In conclusion, I am satisfied that Mr Hogg had not based his specific comments on advice that he had received from Home Office officials.

The reaction to Douglas Hogg’s comments

- 14.45 Unsurprisingly, Douglas Hogg’s comments in Parliament provoked immediate controversy in Northern Ireland. The Law Society of Northern Ireland wrote to him on 18 January 1989 outlining their regret at the remarks and seeking further clarification.³⁰ Mr Hogg responded on 19 January explaining that, as he had indicated to the House, in no sense should his comments be construed as a criticism of the legal profession in general in Northern Ireland.³¹
- 14.46 Concern was also expressed by Irish Government officials to the Northern Ireland Office (NIO). An NIO note dated 14 February 1989 recorded that Irish officials had briefly raised their Minister’s likely concerns about Mr Hogg’s comments on 3 February.³²
- 14.47 I should emphasise, however, that I have not been able to discover any record of the RUC raising concerns, either with Mr Hogg or with the Home Office, about the comments that he made in the House. Nor have I found any record that RUC officers even raised concerns internally about the Minister’s comments. I have, accordingly, not been able to substantiate any contention that the RUC were genuinely alarmed, or even surprised, that the Minister had publicised their concerns about the alleged sympathies of solicitors in Northern Ireland towards the IRA.

The reaction after the murder of Patrick Finucane

- 14.48 The murder of Patrick Finucane on 12 February 1989 revived the controversy over Douglas Hogg’s comments. The Irish Taoiseach, Charles Haughey TD,

²⁹ *Ibid.*, para 6

³⁰ Letter from the Law Society to Douglas Hogg MP, 18 January 1989

³¹ Letter from Douglas Hogg MP to the Law Society, 19 January 1989

³² NIO internal note, *Murder of Mr Pat Finucane*, 14 February 1989

issued a statement the following day implicitly linking Mr Hogg's comments to the murder. He stated that:

*"The need for the greatest care to be given to any statement which might have tragic consequences in Northern Ireland has once again been underlined and I expect that this aspect will be urgently and fully considered."*³³

14.49 At 5.15pm on 13 February the Irish Ambassador called on the Cabinet Secretary, Sir Robin Butler, to whom he provided a copy of the Taoiseach's statement. The Ambassador expressed the Irish Government's concern about the murder of Patrick Finucane and the protection of other defence solicitors (see Chapter 18).³⁴

14.50 UK Government Ministers issued a series of statements and comments condemning the murder and rejecting the notion that it had any link with Mr Hogg's comments. The Secretary of State for Northern Ireland, Tom King, stated on 13 February 1989:

*"Everyone knows that Mr Finucane has had a high profile recently. There are some people, the sicker members in this society, to whom somebody who has a high profile, as it were, for the other team, becomes a sort of target that they can fix on. They have no argument to put against them and so they resort to the ultimate base argument of the gun."*³⁵

14.51 Mr Hogg himself also issued a statement to the press on the same day, as follows:

*"This is a tragic and wicked killing. I very much hope that those responsible will be brought before the courts as soon as possible. As to the identity of those responsible or the circumstances in which the murder has taken place, that is a matter for the RUC."*³⁶

14.52 Tom King touched on the subject again on 14 February 1989 when he said that:

*"Disgust at the murder of Mr Finucane, disgust at other sectarian murders in recent weeks shows how widely in both communities we share the revulsion at attacks, whether they be on solicitors, on contractors, on postmen and milkmen, on the families of the security forces, or on the security forces themselves who seek to defend both communities from the evil terrorists of both extremes."*³⁷

14.53 I explore in Chapter 23 the reaction of the State to the threat to other defence solicitors in the aftermath of the murder of Patrick Finucane.

³³ Statement of the Taoiseach, 13 February 1989

³⁴ Cabinet Office note, 13 February 1989 [see Volume II, pp. 306–307]

³⁵ 'Killing prompts new Anglo-Irish crisis', *The Times*, 14 February 1989

³⁶ Home Office note of press lines, 13 February 1989

³⁷ Speech given by Tom King MP at Belfast East Rotary Club on 14 February 1989

Did Douglas Hogg's comments incite Patrick Finucane's murder?

14.54 Some commentators have alleged that Douglas Hogg's comments prompted the UDA to murder Patrick Finucane. Mr Hogg vigorously denied such a suggestion in his submission to my Review. He stated that:

*"At no time did I refer to Mr Finucane and I don't believe that anybody could properly have inferred such a reference from my remarks. The murder of Mr Finucane was a cowardly and wicked crime. The suggestion that I have in some way connived in such an evil act is wholly untrue and deeply distressing."*³⁸

14.55 As I note in Chapter 16, it is clear that the UDA were already conspiring to murder Patrick Finucane well before Mr Hogg made his comments in Parliament on 17 January 1989. There is, however, no evidence whatsoever to suggest that Mr Hogg was aware of any existing threat to Mr Finucane or any other solicitor in Northern Ireland.

14.56 My findings in relation to the allegations of State incitement to murder Patrick Finucane therefore accord with the alternative proposition put forward in BIRW's Report, which noted that:

*"UDA sources deny that Hogg's remarks precipitated the murder, saying that they were already acting on the suggestion made to [L/03] by RUC officers."*³⁹

14.57 As I outline in Chapter 18, I believe this to be the correct chronology of events.

14.58 However, whilst it is true that the UDA were already conspiring to murder Patrick Finucane by 17 January 1989, there is evidence to suggest that they did consider and discuss the Minister's comments about lawyers. Security Service intelligence received after the murder of Patrick Finucane recorded that Thomas 'Tucker' Lyttle had specifically raised Mr Hogg's comments with another UDA member in the week prior to the murder.⁴⁰ This intelligence was considered by the Security Service to be reliable. Having considered the background to this intelligence in detail, I accept the Security Service's assessment in this regard.

14.59 There are, therefore, grounds for believing that the Minister's comments did increase the vulnerability of prominent solicitors in Northern Ireland who represented republican suspects. I do not believe the significance of 'Tucker' Lyttle's interest in Mr Hogg's comments should be overstated: the evidence I will examine in this Report in relation to the private UDA discussions after the murder suggests that the 'intelligence' they had received from an RUC source was of much greater significance. Indeed, it is worth noting that the 'UFF [Ulster Freedom Fighters]' statement produced by Brian Nelson and published in *Ulster* magazine did not cite Mr Hogg's comments as part of the justification for the attack.⁴¹

³⁸ Douglas Hogg, letter to the Review, 8 September 2012, para 14

³⁹ BIRW Report, *Deadly Intelligence*, para 11.11

⁴⁰ Security Service intelligence received after the murder of Patrick Finucane

⁴¹ 'UFF' statement, *Ulster* magazine

- 14.60 I should note that I am satisfied that Mr Hogg himself was totally unaware of any threat to kill Patrick Finucane. I also believe that his disgust at the murder of Patrick Finucane was genuine. There is simply no basis, therefore, for any suggestion that the Minister expressly intended his comments to provide a form of political legitimacy for what was being planned by the UDA.

Overview

- 14.61 I am satisfied that Douglas Hogg's comments in Parliament on 17 January 1989 were made as a direct result of a briefing sent to him by the RUC about two solicitors, Oliver Kelly and Patrick Finucane. I do not believe that the briefing provided to the Minister substantiated the claims made by the RUC that solicitors such as Patrick Finucane were "*effectively in the pockets of terrorists*".
- 14.62 I am sure that the Minister's comments did not incite the UDA to murder Patrick Finucane. I am satisfied on the basis of the evidence I consider later in this report that the UDA were already conspiring to murder Mr Finucane prior to the Minister's comments on 17 January 1989. I am also satisfied that Mr Hogg was unaware of the loyalist threat to defence solicitors before he made his comments. However, the evidence does suggest that the UDA considered the Minister's comments to be significant. I believe that Mr Hogg's comments may have, albeit unwittingly, further increased the vulnerability of defence solicitors, including Patrick Finucane.
- 14.63 I am satisfied that the manner in which Mr Hogg was briefed by the RUC indicated an attitude or mindset within the RUC at the time which led them to be predisposed against solicitors representing republican paramilitaries, and against Patrick Finucane in particular.
- 14.64 That briefing, in my view, reflects the RUC's desire at the time to discredit a small number of defence solicitors whom they perceived to be too close to the republican paramilitaries that they were representing. All the evidence I have seen suggests that the RUC were fully aware, and indeed intended, that Mr Hogg should put their views in that regard into the public domain. I am accordingly in agreement with Sir John Stevens' conclusion, in his 2003 Report, that Mr Hogg was "*compromised*" by the briefing he received from the RUC.⁴²

⁴² See Stevens III Investigation Report, para 2.17

Chapter 15: Security Service propaganda initiatives

- 15.1 This chapter analyses the propaganda initiatives that were taken forward by the Security Service in the 1980s in order to contest and counter republican propaganda. These initiatives are of particular relevance to my Review because they came to include Patrick Finucane within their scope prior to his murder.

The importance of public disclosure

- 15.2 Although Sir John Stevens and Justice Cory did not explicitly deal with the issue of the Security Service's propaganda initiatives, in view of my broader remit I have decided that it is necessary to publish an account of the scope and nature of these projects.
- 15.3 The precise methods used by the Security Service as part of their propaganda initiatives remain sensitive. I accept that many of the technical details of such operations cannot be publicly disclosed in view of the normal requirements relating to the protection of this type of information. However, I have come to the view that an outline of this issue has to be published as part of this Report.
- 15.4 I have reached this view because my Terms of Reference provide a mandate for the publication of a "*full public account*" and because the serious issues raised by these particular initiatives warrant disclosure in order to ensure that the public interest is served by holding all agencies of the State accountable in relation to matters of potential public concern.
- 15.5 Although many of the details underpinning this account cannot be disclosed in view of their sensitivity, this has not inhibited me from publishing an overview of these initiatives and their objectives; the fact of Patrick Finucane's inclusion in these projects; and my conclusions on the nature of the propaganda as a whole. I have been provided with access to all the relevant underlying documentation. Although he was not directly involved in these propaganda initiatives, I have had the opportunity of questioning a senior Security Service officer on this material.

The context to the propaganda initiatives

- 15.6 Propaganda had long been a tactic used by paramilitary groups alongside their armed campaigns of violence in Northern Ireland. Reports of a leaked copy of the Irish Republican Army's (IRA's) Green Book, apparently obtained when Seamus Twomey was captured in 1977, suggested that the IRA adopted a specific propaganda aim, as follows:

“To sustain the war and gain support for its ends by National and International propaganda and publicity campaigns.”¹

- 15.7 Accounts provided by republicans of their activities in the IRA confirm the importance that was attached to the ‘propaganda war’.² The Security Service believed that the Provisional IRA (PIRA) ran a dedicated propaganda unit in support of this aspect of its strategy. It is clear that PIRA believed it was having significant success in its dissemination of propaganda. Royal Ulster Constabulary Special Branch (RUC SB) intelligence received in March 1988 suggested that a senior PIRA figure was openly boasting about how his organisation was “*winning*” the ‘propaganda war’.³
- 15.8 Loyalists also used propaganda to support their own paramilitary activities. As the Force Research Unit Contact Forms (FRU CFs) demonstrate, paramilitary leaders such as Thomas ‘Tucker’ Lyttle regularly engaged with journalists and would often deliberate over how and whether to ‘claim’ loyalist murders based on their perceptions of the likely media and public reaction.
- 15.9 It is clear that by the 1980s there was a widespread feeling across the security forces and the UK Government that such propaganda needed to be countered. My Review has had access to a range of internal Government documents outlining the discussions of the need for what was described as ‘Counter-Action’. Counter-Action appears to have been described as the use of either overt or covert means to provide truthful rebuttals of terrorist propaganda or to expose the damaging effects of terrorism. A Northern Ireland Office (NIO) Information Strategy Group was tasked with co-ordinating the Government’s presentational strategy. This group considered the Government’s strategy in responding to specific controversial security incidents and the presentation of its wider political and economic message.
- 15.10 My Review has focused specifically on the approach of the intelligence agencies to propaganda activity. An early note from an intelligence officer illustrated the desire of the intelligence agencies to become involved in this field. The officer suggested that a “*sustained and structured propaganda war*” be fought against the terrorist groups in Northern Ireland.⁴ The officer’s note made clear that the campaign could be aimed at both loyalist and republican terrorists. The proposal was put forward on the following basis:

“... a deliberate and continued propaganda campaign (where the hand of HMG [Her Majesty’s Government] is visible, obscured or invisible) might:

(i) strike at recruitment into organisations

(ii) disenchant those already inside by opening their eyes to the reality of things

¹ See, for example, Tim Pat Coogan, *The IRA*, HarperCollins, 1993, Ch. 33

² See, for example, Richard O’Rawe, *Blanketmen*, New Island Books, 2005, which includes a number of references to the ‘propaganda war’ (e.g. p. 112 noting that “*it had been a mammoth task to cover up the fact that the hunger strike had collapsed*”)

³ RUC SB RIRAC, 18 March 1988

⁴ Note held in Security Service archives

(iii) keep public attention, vigilance and interest

(iv) who knows, provide new leads and recruits for us all.”⁵

- 15.11 Although it was mooted, the idea of a structured propaganda campaign in which the intelligence agencies were heavily involved appears never to have been taken forward.

The propaganda initiatives

- 15.12 My Review has, however, established that some comparatively limited propaganda initiatives were taken forward by the Security Service in Northern Ireland in the 1980s. The initiatives focused on propaganda directed against PIRA. The methods used by the Security Service involved the dissemination of information within the broader loyalist community in a bid to counter republican propaganda. The initiatives of central interest to my Review were taken forward by the Service of their own volition and without reference to the NIO Information Strategy Group.
- 15.13 The Security Service used a variety of methods and conduits through which to disseminate the propaganda. The nature of the propaganda being disseminated varied. Some of the propaganda involved, for example, highlighted the damaging effect of PIRA murders and attacks. In other instances, the propaganda was targeted more directly at discrediting specific PIRA figures.
- 15.14 Security Service officers later referred to the dissemination of information within the loyalist community, in such a way that it would be likely to become known by PIRA figures, as having the potential to make “*an impact on the republican target*”. However, whilst the focus of the propaganda was aimed at PIRA, it is also clear that the initiatives were not particularly focused or controlled. The initiatives certainly came to include within their scope individuals who were not members of terrorist organisations but prominent figures in the broader nationalist and republican communities.

The divergence of views within the Security Service

- 15.15 It is clear from the documents I have reviewed that there was a marked divergence of views within the Security Service as to the aims and content of the propaganda being disseminated. Whilst there are few records that directly explain why the propaganda took the forms that it did, internal Security Service discussions in the late 1980s do provide an insight into the aims of the initiatives and the difference of views between the Security Service officers working on operational issues and the analytical staff working in the Assessments Group.

The approach of the Service’s operational branch

- 15.16 Responsibility for the initiation and implementation of the propaganda initiatives lay with the Security Service’s operational branch. The first internal documents which help to explain the strategy and aims behind the propaganda date from the

⁵ Ibid.

late 1980s, towards the end of the initiative. A Security Service officer produced a note considering further options for anti-PIRA propaganda. The note identified two ways in which anti-PIRA propaganda could be directed:

“Firstly to expose the general hypocrisy [sic], pointlessness and lack of humanity of the ‘Armed Struggle’ against overwhelming public opposition in Northern and Southern Ireland.”⁶

15.17 The second mechanism was described as follows:

“... [the Security Service could exploit the use of] the extensive intelligence on PIRA players already available ... [to loyalist paramilitaries] to expose to the public the nature of the people organising and profiting from IRA terrorism.”⁷

15.18 In furtherance of the second aim – to expose ‘PIRA players’ – the officer proposed that the propaganda initiatives should be expanded to include the public circulation of details of “*the structure, organisation and personnel of PIRA*”. Some PIRA figures had already been named and exposed as part of the propaganda initiatives in the late 1980s, though this had been done in an ad hoc and comparatively small-scale fashion. The Security Service officer referred to above was proposing a significant expansion of this aspect of the propaganda initiatives.

15.19 The note also provided an explanation as to how the public circulation of details of PIRA players would assist the intelligence agencies’ wider strategy. It included the comment that:

“It has been agreed that disruption is the alternative as recruitment of PIRA players has proved impossible, and this would provide an ideal opportunity for unnerving the unrecruitable.”⁸

15.20 The note thus implies that propaganda against specific PIRA figures was a tactic that could be used against individuals who were either assessed to be unrecruitable as agents or who had been approached and had refused to become agents.

15.21 I should note that the “*disruption*” envisaged by the Security Service appears to have referred to the concern that such propaganda would prompt amongst PIRA players. There is no evidence that the Service were motivated by a desire to spread the propaganda in order to encourage and inspire loyalists to ‘disrupt’ PIRA figures by attacking them. I consider below, however, the highly pertinent concerns of the Director and Co-ordinator of Intelligence (DCI) and others that, in practice, the propaganda could nonetheless be perceived as being incitement against such individuals.

⁶ Security Service, internal note

⁷ Ibid.

⁸ Internal note from Head of Security Service operational section

Concerns within the Security Service about the initiatives

- 15.22 The documents I have reviewed suggest that there was considerable unease amongst some Security Service officers with regard to the nature of the propaganda and the proposals for expanding the initiatives. At one stage, the Head of the Security Service's operational section had cautioned that the Service should be careful that the initiatives should not involve "*anything which might be taken as incitement*".⁹
- 15.23 The Head of G8, the Service's Irish agent-running section based in London, provided the first internal critique of the propaganda initiatives. He advised that the Government had an:
- "... obligation to do nothing that intentionally or deliberately exacerbates religious sectarian tensions."*¹⁰
- 15.24 However, despite these reservations the officer also referred in the same telegram to the initiatives as having been "*talented and clearly successful*".
- 15.25 Towards the end of the propaganda initiatives, the DCI John Deverell, the Security Service's Head of Assessments Group (HAG) and the Head of the Service's operational section also privately reviewed the Service's involvement in this field. A note of a meeting recorded that the three officers agreed that the initiatives had been "*on dangerous ground*" and that they should be reined in. The earlier proposal that the initiatives be expanded to include a detailed public exposé of PIRA figures was rejected by the DCI. He stated that it would be unacceptable for the Security Service to engage in such activity.

The termination of the propaganda initiatives

- 15.26 The propaganda initiatives appear to have only been terminated entirely towards the end of 1989. The minutes of the Targeting Policy Committee during September 1989 also show that the new Chief Constable, Sir Hugh Annesley, had expressed reservations about the intelligence agencies conducting any 'Counter-Action' type of propaganda activity (though there is no record to suggest that the Chief Constable had been made aware of these Security Service initiatives).
- 15.27 However, it is clear that the Security Service's operational section viewed the ending of the initiatives with some regret. Whilst accepting that the Service's operational branch should not have a propaganda role, one officer expressed the view that there was nevertheless a continuing need for a project:
- "... which challenges republican assertions, which makes republican players feel that they, too, are as exposed as the members of the security forces who live daily under threat of the assassin's bomb or bullet."*¹¹
- 15.28 This note tends to confirm the impression that some officers had always felt that one of the most important aims of the propaganda initiatives was to unnerve and expose republican players. The HAG's response to this note welcomed the

⁹ Earlier internal note from Head of the Security Service's operational section

¹⁰ Head of G8 note to Security Service operational section

¹¹ Note from Security Service operational section to G8, 1989

winding up of the propaganda initiatives but recorded that the DCI, Assistant DCI and HAG were “concerned” about the comments in the memo. The HAG stated that:

“It is one thing to use CA [Counter-Action] to get across the Government’s message or to expose paramilitaries’ hypocrisy. But we cannot agree that it would be right to engage in activity that could be interpreted as incitement, issuing threats to groups or individuals or [disseminating] targeting material. We could not credibly put any such scheme to the NIO.” [Emphasis in original]¹²

15.29 Following its termination, the Security Service in Northern Ireland conducted an internal review of the propaganda initiatives. A note produced on 15 December 1989 acknowledged that, looking back on the initiatives:

“... we [the Security Service] created ... CA activity before we had developed either a controlling mechanism for it or a means of fuelling it with suitable CA material.”¹³

Propaganda referring to Patrick Finucane prior to his murder

15.30 The above analysis provides the background to the formulation and implementation of the Security Service’s propaganda initiatives. This project is of particular relevance to my Review because I have established that in the late 1980s, prior to his murder, the initiatives encompassed the dissemination of information referring to Patrick Finucane within the loyalist community.

15.31 I should note that Patrick Finucane was not the focus of the propaganda initiatives in the late 1980s. The thrust of the propaganda rumours and innuendo was aimed at the republican movement and specific PIRA players, including individuals who would have been represented by Patrick Finucane. However, as a result of his work in defending these individuals, it is clear that Mr Finucane came to be included within the scope of the propaganda.

15.32 The information relating to Patrick Finucane that was being circulated effectively involved fanning the rumours and speculation linking him to the IRA. The effect of the propaganda would certainly have been, in my view, to associate Patrick Finucane with the activities of his clients.

15.33 I have found no evidence that the Security Service circulated Patrick Finucane’s personal details, nor that they proposed that any individual or group attack him. In line with the broader objectives of the initiatives, the propaganda against Patrick Finucane appears to have been designed to discredit and ‘unnerve’ him rather than to incite loyalists or anyone else to target him. However, even if the propaganda was not intended to incite loyalists in that respect, I must consider the question as to whether it could have legitimised him as a target for loyalist paramilitaries.

¹² Note from HAG to Head of G8, 1989

¹³ Security Service paper, review of CA activity, 15 December 1989

15.34 Before turning to this question it is worth noting that the very act of disseminating such propaganda did, in my view, breach the basic principles upon which the State should be obliged to approach lawyers exercising their professional duties. In Chapter 16, I deal in greater detail with the ‘Basic Principles on the Role of Lawyers’, which were formally adopted by the United Nations in 1990 and should, I believe, have already have been followed by a country such as the United Kingdom. For the purpose of this chapter, it is important to highlight the fact that Principle 16a referred to the need for lawyers to be:

“... able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”

15.35 Principle 18 specifically provided that:

“Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”¹⁴

What effect did the propaganda have?

15.36 In order to determine whether the propaganda featuring Patrick Finucane was linked in any way to his murder, I have considered whether the Ulster Defence Association (UDA) became aware of the rumours being circulated. Rumours linking Patrick Finucane to the IRA had, of course, been circulating within the UDA for many years. As the Security Service records show, the UDA had previously considered murdering Mr Finucane in 1981 and 1985. In the light of his success in defending republican clients in the late 1980s, and his brothers’ well-known involvement in terrorist activity, it is clear that the UDA would already have associated him with PIRA.

15.37 I am satisfied that, by the end of 1988, UDA members had certainly become aware of the rumours linking Patrick Finucane to the IRA. I am sure that members of the West Belfast UDA, and specifically one of the key ringleaders of the murder, L/28, became aware of rumours being circulated. Although it is clear that the UDA would already have believed Mr Finucane to be associated with PIRA, the rumours being disseminated could certainly have served to further reinforce the UDA’s views in this regard.

15.38 I am also sure that the Security Service were aware of the fact that the propaganda was reaching loyalist paramilitaries. Indeed, as I have already outlined at paragraph 15.25, the subsequent records with respect to the propaganda initiative demonstrate that Security Service personnel later became concerned that the circulation of such information in this way was treading on “*dangerous ground*”.

15.39 I questioned Security Service officer G/07 on the propaganda initiative. He acknowledged that:

¹⁴ *Basic Principles on the Role of Lawyers*, adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990. Available on the website of the United Nations High Commissioner for Human Rights.

“... the discussion that we saw [between the DCI, HAG and the Head of the Service’s operational section] might more usefully have taken place before the [initiatives] took place.”¹⁵

- 15.40 However, he did express the view that, given the UDA’s long-standing targeting of Patrick Finucane, he did not “*see a direct linkage between the [propaganda] and the murder*”.¹⁶
- 15.41 I accept that the link between such propaganda and a paramilitary murder should not be overstated. Later in this Report I consider what I believe to have been the key drivers behind the UDA beginning to conspire to murder Patrick Finucane in December 1988.
- 15.42 However, that does not mean that the potential impact of such propaganda should be overlooked. In considering the background to this initiative, and taking account of the underlying material I have seen, I do believe that the propaganda could have had the effect of further legitimising Patrick Finucane as a target for loyalist paramilitaries.

Awareness of the propaganda against Patrick Finucane

- 15.43 It is clear that knowledge of the propaganda being circulated in the late 1980s, which included rumours relating to Patrick Finucane, extended beyond the Security Service’s operational section.
- 15.44 The HAG was informed of the nature of some of the propaganda prior to it being disseminated. The content of this propaganda may have included the proposal to link Patrick Finucane to PIRA, though it is difficult to be sure of this. However, the HAG subsequently stated that he was told by a Security Service officer that the propaganda was already in the process of being disseminated and that there was therefore “*no opportunity*” for the Assessments Group to influence its content or nature.
- 15.45 The HAG’s account appears to have been supported by the Head of the Security Service’s operational section, whose own review of the propaganda initiatives implied that the operational section had not believed it to be necessary to seek clearance from the Assessments Group. The Head of G8 was also made aware of the intention to disseminate the propaganda, though it is not clear whether G8 was aware of the content of the propaganda and the fact that it made links between Patrick Finucane and PIRA.
- 15.46 A Security Service telegram produced in the late 1980s also demonstrates that both the RUC SB and the FRU were aware of the propaganda that included Patrick Finucane. The RUC SB appear to have provided their endorsement for the propaganda, whilst the FRU were said to have been made aware of the propaganda intended for dissemination. The Security Service note stated that:

¹⁵ Transcript of meeting with G/07, 28 September 2012, p. 37

¹⁶ Ibid.

“We have consulted [Assessments Group] (HAG) and RUC (SB Ch Insp.) who was enthusiastic about the concept and content [with the proposed nature of the propaganda]. FRU were [made aware of the proposed nature of the propaganda].”¹⁷

- 15.47 I should note that there is no evidence whatsoever that any political clearance was sought or obtained for the Security Service’s propaganda initiatives. It is clear that, by the summer of 1989, the Service had begun to brief NIO officials in general terms about the concept of ‘Counter-Action’ and that NIO officials had made clear that “*political clearance*” was required for such activity. Although it is unclear whether the propaganda was explicitly classified as ‘Counter-Action’ at the time, it should, in my view, have been self-evident that these particular initiatives required political clearance.
- 15.48 The documentary records suggest that processes were subsequently devised to ensure that political clearance was sought for such initiatives. In September 1989, the Targeting Policy Committee agreed that future ‘Counter-Action’ activity would be subject to “*full consultation and political clearance*” and would be led by the cross-agency Information Strategy Group rather than the intelligence agencies.¹⁸ By this stage, however, the Security Service initiatives of interest to my Review were being wound up.

Propaganda against Oliver Kelly and Paddy McGrory

- 15.49 I have established that the propaganda initiatives also included the dissemination of rumours with respect to the solicitors Oliver Kelly and Paddy McGrory during the 1980s. As was the case in relation to Patrick Finucane, I am satisfied that the channels used for this propaganda meant that the information reached loyalist paramilitary groups.
- 15.50 The Security Service were aware at the material time that these rumours would reach loyalist paramilitaries. The rumours would have added to and reinforced a variety of other conversations taking place within UDA circles at the time with regard to the supposed allegiances of these solicitors.
- 15.51 I should note that there is no evidence that the Security Service intended such rumours to be circulated with a view to encouraging loyalists to attack these lawyers. However, even if the intention was to ‘unnerve’ such lawyers, there were obvious risks in acquiescing in the circulation of such information around the loyalist community. The propaganda was disseminated despite the fact that both lawyers were known to be under threat from loyalist paramilitaries.

Overview

- 15.52 It is clear that there was an understandable desire within the UK Government and intelligence community to counter the propaganda being produced by terrorist groups in Northern Ireland during this period. However, given the background

¹⁷ Note, Security Service operational section to Head of G8

¹⁸ Minutes of Targeting Policy Committee, September 1989

to these initiatives, and the circumstances which then prevailed in Northern Ireland, such propaganda could, unless it was very carefully controlled, have had manifestly undesirable results. Further, I agree entirely with the conclusions of senior officers who later recognised that the initiatives had been on “*dangerous ground*” and sought to wind them up. It is a matter of serious concern that initiatives of this nature were not subject to any form of political clearance.

15.53 I am entirely satisfied that, although he was not the focus of the initiatives, Patrick Finucane came to be included within their scope. In my view, his inclusion in this manner breached the obligations that should have been upheld by the State to ensure that lawyers could operate free from intimidation and not be identified with the causes of their clients.

15.54 I am satisfied that the dissemination of this propaganda could have served to further legitimise Patrick Finucane as a target for loyalist paramilitaries. Whilst the aim of these initiatives was to ‘unnerve’ people such as Mr Finucane (rather than to incite loyalists to attack them), the fact that the propaganda could have such an effect was, in my view, a consequence that should have been foreseeable to the Security Service at the time.

Chapter 16: The response to threat intelligence relating to Patrick Finucane

- 16.1 In this chapter I outline the way in which the Security Service and the Royal Ulster Constabulary Special Branch (RUC SB) dealt with intelligence indicating threats to the life of Patrick Finucane. Further context to this issue is provided by my analysis of the handling of threat intelligence relating to the solicitor Oliver Kelly in 1981.
- 16.2 In seeking to make findings on this issue, I have been guided by two key principles. The first is that the United Kingdom had obligations under Article 2 of the European Convention on Human Rights (ECHR) to take appropriate steps to safeguard the right to life of its citizens. I have already outlined in Chapter 1 the application of Article 2 to the issues that I am reviewing.
- 16.3 I also start from the position that the State should have recognised its duties to protect solicitors who performed a difficult role that was essential to the fair operation of the legal system. Principle 17 of the United Nations (UN) ‘Basic Principles on the Role of Lawyers’ provides that:

“Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”¹

- 16.4 Although these Basic Principles were only formally adopted by the UN in 1990, I nevertheless believe that it is reasonable to have expected a State such as the United Kingdom to have already been abiding by such key principles. In this respect I am in agreement with the UN Special Rapporteur, Mr Param Kumaraswamy, who stated in his 1998 Report that:

“Though the United Nations Basic Principles on the Role of Lawyers were endorsed by the General Assembly in the aftermath of [the murder of Patrick Finucane], yet the Government’s duty to provide adequate safeguards to protect the security of lawyers in such circumstances must necessarily be implied, particularly in a country which cradled and nurtured the concept of an independent system of justice.”²

The context: the threat to Oliver Kelly in 1981

- 16.5 Before considering the threats to Patrick Finucane’s life, it is instructive to examine the response of the Security Service/Secret Intelligence Service’s (SIS’s) Irish Joint Section (IJS) and the RUC SB to the Ulster Defence Association’s (UDA’s)

¹ *Basic Principles on the Role of Lawyers*, adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990. Available on the website of the United Nations High Commissioner for Human Rights.

² Report of the Special Rapporteur on the Independence of Judges and Lawyers, Mr Param Kumaraswamy, submitted pursuant to Commission on Human Rights Resolution 1997/23, 5 March 1998

targeting of Oliver Kelly, another solicitor, in June 1981. In Chapter 3 I outlined the shared management responsibilities within the Security Service and the SIS for the IJS during this period.

The threat to Oliver Kelly's life

16.6 In June 1981, the IJS received intelligence suggesting that the UDA intended to murder the solicitor Oliver Kelly. The intelligence indicated that the UDA had already carried out targeting activity on Kelly. The behaviour of senior UDA figures during this period was also noted as having been consistent with their past behaviour when a high-profile 'hit' was about to be carried out.

16.7 Security Service records outlined discussions between three IJS officers and the Deputy Head of Special Branch (DHSB) regarding the exploitation of this intelligence. It is clear that the IJS officers involved had "*stressed the problems of source protection*" when explaining the position to the DHSB.³

16.8 The Security Service documentation recorded the response of the DHSB as follows:

"DHSB said that his inclination was to do nothing. DHSB ruled out warning Kelly since RUC relations with Kelly are strained following the break-out. He also ruled out an anonymous letter saying that Kelly must know already that he is under threat from loyalist paramilitaries. He concluded that he was not prepared to take any action to protect Kelly and he was reinforced in this view in considering the problems of source protection." [Emphasis added]⁴

16.9 The DHSB's comment about the 'break-out' is a reference to the escape of Provisional Irish Republican Army (PIRA) prisoners from Crumlin Road jail in Belfast on 10 June 1981, in which the RUC SB evidently believed Kelly had played a part.⁵

16.10 In response to the DHSB's comments, the IJS noted that they would seek to confirm whether targeting material had already been gathered on Oliver Kelly or on a different UDA target. If a UDA 'recce' had been carried out on a different target, the IJS note recorded that "*this in turn might affect the RUC's consideration of what steps should be taken*".

16.11 The clear implication of this remark is that the RUC might have taken a different approach in the event that the UDA were targeting someone with whom the police did not have 'strained' relations. Whilst the IJS note made clear that exploitation of the intelligence was ultimately a matter for the RUC, there is no doubt that the IJS acquiesced in the DHSB's approach. The memo recorded that:

³ Security Service telegram, June 1981, para 6

⁴ Ibid.

⁵ The RUC 'profile' on Oliver Kelly provided to Douglas Hogg MP on 13 January 1989 included the allegation that Kelly had played some part in the 'break-out' [see Volume II, pp. 209–213]

“In conclusion, DHSB’s frankness in admitting that he would rather do nothing to protect Kelly came somewhat as a surprise but, in effect, eases our worry concerning [source protection].”⁶

16.12 The memo went on to record that:

“We remain concerned, (and DHSB is well aware of this) that the recce details might not refer to Kelly’s office and that a second, unknown, person could be in danger. However, we have done all that we can at this stage by giving DHSB all the facts and such conclusions as we have drawn.

In the final analysis it is DHSB who must decide what the RUC will do. DHSB has undertaken to keep us informed. HSB [Head of SB], who returns to his office ... [later], may not take such a pragmatic view as DHSB but we have little doubt that we will be kept informed and can react as necessary to protect [the source’s] position.”⁷

16.13 In later discussions, the DHSB confirmed that the UDA must have gathered targeting material on Oliver Kelly and that he should therefore *“be considered a UFF [Ulster Freedom Fighters] target”*.⁸ Whilst the DHSB did commit to exploring possible courses of action *“just in case”*, he noted that he was *“not going to take any other positive action”*.

The change of attitude towards protecting Kelly

16.14 Later Security Service documents demonstrate that there was a dramatic change of approach with regard to the protection of Kelly. A later IJS telegram recorded that the Director and Co-ordinator of Intelligence (DCI) *“called in”* the HSB and the Head of the agent-running section. The document stated that the DCI informed them of the fact that Oliver Kelly was *“directly and constructively involved”* in discussions regarding the hunger strikes.⁹ Kelly appears to have been one of a number of people involved in the now well-documented discussions with intermediaries seeking to explore whether an agreement could be reached between the hunger strikers and the UK Government.

16.15 In the light of this development, the DCI was reported to have indicated that:

“... it was clearly of extreme importance that Kelly remain in good health providing this could be achieved without endangering [an agent].”¹⁰

16.16 The telegram recorded that the HSB stated that the DCI’s information:

“... brought a new dimension to the Kelly problem and that some scheme however elaborate must be devised to protect Kelly from action by the UFF.”¹¹

⁶ Security Service telegram, June 1981, para 7

⁷ Ibid., paras 7–8

⁸ Security Service telegram produced later in June 1981

⁹ Security Service telegram relating to the discussion with the DCI, June 1981

¹⁰ Ibid.

¹¹ Ibid., para 2

- 16.17 The telegram noted that the decision was taken to arrest selected UDA figures in order to deter the group from mounting an attack. The Head of the IJS agent-running section was recorded as having agreed that such a plan would not jeopardise the security of their agent.
- 16.18 After the Chief Constable had been consulted about the operation, the RUC subsequently arrested a number of UDA figures. This action does, indeed, appear to have had the effect of preventing the UDA from carrying out their planned attack on Oliver Kelly and ultimately may have saved his life.

The subsequent RUC leak to the UDA

- 16.19 The Kelly case also highlights another theme relevant to my Review: the leak of information from RUC officers to the UDA. IJS intelligence received shortly after the arrests recorded that a senior UDA figure claimed to have been informed by “a top-ranker” in the RUC SB that the UDA members had been arrested “to prevent a political assassination – that of Oliver Kelly”.¹² This leak appears to have provoked much inevitable wrangling and paranoia within the UDA and potentially placed the lives of individuals suspected of being informers in danger.
- 16.20 A subsequent RUC Criminal Investigation Department (CID) investigation was established to identify whether a senior officer was passing information to the UDA. I have not seen any evidence to suggest that the source of the leak was ever identified. A later Security Service document recorded that:

“HSB remarked that a number of officers with official and semi-official links to the UDA had been interviewed and, so far, all had given a convincing account of themselves. Notwithstanding this, certain officers have been or will be moved in order to sever existing UDA contact.”¹³

Overview

- 16.21 Ultimately, the action taken by the RUC, with the encouragement of the DCI, may well have saved Oliver Kelly’s life in 1981. It is, however, a matter of grave concern that the RUC SB were initially unwilling to protect Kelly and that action was only contemplated once the DCI had indicated that the solicitor was playing a constructive role in the discussions about the hunger strikes. This is indicative of an unjustifiable approach to threat intelligence which distinguished between those who were considered by the authorities to be ‘constructive’ (and therefore in need of protection) and those who were not. Primary responsibility for this attitude rests with the RUC SB but it is also clear that the Security Service/SIS acquiesced in this approach. The later intervention of the DCI is, indeed, powerful evidence that the Service could, and did, prompt the RUC to take action to prevent attacks when they wished to do so.

¹² Security Service telegram, 1 July 1981

¹³ Security Service telegram, 14 August 1981

The 1981 targeting of Patrick Finucane

- 16.22 Intelligence received by the IJS and the RUC in the summer of 1981 provided the first sign that Patrick Finucane's life was under threat from the UDA. This section analyses the threat intelligence received by the agencies and the decisions taken as a result of that intelligence.

RUC intelligence received in July 1981

- 16.23 Patrick Finucane's profile was raised considerably in 1981 as a result of his work representing the hunger striker Bobby Sands, who died on 5 May 1981. RUC intelligence suggested that Mr Finucane was known to the UDA in July 1981 as one of "*the main solicitors acting on behalf of the Provisionals*".¹⁴ This intelligence did not indicate a specific threat to Patrick Finucane but it did clearly suggest that he was known to senior UDA figures. IJS intelligence then showed that the UDA actively considered murdering Mr Finucane in August 1981.

The August 1981 conspiracy

- 16.24 The IJS became aware of the conspiracy as a result of intelligence reported by one of their agents within the UDA. It should be noted that the August 1981 conspiracy to murder Patrick Finucane appears to have been independently generated by the UDA: there is no evidence of security force instigation or inspiration for this action. The evidence suggests that the UDA identified Mr Finucane as a target as a result of information already in the public domain.
- 16.25 A note dated 24 August 1981, produced by a Security Service officer, outlined the intelligence provided by the agent and the discussion between the IJS and the HSB as to what action to take as a result of this. In view of its importance, I have declassified and published a redacted version of the original note alongside this Report. To meet my Article 2 obligations, I have agreed a number of redactions to the note. I am entirely satisfied, however, that none of these redactions changes the substance of the document in any way.
- 16.26 The Security Service officer outlined the UDA's desire to attack a number of individuals. Their agent had reported that:
- "... one target stood out above the others. This was Pat Finucane, a solicitor with strong republican connections who was closely involved with Bobby Sands at the time of the latter's election campaign."*¹⁵
- 16.27 The intelligence provided by the agent indicated the gravity of the UDA threat against Mr Finucane. The intelligence suggested that the UDA were even aware of the security arrangements in place at Patrick Finucane's office. The agent also identified a named loyalist gunman who was likely to carry out the attack and the method the gunman would probably use.¹⁶

¹⁴ RUC intelligence document, 9 July 1981

¹⁵ Security Service note, 24 August 1981 [see Volume II, pp. 181–190 and 193]

¹⁶ See notes regarding the intelligence [see Volume II, p. 182]

- 16.28 The IJS urgently convened a meeting with the HSB to discuss what action to take. The Security Service officer's note included the following options:
- *“Warn Finucane either officially or by an anonymous ‘tip off’ or threat”*
 - *“Arrest ... the UFF team”*
 - *“Arrest Finucane”*
 - *“Establish an overt SF [Security Force] presence in the area”*
 - *“Carry out a mock attack on Finucane’s house, thus causing him to flee”*
 - *“Put [in place] E4A surveillance ...”*¹⁷
- 16.29 Those present at the meeting ruled out warning Patrick Finucane because *“it was very unlikely that Finucane could be trusted to keep his own counsel”*. They felt that if Mr Finucane publicised the fact that he had been warned then the life of the source would be in serious danger. The options of carrying out arrests, establishing a security force presence in the area and carrying out surveillance on the likely hit team were all ruled out largely on the grounds that they were likely to endanger the source.
- 16.30 Petrol bombing the Finucane home was initially proposed as an option by the source. It was subsequently discussed as a possibility at the meeting but was ruled out as *“an extremely dangerous course of action”*, not least because it *“might end up doing the UDA’s job for them”*.
- 16.31 There was no doubt about the immediacy and seriousness of the threat against Patrick Finucane. The HSB noted that *“he thought that the attack on Finucane could be carried out very soon, possibly that night”*. The HSB concluded that he *“assessed the threat as very real and imminent”*.¹⁸
- 16.32 Ultimately, however, the HSB decided that *“the RUC would take no action on the information”*. The note stated that:
- “HSB saw that for all concerned the balance of advantage lay with preserving [the agent] as a source for as long as possible. Everyone present agreed that HSB’s decision was the best one in the circumstances.”*¹⁹
- 16.33 The HSB also undertook to inform the Deputy Chief Constable and other senior officers about his decision.
- 16.34 The documentary record makes clear that the IJS officers welcomed the decision taken by the HSB. In a follow-up note to a more senior officer, an IJS officer described the approach of the HSB as follows:
- “[HSB] appeared to remain open-minded to all the possible solutions, whilst leaving no-one in any doubt that an overriding concern for the safety of [the source] would lie behind any decision he made. Finally, he stated that the responsibility for deciding what to do was his. His decision to do*

¹⁷ Ibid. [see Volume II, pp. 183–184]

¹⁸ Ibid. [see Volume II, p. 187]

¹⁹ Ibid. [see Volume II, p. 188]

nothing was accepted by everyone present as entirely pragmatic, but it was obviously a difficult and courageous decision for him to make since, as he acknowledged, he was ultimately responsible for law and order and on this occasion, specifically for the safety of the intended target and would have to defend it to his superiors.”²⁰

Subsequent events

- 16.35 Despite the decision to take no action, the UDA did not actually attempt to attack Patrick Finucane. With the benefit of hindsight it could be argued that the decision in August 1981 was proved to be correct because the UDA did not ultimately mount an attack. I do not accept this argument. The decision must be judged on the basis on which it was taken and not with the benefit of hindsight. In August 1981, the Security Service/SIS and the RUC believed that the UDA would imminently seek to murder Patrick Finucane.

Representations received by the Review

- 16.36 I received representations from both retired RUC officers and the Security Service with regard to the handling of the 1981 threat intelligence. The former RUC officers commented that, as Patrick Finucane was not attacked in 1981, it seemed *“that the right judgment had been made on this occasion”*.²¹ R/15 commented that the handling of the intelligence:

“... was really ... for the SyS [Security Service] to answer since it concerned their source’s intelligence and they would have been in a position to know the full circumstances.”²²

- 16.37 Security Service officer G/07, however, told me that he felt the RUC SB would have been in a better position than the Service to make assessments about the intelligence:

“One of the issues in this particular context and elsewhere, I think, is the extent to which the RUC already had knowledge of some of this intelligence, but were not revealing that to the Security Service as part of this discussion.”²³

- 16.38 Aside from the intelligence received by the RUC SB in July 1981, I have not seen any other evidence to suggest that the RUC had other intelligence coverage of the UDA’s discussions about Patrick Finucane at that time.

- 16.39 G/07 noted that the decision as to how to exploit such intelligence *“could only have rested with the Special Branch”*.²⁴ However, in view of the Service’s involvement in the discussion with the HSB, I questioned G/07 as follows:

²⁰ Agent-running section note, August 1981, para 2 [see Volume II, pp. 191–192]

²¹ Note of meeting with retired RUC officers 25 July 2012, para 83

²² Ibid., para 85

²³ Transcript of meeting with G/07, 28 September 2012

²⁴ Ibid.

“Chairman: So we have the [Security Service] representative acquiescing in the decision made by HSB, would you agree with that?”

G/07: On the face of it, yes.

Chairman: There is no other interpretation?”

G/07: No, absolutely not.

Chairman: No ... the prime concern was to preserve the source. That is correct, isn't it?”

G/07: That would seem to be the decision of the meeting.

Chairman: Yes.

G/07: In the circumstances, given your point earlier about imminence [of the threat], I am surprised that the discussion was quite that clear cut.

Chairman: Well, I mean, that is why I am looking at this with some care; because on the face of this document, preserving the source took precedence over preserving the target. That is clear, isn't it?”

G/07: Absolutely.”

16.40 G/07 was not directly involved in the discussions about the 1981 threat intelligence but was frank that he was:

“... surprised by the way the decision was reached and by the terms in which this was written down as an account.”²⁵

Overview

16.41 First, I should acknowledge that on this occasion all the representatives of the State, including the Security Service agent himself, the Security Service case officers and the HSB, appeared to believe that it was desirable in principle to prevent a UDA attack on Patrick Finucane. I am satisfied that, had those parties shared the UDA's desire that Mr Finucane be murdered, they would not have conducted a lengthy and detailed discussion about the possible ways in which an attack could be prevented.

16.42 I also recognise the difficulties faced by the IJS and the RUC SB in this context. In dealing with such situations, the State faces a potential tension between the duty to protect the life of the agent providing the information and the duty to protect the life of the individual under threat. Seeking to resolve that tension could undoubtedly be an extremely difficult and complex task. It is significant that in 1981 the IJS and the RUC SB did at least appear to be trying to resolve the tension.

16.43 However, I am none the less firmly of the view that the decision reached in 1981 was not justifiable in the circumstances. I considered the duties of the State under Article 2 of the ECHR in Chapter 1. The requirements of Article 2 did not, in my view, prescribe the exact nature of the action that the State should

²⁵ Ibid.

have taken to protect Patrick Finucane. It was entirely proper for the IJS and the RUC to consider the relative risks of different courses of action in relation to the competing obligation to protect the right to life of the agent. It was, however, wholly incompatible with the obligations of Article 2 for the authorities to decide to place an overriding priority on the life of the agent and to take no action at all to protect Patrick Finucane's life despite the "very real and imminent" nature of the threat against him.

- 16.44 It is also significant that perhaps the clearest course of action available to the agencies concerned – to warn Patrick Finucane that his life was in danger – appears to have been quickly ruled out. Ruling out the option of warning Mr Finucane necessitated considering a range of other approaches, including the alarming proposal to petrol bomb his home, though I acknowledge that this option was rejected.
- 16.45 The decision that warning Patrick Finucane about the threat was an "unacceptable" course of action appears to have been taken on the basis of a judgement about how much the authorities could 'trust' him to keep his own counsel. It is understandable that the organisations involved would need to consider the impact on the safety of their agent if a warning provided to an individual under threat was made public. There was, however, in my view, evidently a real risk in placing too much weight on this consideration.
- 16.46 The RUC and the IJS were in a good position to judge the best means of tactically exploiting intelligence; they were not in a strong position to subjectively assess the degree of 'trust' they could place in Patrick Finucane. In the context of the Kelly case I have already dealt with, there was, in my view, a real risk that making such judgements would lead to individuals deemed to be subjectively 'untrustworthy' not receiving any protection from the State.

The 1985 targeting of Patrick Finucane

- 16.47 Security Service documentation shows that another UDA conspiracy to murder Patrick Finucane surfaced in June 1985. Once again the UDA plot did not lead to the actual mounting of an attack. I have examined the intelligence relating to this conspiracy in order to determine the attitude of State agencies with respect to this threat to the life of Mr Finucane.

The June 1985 threat

- 16.48 Intelligence received by the Security Service in June 1985 suggested that the UDA were again targeting Patrick Finucane. I have released the key document outlining this intelligence alongside my Report.
- 16.49 The Security Service telegram recorded that a UDA Brigadier was actively seeking to obtain information on Mr Finucane. The telegram noted that the Brigadier:

"... is interested in this man [Finucane] because he is sympathetic to PIRA. He considers him a priority target." [Emphasis added]²⁶

²⁶ Security Service telegram, 19 June 1985 [see Volume II, p. 194]

- 16.50 The reference to Patrick Finucane being considered to be a “*priority*” target suggests that the UDA threat against him was potentially very serious. Analysis of the broader context to this intelligence also points to a number of additional factors that could have served to increase the severity of any UDA threat against Patrick Finucane. As had been observed during the discussions between the Security Service and the RUC in relation to the 1981 conspiracy, Mr Finucane’s home address at the time significantly increased his vulnerability to a loyalist attack. Hughenden Avenue was in close proximity to the strongly loyalist Westland Estate.
- 16.51 The Security Service should also have known that the UDA had already gathered a significant amount of intelligence on Patrick Finucane. In 1981 they held details of his home address and the security arrangements in place in his office. There was, therefore, a real prospect that the UDA Brigadier would be able to obtain the information on Mr Finucane that he sought in June 1985.

The Security Service and RUC responses to the threat

- 16.52 The June 1985 intelligence should certainly have led to some consideration on the part of the security forces as to how to mitigate the threat against Patrick Finucane. This could be by means of an intelligence operation to monitor the developing plot or by taking direct steps to warn or otherwise protect Patrick Finucane.
- 16.53 I have sought to establish whether any action was taken as a result of the intelligence received by the Security Service in 1985. In his Report, Justice Cory stated that there was no record to indicate that the Service had shared this threat intelligence with the RUC SB. Justice Cory noted:

“This information [the 1985 intelligence] may have been passed by word of mouth to RUC SB. However, there is certainly no documentation to confirm that any such action took place.”²⁷

- 16.54 I have, however, been able to recover documentary evidence demonstrating that this intelligence was, in fact, shared with the RUC SB. The Security Service produced a Northern Ireland Intelligence Report (NIIR) outlining the intelligence that had been received.²⁸ The cover sheet of the NIIR recorded that the document was distributed to four officers in the RUC, including the Head and Deputy Head of Special Branch. The NIIR was also distributed to Army intelligence HQ and to a senior civil servant, the Assistant Secretary for Security in the Northern Ireland Office.
- 16.55 There is, however, no record in the Security Service or RUC documentation to suggest that the RUC SB ever took any action as a result of this intelligence. The RUC do not, in fact, appear to have any records at all relating to the 1985 conspiracy to murder Patrick Finucane. The Security Service documentation

²⁷ Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 61, para 1.175

²⁸ Security Service NIIR, 20 June 1985 [see Volume II, p. 195]

provides no indication that the Service ever prompted the RUC to consider exploiting the intelligence or queried what action had been taken as a result of the intelligence that they had provided.

- 16.56 G/07 told me that, although there was no record of any follow-up action, he would expect conversations to have taken place between the relevant Security Service and RUC officers. He stated that:

“I would be very surprised if there hadn’t been some conversation between the case officer and his RUC opposite number.

It very much depended on personalities. As I say, some relationships with the RUC were straightforward, reasonably open. But often, as I say, there was significant antipathy between RUC opposite numbers and the Service. The RUC didn’t want the Service engaged on what they regarded as their patch, dealing with their problems.”²⁹

- 16.57 I should note that, although questions have been raised as to what conversations took place between the Security Service and the RUC SB as a result of this intelligence, no-one has ever suggested that this intelligence was, in fact, exploited in order to protect Patrick Finucane.

Overview

- 16.58 I have found no evidence that any steps were taken to protect Patrick Finucane in 1985, despite the potentially serious threat to his life. Ultimate responsibility for this failure must lie with the RUC SB, who received the intelligence and were responsible for determining what operational action to take. However, as the organisation that had first received this intelligence, the Security Service should, in my view, have prompted the RUC SB to consider what measures could be taken to protect Mr Finucane, as they had done in 1981. Whilst the UDA did not actually attack him in 1985, he was left exposed and potentially in danger as a result of the failure of the State to take proportionate steps to seek to protect him.

The Security Service and the 1988 threat intelligence

- 16.59 Although the handling of threat intelligence relating to Patrick Finucane in 1981 and 1985 raises very real concerns, it could not be said to have contributed to his murder in 1989. However, I turn now to the handling of threat intelligence received in December 1988, seven weeks prior to the murder.

The December 1988 intelligence

- 16.60 In a telegram dated 19 December 1988, the Security Service reported intelligence of a UDA threat against three solicitors. The intelligence was recorded as follows:

²⁹ Transcript of meeting with G/07, 28 September 2012

“[L/32] was to have held a meeting of the military commanders on ... December to discuss plans to kill the three solicitors who have represented republicans at recent hearings. These were Paddy McGrory, Oliver Kelly and the ‘shoot to kill’ solicitor in Armagh.” [Emphasis added]³⁰

- 16.61 This telegram was distributed to the Security Service Assessments Group that reported to the DCI, the Security Service Assistant Director responsible for Irish-related agent operations and the Assistant Director responsible for mainland and overseas Irish-related investigations. I have released a copy of this telegram in Volume II of this Report.
- 16.62 In their representations to Justice Cory, the Security Service stated that it was “*by no means clear*” that the Service had identified the “*‘shoot to kill’ solicitor*” as Patrick Finucane prior to his murder.³¹ I am, however, satisfied that the Security Service should have known at the time that the “*‘shoot to kill’ solicitor*” reference related to Patrick Finucane.
- 16.63 In November 1988, it had been widely reported in the press that Patrick Finucane was representing Eleanor McKerr at the inquest into the deaths of Gervaise McKerr and two other men shot by the RUC in County Armagh in 1982. The inquest was being held in Craigavon in County Armagh.
- 16.64 The inquest proceedings were closely associated with the prolonged controversy over the allegations that the 1982 shootings were the result of a State ‘shoot to kill’ policy. On 16 November 1988, for example, the *Daily Telegraph* had referred to the case as the “*shoot-to-kill inquest*”. In a high-profile Judgment delivered on 20 December 1988, the day after the Security Service telegram, the Court of Appeal ruled that police officers involved in the McKerr case were compellable witnesses.
- 16.65 Patrick Finucane was centrally involved in both the inquest proceedings and the parallel litigation relating to the compellability of witnesses.³² The *Belfast Telegraph* of 15 November 1988 had included a photograph of Patrick Finucane alongside its account of the inquest proceedings.
- 16.66 The Security Service assessments produced after the murder recognised that the “*‘shoot to kill’ solicitor*” must have referred to Patrick Finucane. The NIIR produced on 17 February 1989 substituted Mr Finucane’s name for the “*‘shoot to kill’ solicitor*” reference. A separate ‘Note for the File’ produced by an officer in the Assessments Group described the intelligence relating to the “*‘shoot to kill’ solicitor*” as a “*clear reference to Finucane*”.³³ However, in fairness I do note that these assessments were produced after the murder and would therefore have been drafted with the benefit of hindsight.

³⁰ Security Service telegram, 19 December 1988 [see Volume II, p. 196]

³¹ Security Service submission to Justice Cory regarding his draft Report

³² See, for example, the summary of the McKerr litigation given in a speech by the Honourable Mr Justice Treacy at the conference, *Pat Finucane: His Life and Legacy*, on 14 February 2009. A copy of the speech is included in the record of the conference available on the website of British Irish Rights Watch.

³³ Security Service NIIR and Note for the File, 17 February 1989 [see Volume II, pp. 197–198 and 199–200]

16.67 In his oral evidence to my Review, Security Service officer G/07 acknowledged that the December 1988 reference to the “*shoot to kill*’ solicitor” would have been sufficient to make it clear to those receiving the intelligence that it was “*highly likely*” that the UDA’s plans related to Patrick Finucane.³⁴

The seriousness of the threat against Patrick Finucane

16.68 With the benefit of hindsight it is clear that this intelligence refers to the point at which the UDA were first developing their conspiracy to murder Patrick Finucane. However, it could be argued that the intelligence received in December 1988 by the Security Service did not necessarily indicate a serious and continuing risk to the life of Patrick Finucane. In a letter to my Review, the Service referred to intelligence indicating that, during January 1989, the UDA appeared to be prioritising the targeting of Brian Gillen and other republican paramilitaries, and not the solicitors.³⁵

16.69 I accept that the UDA’s decisions on targeting at the time were somewhat erratic and difficult to predict. Many potential victims were considered by the UDA without necessarily being actively targeted for attack.

16.70 However, the nature of the December 1988 intelligence regarding the solicitors should, in my view, have been assessed as constituting a potentially serious threat to the lives of all three men. The Security Service knew that two of the solicitors – Patrick Finucane and Oliver Kelly – were long-standing UDA targets. The fact that the targets were due to be discussed at a meeting of military commanders also increased the seriousness of a threat. Military commanders had the authority within the UDA to sanction an attack.

16.71 There was often a lengthy period between the UDA agreeing a target and actually carrying out an attack but that was by no means always the case. Some attacks, such as that on Gerard Slane (see Chapter 7), had been mounted within a couple of weeks of the individual being considered as a possible target. I am satisfied that although the threat against Patrick Finucane in December 1988 may not have been an imminent one, it was nevertheless potentially serious and consequently demanded consideration of the positive steps that could be taken to protect his life (either through warning him or devising a means of continuing to monitor the UDA plot).

16.72 The extensive background material I have seen during this Review suggests that the receipt of such specific threat intelligence relating to the loyalist targeting of solicitors would certainly have stood out amongst the broader intelligence reporting that the Service received.

³⁴ Transcript of meeting with G/07, 28 September 2012

³⁵ Security Service, letter to the Review, 10 October 2012

The implications of receiving threat intelligence after the dissemination of propaganda

- 16.73 The obligation on the Security Service to deal appropriately with this threat intelligence was, in my view, particularly acute because the threat post-dated the dissemination of propaganda relating to Patrick Finucane. As I noted in Chapter 15, the propaganda being disseminated identified Mr Finucane with the activities of his clients and could, in my view, have served to legitimise him as a target for loyalist paramilitaries. It should also be emphasised that the dissemination of such propaganda placed a further considerable burden on the Service to act on any threat intelligence they subsequently received relating to Patrick Finucane.

What action was taken as a result of this intelligence?

- 16.74 I have considered whether the Security Service took any steps to pursue the threat intelligence further and whether the intelligence was shared with the RUC SB.
- 16.75 My Review has been able to examine material outlining the background to the Security Service's agent-reporting in December 1988. I am satisfied that there was a good reason why the Service were unable to receive any further intelligence on the outcome of the meeting of military commanders.
- 16.76 However, in a fully co-ordinated intelligence structure, consideration could have been given to tasking the Force Research Unit (FRU) agent Brian Nelson, as the UDA Intelligence Officer, to report on any further targeting of the solicitors. The fractious nature of the relationship between the Security Service and the FRU at the time perhaps militated against such a co-ordinated approach.
- 16.77 The fact that the Security Service were unlikely to receive further intelligence on the targeting of the solicitors did, in my view, increase the need for the authorities to consider taking action to warn or otherwise seek to protect the targets. If an intelligence agency could be confident that they would receive greater detail in the future on the progression of the paramilitaries' plans, then it might make sense for any exploitation of the intelligence to wait until a more detailed intelligence picture emerged. If, as in this case, further intelligence on the targeting was unlikely to be forthcoming, then there was, in my view, a more pressing obligation to consider the steps that might be taken to protect life.
- 16.78 There is, in fact, no documentary record to indicate that the 1988 threat intelligence was ever shared with the RUC SB. It is possible that the intelligence was discussed orally with the RUC SB by the Security Service agent-handler. In an internal note produced for the then DCI in 1999, a Security Service Director recorded that:

“... [The Head of the Service's agent-running section in Northern Ireland], who was [the agent's] case officer, was in regular contact with HSB over the ... case and believes that the intelligence would have been discussed with the RUC as a matter of routine.”³⁶

³⁶ Security Service, internal note, 1999

16.79 In a statement to the Stevens III Investigation in 2004, the then Head of the Security Service's agent-running section in Northern Ireland stated that:

*"To the best of my belief, based on normal practice ... I would have arranged to discuss the matters raised by the agent with officers in RUC Headquarters."*³⁷

16.80 In his oral evidence to my Review, G/07 told me that:

*"I find it inconceivable that nothing was done, on the back of this intelligence; why there is no record of it, I find very surprising."*³⁸

16.81 G/07's written statement to my Review acknowledged that the procedure at the time was for such intelligence to be provided to the RUC in written form:

"The Security Service has no executive powers, and in Northern Ireland it was therefore the RUC's responsibility to deal with threats to life, both as principal law enforcement agency, and because they held the lead responsibility for counter terrorist intelligence work, and were therefore best placed to set new intelligence in the wider context. If the threat was immediate, the information would be passed in a telephone call and then followed up in writing. Otherwise, it would have been sent as soon as reasonably feasible in report form. The Service's engagement with the RUC after threat intelligence was passed was limited to ensuring that the agent's identity, safety and access were safeguarded when the RUC took action on the reporting." [Emphasis added]³⁹

16.82 In addition to the lack of any documentary record to demonstrate that the intelligence was passed to the RUC SB, the manner in which the information was recorded strikes me as somewhat concerning. The document recording the threat refers to 'snippets' and does not highlight the threat against the solicitors or suggest any follow-up action. Equivalent internal Security Service documents I have seen tended to note explicitly that such information had been passed on to the RUC either orally or in writing.

16.83 G/07 stated in his oral evidence that:

*"I am surprised at the way it has been handled here, it is described as a snippet. But I would have expected the staff in the assessments group to have picked it up and done something."*⁴⁰

16.84 There is, however, no Security Service documentary record to suggest that any action was taken to disseminate the intelligence. Similarly, there is no reference in the RUC records to suggest that the intelligence was passed to them. This is in contrast to the Security Service's dissemination of the 1981 and 1985 threat intelligence regarding Patrick Finucane, where the Service's documentary records clearly show that the reporting was shared with the RUC. The 1981 case

³⁷ Head of agent-running section, statement to Stevens III Investigation, 29 June 2004

³⁸ Transcript of meeting with G/07, 28 September 2012

³⁹ G/07, statement to the Review, 27 September 2012

⁴⁰ Transcript of meeting with G/07, 28 September 2012

outlined above strongly suggests to me that, had the Security Service shared and considered the exploitation of the 1988 intelligence with the RUC SB in the same detailed way, there would surely have been a record of such a discussion.

Overview

- 16.85 The Security Service intelligence received in December 1988 demonstrated, in my view, a potentially serious threat to the life of Patrick Finucane. Mr Finucane was murdered by the UDA less than two months afterwards. No steps had been taken to warn him that his life was in danger or to otherwise protect him.
- 16.86 I believe that the responsibility for the failure to act on the December 1988 threat intelligence lies with the Security Service. Had the Service properly pursued this intelligence with the RUC, I believe that there would be a documentary record demonstrating this.

Chapter 17: The failure to take action against the West Belfast UDA prior to the murder of Patrick Finucane

- 17.1 Having conducted a detailed examination of the intelligence provided to the Force Research Unit (FRU) and the Royal Ulster Constabulary (RUC) by Brian Nelson and William Stobie, it is clear to me that members of the West Belfast Ulster Defence Association (UDA) had been linked with a string of murders and attempted murders during the period 1987–89. The murder of Patrick Finucane was one of a series of attacks carried out by the same terrorist gang in a comparatively small area of West and North Belfast.
- 17.2 In the light of this pattern of terrorist activity, I must consider the broader question of whether the authorities were taking sufficient action to frustrate the activities of this group. I consider in detail in Chapter 8 the way in which the FRU and the RUC dealt with threat intelligence provided by Brian Nelson to his handlers prior to UDA attacks.
- 17.3 It is not sufficient, however, to focus only on the question of whether attacks could have been prevented; I must also consider whether action was taken by the authorities after attacks to arrest and question those who had been linked to the crime. In effect, I must determine whether the authorities should have made more effort prior to February 1989 to disrupt, and seek to bring to justice, the gang responsible for the murder of Patrick Finucane.

The use of intelligence to arrest terrorist suspects

- 17.4 In examining this area, I have been mindful of the fact that intelligence material linking an individual to an attack does not represent admissible evidence that can be used for the purposes of prosecution. It would not necessarily be fair, therefore, to criticise the RUC for failing to translate such intelligence into prosecutions, since admissible evidence to the requisite threshold is required in such cases.
- 17.5 I am conscious that by the late 1980s in Northern Ireland both republican and loyalist terrorists had long since adopted a consistent strategy of refusing to answer questions in police custody. There was, therefore, often only a remote possibility of suspected terrorists making confessions when brought in for questioning. I also take into account the fact that the RUC were dealing with an unprecedented number of serious crimes during this period. It would not be reasonable to judge the police's record in arresting suspects by the standards we would expect in Northern Ireland today.

17.6 The Police Service of Northern Ireland (PSNI) raised this issue in its submission to my Review. Its submission included the important observation that:

“The sheer scale of the violence made it impossible to conduct investigations into incidents in the same manner as they would be undertaken in Great Britain because of the level of threat and associated risks emanating from the various paramilitary groupings. For example, in some parts of the Province, for the police to simply deliver a summons required substantial police resources supported by the Army.”¹

17.7 Nevertheless, intelligence was successfully exploited during the late 1980s to arrest terrorist suspects. It is also clear that exploiting such intelligence to enable suspects to be investigated and arrested was an important part of the rationale for running agents such as Brian Nelson. A/05 explicitly cited the aim of arresting UDA suspects as one of the two key FRU objectives in running Nelson as an agent. In his 2002 statement to the Stevens III Investigation, A/05 stated that:

“FRU’s aim was always to get sufficiently detailed information to allow the RUC not only to prevent substantive crime but also to arrest the terrorists and thus to cause attrition to the organisation.” [Emphasis added]²

17.8 The law has also long acknowledged the potential for agents of the State to participate in ostensibly criminal activities with the aim of helping the authorities to seek to bring criminals to justice. The relevant volume of ‘Halsbury’s Laws of England’ in circulation at the time noted that:

“It is doubtful whether a police officer, or a person acting under the directions of the police, who aids, abets, counsels or procures the commission of a crime for the purpose of detecting offenders and bringing them to justice thereby becomes a secondary party to the crime.”³

17.9 The arrest of terrorist suspects could also serve a wider purpose in helping to disrupt their activity. Detainees could be questioned both in order to attempt to bring them to justice for their crime, and with a view to disrupting their ongoing criminal conspiracies by holding them in custody for up to seven days. Indeed, as the case of Oliver Kelly shows, the pre-emptive arrest of individuals plotting to carry out attacks was an important means by which terrorist activity could be frustrated (see Chapter 16).

UDA suspects linked to the murder of Patrick Finucane

17.10 I have analysed in detail the action taken by the RUC with regard to those individuals in the West Belfast UDA who have been linked to the murder of Patrick Finucane. One of the UDA members, Kenneth Barrett, was convicted in 2004 for his part in the murder. The others have all been linked to the murder in

¹ PSNI, submission to the Review, p. 11

² A/05, statement to Stevens III Investigation, 2002, para 60

³ *Halsbury’s Laws of England*, 4th Edition, Vol. 11(1), para 48

intelligence reporting and statements collated by the Stevens III Investigation. Regrettably, by the time of the Stevens III Investigation there was insufficient admissible evidence to bring charges against any of these individuals.

- 17.11 Brian Nelson and William Stobie are dealt with separately in Chapters 21 and 22, when I consider the role of State agents. I should also note that there were other individuals involved in the conspiracy to murder Patrick Finucane, but the RUC SB's knowledge of their activities was comparatively minimal and I have not, consequently, considered them as part of this analysis.

Intelligence on the UDA suspects prior to Patrick Finucane's murder

- 17.12 Brian Nelson provided a significant quantity of intelligence regarding the identities of those West Belfast UDA members involved in planning and carrying out murders. I have sought to ascertain the identities of UDA suspects passed by Nelson to his FRU handlers and the identities subsequently passed on to the RUC Special Branch (SB). I have also considered the intelligence provided by William Stobie and other intelligence sources directly to the RUC SB.
- 17.13 At Figure 12 I have summarised the intelligence received linking UDA members to the murder of Terence McDaid in May 1988 and the murder of Gerard Slane in September 1988. Nelson also reported on a number of other attempted murders and conspiracies to murder. I have included three examples of attempted murders committed by the UDA during this period. Individual cases are dealt with in greater detail in Chapter 7, but I am satisfied that the tables accurately reflect the broad pattern.

Figure 12: Intelligence received linking UDA members to a selection of attacks

Murder of Terence McDaid (10 May 1988)			
UDA suspect	Agency receiving intelligence	Date intelligence received⁴	Source of intelligence
L/22	FRU	11 May 1988 ⁵	Brian Nelson
	RUC	11 May 1988 ⁶	
L/28	FRU	11 May 1988 ⁷	Brian Nelson
	RUC	11 May 1988 ⁸	
L/20	RUC only	1 June 1988 ⁹	William Stobie
L/33	RUC only	1 June 1988 ¹⁰	William Stobie

Murder of Gerard Slane (23 September 1988)			
UDA suspect	Agency receiving intelligence	Date intelligence received	Source of intelligence
L/28	FRU only	12 September 1988 ¹¹ (pre-attack)	Brian Nelson
L/20	FRU	21 September 1988 ¹² (pre-attack)	Brian Nelson
	RUC	3 October 1988 ¹³	
Thomas 'Tucker' Lyttle	FRU only	12 September 1988 ¹⁴ (pre-attack)	Brian Nelson
L/25	RUC only	23 September 1988 ¹⁵	RUC intelligence

⁴In some cases there are multiple source reports linking an individual to the attack – these tables list only the date of the first such report for illustrative purposes

⁵Contact Form (CF) 11 May 1988

⁶Military Intelligence Source Report (MISR) 11 May 1988

⁷CF 11 May 1988

⁸MISR 11 May 1988

⁹RUC SB50, 1 June 1988 [see Volume II, p. 76]

¹⁰Ibid.

¹¹CF 12 September 1988

¹²CF 21 September 1988

¹³MISR 3 October 1988

¹⁴CF 12 September 1988

¹⁵RUC SB50, 23 September 1988 [see Volume II, p. 78]

Murder of Gerard Slane (cont.)			
L/33	RUC only	23 September 1988 ¹⁶	RUC Intelligence
L/30	RUC only	23 September 1988 ¹⁷	RUC Intelligence

Attempted murder of T/16 (20 September 1988)			
UDA suspect	Agency receiving intelligence	Date intelligence received	Source of intelligence
L/22	FRU	19 April 1988 ¹⁸ (pre-attack)	Brian Nelson
	RUC	19 April 1988 ¹⁹ (pre-attack)	
L/20	RUC	Unknown, but by 13 February 1989 ²⁰	Unknown
L/33	RUC	Unknown, but by 13 February 1989 ²¹	Unknown

Attempted murder of Patrick Monaghan (9 November 1988)			
UDA suspect	Agency receiving intelligence	Date intelligence received	Source of intelligence
L/28	FRU only	26 October 1988 ²² (pre-attack)	Brian Nelson
L/20	FRU	26 October 1988 ²³ (pre-attack)	Brian Nelson
	RUC	21 November 1988 ²⁴	
L/30	FRU	26 October 1988 ²⁵	Brian Nelson
	RUC	21 November 1988 ²⁶	

¹⁶Ibid.¹⁷Ibid.¹⁸CF 19 April 1988¹⁹MISR 19 April 1988²⁰Document M28, 13 February 1989 from D/Supt Simpson. I have not been able to establish when the CID received this intelligence or from what source, though it may have been SB intelligence reporting [see Volume II, p. 104].²¹Ibid.²²CF 26 October 1988²³Ibid.²⁴MISR 21 November 1988²⁵CF 26 October 1988²⁶MISR 21 November 1988

Attempted murder of Patrick Monaghan (cont.)			
L/25	FRU only	7 November 1988 ²⁷ (pre-attack)	Brian Nelson
Kenneth Barrett	FRU	17 November 1988 ²⁸	Brian Nelson
	RUC	21 November 1988 ²⁹	
L/33	FRU	17 November 1988 ³⁰	Brian Nelson
	RUC	21 November 1988 ³¹	

Attempted murder of James Peter Morgan (14 November 1988)³²			
UDA suspect	Agency receiving intelligence	Date intelligence received	Source of intelligence
L/22	FRU only	26 October 1988 ³³ (pre-attack)	Brian Nelson
L/28	FRU only	26 October 1988 ³⁴ (pre-attack)	Brian Nelson
L/20	FRU only	26 October 1988 ³⁵ (pre-attack)	Brian Nelson
L/25	FRU	26 November 1988 ³⁶	Brian Nelson
	RUC	1 December 1988 ³⁷	
L/30	FRU only	26 October 1988 ³⁸	Brian Nelson

17.14 Before considering the responsibilities of the RUC, it is important to note that in the Morgan case the FRU failed to pass on to the RUC important intelligence linking UDA suspects to the attack.

The passage of information from the SB to the CID

17.15 There are no records to suggest that any of the intelligence received from the FRU was passed by the RUC SB to the RUC Criminal Investigation Department

²⁷CF 7 November 1988

²⁸CF 17 November 1988

²⁹MISR 21 November 1988

³⁰CF 17 November 1988

³¹MISR 21 November 1988

³²The FRU MISR dated 8 February also linked L/05 to this attack, but he was not subsequently arrested in connection with it

³³CF 26 October 1988

³⁴Ibid.

³⁵Ibid.

³⁶CF 26 November 1988

³⁷MISR 1 December 1988

³⁸CF 26 October 1988

(CID). However, the documentary evidence does suggest that at least some of the RUC SB intelligence relating to UDA suspects was passed to the CID.

17.16 The intelligence linking L/30, L/33 and L/25 to the Slane murder was recorded on two SB50 documents. Both documents record that the information was provided to the Grosvenor Road CID team investigating the murder of Gerard Slane.³⁹ Similarly, the SB50 recording Stobie’s intelligence linking four suspects to the McDaid murder included the note that the CID had been informed. Although I note later in this Report that such annotations cannot necessarily be relied upon, it is certain that the intelligence was provided to the CID in the McDaid case because a note of the information is included in the CID file on murders committed during 1988.⁴⁰

The exploitation of the intelligence to arrest UDA suspects

17.17 Figure 13 outlines the arrest records of UDA suspects linked to Patrick Finucane’s murder during the period after Brian Nelson returned to Belfast. There is clearly a marked disparity between the extensive intelligence received by the RUC linking the UDA terrorists to attacks prior to February 1989 and the custody records of those individuals.

Figure 13: Arrests of UDA Suspects, May 1987 to February 1989⁴¹

Suspect	Date of arrest	Reason for arrest
L/22	9 November 1987	s12(1)(b) Prevention of Terrorism Act (PTA) 1984
Kenneth Barrett	22 September 1987 16 February 1988	s12 PTA 1984 (UDR Palace Barracks theft) s12 PTA 1984 (hijacking/ attempted murder at Mater Hospital on 3 February 1988)
L/25	Not arrested between April 1988 and February 1989 NB convicted on 2 June 1987 for burglary – released from prison in April 1988	N/A
L/28	Not arrested during this period	N/A
L/20	Not arrested during this period	N/A
‘Tucker’ Lyttle	Not arrested during this period	N/A
L/33	16 February 1988	s12(1) PTA 1984
L/30	21 June 1988	s12(1) PTA 1984

³⁹ See RUC SB50s [see Volume II, pp. 78–80]

⁴⁰ CID file, ‘1988 murders’, Terence McDaid

⁴¹ Based on custody records received by the Review from the PSNI

- 17.18 The records paint a concerning picture. None of the four individuals reliably linked to the murder of Terence McDaid was arrested in connection with that crime. None of the six individuals linked to the murder of Gerard Slane was arrested in connection with that attack. A number of individuals linked to the three attempted murders were not arrested in connection with those attacks. In view of the extent of Nelson's reporting, it seems likely that this pattern was repeated in relation to further attempted murders and conspiracies to murder.
- 17.19 Extensive and reliable intelligence material should, in my view, assist the police in identifying suspects for the purposes of arrest and questioning. Even taking account of the context of the time, one would expect to find that most or all of the UDA suspects would have been arrested on a number of occasions in relation to the crimes I have outlined. Indeed, as A/05 indicated, the arrest of such suspects was supposed to form part of the justification for the running of Brian Nelson as an agent in the UDA.
- 17.20 I have taken into account the fact that intelligence must be used with care when seeking to arrest and question suspects. The protection of the source of the intelligence must be considered before exploiting such information.
- 17.21 I do not, however, believe that this factor can possibly account for the failure to take sufficient action against the listed suspects. The overall impression I have reached from the extensive material before me is that each of these individuals was known in the broader loyalist community to be associated with paramilitary activity. I do not believe that any of the individuals would have been surprised to be arrested after a high-profile loyalist attack and, providing that the questioning did not reveal detailed intelligence, none of them would, in my view, have been in a position to link their arrest to Nelson. The position is somewhat different with regard to conspiracies to murder, for which I accept that arrests may have been more difficult.
- 17.22 I should note that Nelson himself expressed surprise at the lack of action taken against members of the UDA. In a statement to the Stevens I Investigation on 3 February 1990, Nelson commented as follows:

*"I can only speculate as to why no action was taken against the individuals that I was associated with considering the mass of information I accumulated against them over the years. I can only speculate this was done in order to protect me."*⁴²

- 17.23 The trial Judge in the Nelson case, Lord Justice Kelly, also questioned whether individuals identified by Nelson had been arrested and prosecuted. The following exchange between Lord Justice Kelly and defence Counsel, Desmond Boal QC, at the trial is of particular relevance:

"Lord Justice Kelly: I have been asking myself that question really all morning, what did he [Nelson] really achieve at the end of the day? Of course he did, and I take the point immediately, save lives, but I think the intention really of

⁴² Brian Nelson, statement to Stevens I Investigation, 3 February 1990

[A/05] was to, that he would try and bring down the organisation. Were any of these men prosecuted at all?

Mr Boal: Yes

...

Lord Justice Kelly: But only on charges of collecting information

Mr Boal: I think that's right

Lord Justice Kelly: But were any of them dealt with for more serious charges?

Mr Boal: Not that I know of.

...

Lord Justice Kelly: But I take the point now that none of these men at all, other than the two names I have mentioned, have not [sic] been dealt with for any crime.

Mr Boal: For any crime, but the important thing is through no fault of Nelson.”⁴³

- 17.24 I make no criticism of the decision not to use Nelson as a ‘supergrass’ witness. The issue here, however, is a broader one as to whether sufficient action had been taken to bring a dangerous UDA gang to justice. This is particularly pertinent in view of the fact that the prosecutions referred to at the trial had only come about as a result of the Stevens I Investigation. Individuals such as L/20 had not even been arrested during the period prior to Stevens I, let alone prosecuted.
- 17.25 My Review requested representations from the PSNI as to why such individuals had not been arrested in connection with a series of attacks prior to the murder of Patrick Finucane.⁴⁴ The PSNI response noted that it was sometimes necessary to allow the situation to develop in order to enable further evidence to be gathered prior to making an arrest. The submission also noted that the threat to the individual who provided the information to the police would need to be considered.⁴⁵ I recognise the importance of these points but, as I have already noted, I do not believe that they adequately explain the failure to arrest the individuals referred to above. It should also be noted that I have been unable to find any evidence of an ongoing intelligence operation which could explain why such intelligence was not exploited to arrest these individuals.

Overview

- 17.26 It is clear that the majority of the UDA gang responsible for the murder of Patrick Finucane had been linked to a number of murders and attempted murders during the period from May 1987 to February 1989. The use of such intelligence to arrest terrorist suspects was a complex task but it was supposed to form part

⁴³ Trial transcript, *R v Brian Nelson*, 29 January 1992

⁴⁴ Review letter to PSNI, 15 August 2012

⁴⁵ PSNI, submission to the Review, October 2012. Similar factors were also raised in a different context by the retired RUC officers I met during the Review (minutes of the meeting on 25 July 2012).

of the rationale for running agents such as Brian Nelson and William Stobie in terrorist groups. In the light of this, it is remarkable that individuals such as L/20 and L/28 were not arrested at any stage during this period. It would not be fair to attribute responsibility for this situation solely to the RUC SB in view of the fact that in some cases intelligence was passed to the CID for potential exploitation.

17.27 In considering this issue, I have taken account of the very difficult security situation facing the police at the time, and the fact that the RUC's overall record in pursuing charges against loyalist terrorists in Northern Ireland as a whole does stand up to scrutiny (see Chapter 5). Nevertheless, having analysed this issue carefully, my view is that the action taken by the RUC to disrupt this particular terrorist gang in the West Belfast UDA was grossly inadequate.

Chapter 18: Allegations that RUC officers encouraged the murder of Patrick Finucane

Allegations of threats to Patrick Finucane

- 18.1 A number of non-governmental organisation (NGO) reports have alleged that Royal Ulster Constabulary (RUC) officers made threats about Patrick Finucane when questioning or speaking to his clients.
- 18.2 Allegations of derogatory remarks being made by RUC interviewing officers about a detainee's solicitor recurred frequently throughout the later period of the Troubles in Northern Ireland. Almost ten years after the murder of Patrick Finucane the issue of threats to solicitors by RUC officers, communicated via detainees, continued to be a cause of concern. The issue received further attention from solicitors, NGOs and the United Nations (UN) Special Rapporteur prior to and following the murder in 1999 of the solicitor Rosemary Nelson, who was also the subject of derogatory and intimidating remarks alleged to have emanated from RUC officers.
- 18.3 In considering this issue, I do recognise that the fact that such threats did occur in some cases has now been established in relation to the Rosemary Nelson case. The Rosemary Nelson Inquiry Report, published in May 2011, concluded that:

“... some members of the RUC made abusive and/or threatening remarks about Rosemary Nelson to her clients.”¹

The context to the alleged threats

- 18.4 The allegations relating to this case refer mainly to threats being made against Patrick Finucane during the questioning of his clients in RUC Castlereagh. Castlereagh was a police holding centre to which individuals suspected of involvement in terrorism-related offences would be taken for questioning. Suspects were generally interviewed by two RUC officers at any one time. The emergency legislation in force at the time meant that suspects could be denied access to a solicitor during the initial period of custody.
- 18.5 The context in which the threats were alleged to have been made presents severe difficulties for any investigator seeking to establish the truth. Cameras were installed in interview rooms in the holding centres only in 1991, though no sound was transmitted and the footage was not recorded until March 1998. Audio recording of interviews in the holding centres was introduced only in January 1999.²

¹ Rosemary Nelson Inquiry Report, p. 465

² See summary in the Rosemary Nelson Inquiry Report, p. 105, para 8.2

- 18.6 The only record of police interviews in the late 1980s was provided by the written interview notes. As I outline later in this chapter, these notes could include as little as a few paragraphs of text summarising interviews that had lasted for several hours. In any event interviewing officers, if they were the authors of threats, were unlikely to record such remarks in the notes. One is left with a conflict of evidence between, on the one hand, an unsupported allegation made by an individual detained on suspicion of terrorist crime and, on the other hand, two interviewing RUC officers who deny that such remarks were made.
- 18.7 This means that any complaint from a suspect in relation to allegations of threats was, and remains, extremely difficult to substantiate. Indeed many solicitors did not lodge complaints about the behaviour of officers reported to them by their clients because they were conscious that any such complaint would be unlikely to be upheld. Statistics appear to confirm this: a report published on 1 April 1998 by the UN Special Rapporteur revealed that, of 400 complaints lodged concerning the conduct of police officers in holding centres during the period 1988–95, not a single one was upheld.³

Alleged threats to solicitors

- 18.8 The Stevens III Investigation did seek to corroborate the allegations of threats to solicitors. None of the solicitors who agreed to meet with the investigating officers had been the subject of a direct threat, though they were unanimous in their view that such intimidation was used by police officers at the holding centres. The Stevens III Investigation encouraged the solicitors to contact their clients to substantiate such allegations. Only one such client was put forward but this individual was ultimately unwilling to make a statement.

The allegations in this case

- 18.9 NGO reports on this case have outlined a series of alleged threats made to Patrick Finucane's clients. The threats appear to be concentrated in the period 1988–89, during which time Mr Finucane had achieved considerable success in challenging aspects of police practice and evidence in the courts.
- 18.10 Brian Gillen alleged to the Lawyers Committee for Human Rights that RUC officers had made threats to Patrick Finucane after he had filed an application for habeas corpus when representing him in 1988. Gillen alleged that the officers said, "*It would be better if he were dead than defending the likes of you*" and that, "*We can give them [detained loyalist paramilitaries] his details along with yours*".⁴ The Stevens III Investigation contacted Mr Gillen to seek to substantiate this allegation but did not receive any response.
- 18.11 Patrick McGeown told the Lawyers Committee that threats had been made against Patrick Finucane by an RUC officer in late 1988 at a joint RUC/Army

³ Rosemary Nelson *Inquiry Report*, p. 113, para. 8.27

⁴ Lawyers Committee for Human Rights, *Beyond Collusion*, 2003, p. 8

checkpoint. A high-profile prosecution against McGeown in relation to the murder of two soldiers had collapsed in November 1988. McGeown alleged that the RUC officer had told him at the checkpoint:

*“Don’t think you got away with that. We intend to make sure you won’t be about too long ... and your mate, Pat, we’ll fix him too.”*⁵

18.12 Three other clients of Mr Finucane – his brother, Seamus Finucane and two other republicans – alleged that threats had been made against him by RUC officers in January 1989. The threats involved clear references to Patrick Finucane being murdered: *“He’s a dead man”*; *“he would meet his end”*; and *“Fucking Finucane’s getting took out”*.⁶

18.13 Peter Madden, Patrick Finucane’s business partner and friend, has provided further accounts supporting the picture of a number of threats being made by the police during interviews. In a 2005 article Mr Madden noted that:

*“For months before his death, Pat recorded the threats to his life. I kept the record of these threats in a drawer in a filing cabinet in my office. I still have an image in my mind of Pat returning from Castlereagh, coming into my office when I was on the phone, nodding to me and pointed to the filing cabinet as he brought yet another recorded threat against him. I remember at the time that we both wondered what was going on, which was why we decided to collate these threats separately.”*⁷

18.14 I have not had access to this record of alleged threats and I am therefore reliant on the reports of threats contained in the NGO reports as set out above.

18.15 Different accounts have been provided as to the perceived intentions of the officers allegedly making threats to Patrick Finucane’s life. Some solicitors appear to have felt that the threats were essentially interrogation techniques aimed at unsettling the client rather than comments indicating a genuine desire that solicitors should be killed.

18.16 Patrick Finucane was, according to an article in the *Irish Times* on 27 May 1987, one of 15 solicitors who made a statement which accused the RUC of regularly harassing lawyers acting on behalf of clients being detained at interrogation centres in Londonderry, Armagh and Castlereagh. The statement accused the RUC of speaking to detainees and referring to their chosen solicitors as ‘IRA men’ and ‘murderers and terrorists’, the implication being that by asking for such a solicitor the detainee was thereby admitting his role as a terrorist. Mr Paddy Fahy, the instigator of the statement, is quoted in the *Irish Times* article as saying:

*“We are not primarily concerned about the effect of this harassment on us but on the people being held in these centres ... [the RUC] aim is to make these people [detainees] as isolated as possible and discourage lawyers from taking up their defence.”*⁸

⁵ Ibid.

⁶ Ibid. BIRW reference two of the threats being made on 5 January and 7 January 1989.

⁷ Peter Madden, ‘Interfering in the inquiry’, *Daily Ireland*, 12 February 2005

⁸ *Irish Times*, 27 May 1987

- 18.17 The Stevens III Investigation spoke to all the surviving signatories to this statement. Whilst some of the solicitors denied being signatories to the statement, and had in fact received a contemporaneous apology from the *Irish Times* for their names being cited, all were unanimous in confirming that clients had made reports to them of such remarks being made. Almost all the solicitors viewed these threats as a tactical ploy adopted by the RUC interrogating officers in order to discredit the solicitors in the eyes of their clients and to thereby exert pressure, as opposed to being a direct threat to their lives.
- 18.18 In a press interview in 2007, Geraldine Finucane gave the following account of Patrick Finucane's views on the alleged threats being made against him, which appear to be in accordance with the views of the majority of his colleagues:

“Pat had been threatened ... When he went to Castlereagh holding centre to meet his clients they would say, ‘we’d better get a new solicitor because you’re not going to be around’ and ‘you’re a thug in a suit’. They were the sort of things being said to them. It started very low level, slightly derogatory, and ended up as death threats. Pat thought they were interrogation techniques rather than being directed at the solicitor. But when Douglas Hogg said that it certainly made me stand back and look at things.”⁹

The reliability of the evidence from Patrick Finucane's clients

- 18.19 It is important to state that there does not appear to have been any allegation made by Patrick Finucane that he was directly threatened by an RUC officer. All of the allegations relate to threats being made through his clients. His clients appear to have communicated these threats to Mr Finucane or subsequently to human rights groups investigating the murder.
- 18.20 I have no doubt that Patrick Finucane, Peter Madden and human rights groups such as the Lawyers Committee have recorded the allegations made by these clients in good faith. However, in order to assess what weight to give to the allegations made by Patrick Finucane's clients I must consider the motives and reliability of these individuals.
- 18.21 I am conscious that the individuals making the allegations could be reasonably referred to either as members of the Provisional Irish Republican Army (PIRA) or as individuals who associated closely with the methods and aims of that organisation. I have not been able to find any allegation relating to threats to Patrick Finucane that emanated from a client who was not linked in some form to PIRA.
- 18.22 I am faced, therefore, with uncorroborated allegations made by individuals who may have been part of an organisation that would have readily distorted the truth in order to support its broader objectives. I have no doubt that, at the time, PIRA would not have hesitated to either invent or exaggerate allegations against the police if they felt that by doing so they would discredit the RUC as an organisation.

⁹Geraldine Finucane interview, *Breaking the glass ceiling*, 11 January 2007, available on politico.ie

- 18.23 On the other hand, I certainly cannot rule out the possibility that such allegations may have been true. I must, and do, take note of the extensive number of both informal and formal complaints which were made by a considerable number of solicitors over a prolonged period. I have also taken note of the approach of the Rosemary Nelson Inquiry which concluded, even after hearing oral evidence from both detainees and RUC officers, that it was not appropriate to embark on a series of mini-trials in respect of each allegation.¹⁰

Overview

- 18.24 I have considered this issue carefully but I do not believe that I am able to make specific findings about whether threats were made to Patrick Finucane by RUC officers via his clients. I do not have a comprehensive list of the allegations reported by clients. Even were this available to me, for the reasons outlined above it is not possible to go further than note that these were uncorroborated allegations, generally made by individuals whose reliability is highly questionable. I do, however, note that the allegations were widespread and were viewed as credible by a significant number of solicitors who represented clients accused of terrorist crimes.
- 18.25 In any event, I am not persuaded that the allegations of threats made to Patrick Finucane's clients would significantly influence my findings with respect to State involvement in the murder. Even in the event that the threats could be proved, the fact that a threat was made to a client of Patrick Finucane could not be taken to mean, in causative terms, that the threat contributed to his murder. In order to infer such a causal link, it would be necessary to establish that the threat was in some way transmitted to loyalist terrorists who were then motivated to assassinate Patrick Finucane. It is, in my view, inconceivable that Mr Finucane's clients or colleagues would have communicated such threats or encouragement to loyalist paramilitaries.
- 18.26 Whilst allegations of threats being made by police officers to solicitors via their clients is rightly an issue that has attracted significant concern, I believe that the critical issue relevant to my Terms of Reference is the question as to whether RUC officers incited loyalists being held in custody to attack Patrick Finucane.

Alleged incitement of loyalists in RUC Castlereagh

- 18.27 I turn now to consider the allegations that RUC officers encouraged or solicited members of the Ulster Defence Association (UDA) who were being questioned at the RUC's Castlereagh Holding Centre to attack Patrick Finucane.

¹⁰ See *Rosemary Nelson Inquiry Report*, p. 109, para 8.10

Allegations made by the Irish Government

18.28 The day after Patrick Finucane's murder, the Ambassador of the Government of Ireland met the Cabinet Secretary to hand over an advance copy of the Taoiseach's statement on the murder. The Cabinet Office note of the meeting of 13 February 1989 records that the Ambassador raised the Irish Government's concern that RUC officers in Castlereagh had allegedly encouraged loyalists to attack Patrick Finucane. The Ambassador was recorded as having stated that:

*"His [the Irish] Government's concern had been increased by information that the police in Castlereagh were encouraging Protestant paramilitaries to attack Republican lawyers. In this context, the names of Messrs Finucane, McGrory and Kelly had been mentioned. The murder of Mr Finucane had shown that these concerns were justified."*¹¹

18.29 The Ambassador did not reveal the source of the information suggesting that the three solicitors had been proposed as targets. RUC intelligence received shortly after the murder of Patrick Finucane raises the possibility that such reports may have originated from loyalist sources briefing a well-known journalist, who subsequently passed the information on more widely.¹² However, as these reports were only hearsay, I have sought to examine the full range of evidence relating to this issue.

Accounts given by loyalist paramilitaries

18.30 Four different loyalist paramilitaries have claimed that UDA members were encouraged by RUC officers in Castlereagh to attack Patrick Finucane. The first publicly expressed allegations were made as part of ITV's World in Action programme broadcast on 17 June 1991. Sammy Duddy, who was described as the ex-editor of *Ulster* magazine, commented during the programme on the murder of Patrick Finucane. He stated that:

*"... prior to Pat Finucane's murder, Loyalists had been called into Castlereagh Interrogation Centre, had been told by the RUC that Pat Finucane was a well known IRA member."*¹³

18.31 When asked whether this had contributed to Patrick Finucane's murder, Duddy stated that, *"I would say with all sincerity, that it probably did"*.

18.32 The UDA's West Belfast 'Brigadier', Thomas 'Tucker' Lyttle, subsequently made more specific allegations regarding the RUC's alleged instigation of the attack on Patrick Finucane. John Ware summarised a conversation he had with 'Tucker' Lyttle in an article published in the *New Statesman* in 1998. Ware recorded that:

"Lyttle ... confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his

¹¹ Note for record, 'Call by Irish Ambassador', 13 February 1989 [see Volume II, pp. 306–307]

¹² RUC SB50, 17 February 1989, Police Service of Northern Ireland (PSNI) records provided to the Review

¹³ ITV, World in Action, 17 June 1991

*colleague: 'Have you put it to him yet?' They then suggested that the UDA shoot Finucane."*¹⁴

- 18.33 John Ware has provided my Review with his original interview notes of his conversations with 'Tucker' Lyttle on 24 December 1993 and on 20–22 June 1994. Mr Ware is an experienced journalist who keeps detailed records and I see no reason to doubt that his notes accurately reflect his conversations with Lyttle. The notes of the 1993 conversation recorded that, prior to Christmas 1988:

*"[L/03] had been questioned in Castlereagh. TL ['Tucker' Lyttle] said that [L/03] had reported to him that a senior officer [name unknown] had opened the door whole [sic] [L/03] was being interrogated. The officer allegedly said: 'Have you put it to him yet?' [L/03] said: 'Put what?' Then the two officers – names of [name 1 redacted] and [name 2 redacted] based in Grosvenor Road RUC station suggested that the UFF kill Finucane. TL said there is no doubt at all that between the RUC and [an RUC SB contact] the idea to kill Finucane was born."*¹⁵

- 18.34 John Ware's notes from his conversations with Lyttle in 1994 recorded that:

"With regard to the planned assassination of the lawyer Patrick Finucane, TL told [an RUC SB officer] that certain RUC officers were putting pressure on the UDA to have Finucane shot. This followed the interrogation of [L/03] and two other UDA men. The RUC officers had suggested to this UDA trio that they should remove Finucane and also Paddy McGrory and Oliver Kelly."

- 18.35 In his submission to my Review, John Ware provided the following account to explain why he assessed Lyttle's allegations as credible:

"When I went to Belfast in September 1989 (seven months after Finucane was murdered) to make the first of several Panorama programmes on collusion I was told that a few weeks before his murder, Lyttle had asked to meet two individuals whom he trusted and both of whom I know. Lyttle had said to them words to this effect: 'You'll never guess what the cops are now suggesting we do. Kill Finucane'.

*This was recounted to me by one of the individuals whom I have known since 1975, who is a friend and whom I trust implicitly. This individual was conscience stricken because he felt he should have acted upon what Lyttle had told him, perhaps by telling Finucane himself." [Emphasis in original]*¹⁶

- 18.36 However, as the source of John Ware's information regarding Lyttle's reported comments prior to the murder is confidential, I do not feel able to place any weight on this specific aspect of his account.¹⁷ I do, however, note in Chapter 20 that the wider background evidence I have reviewed suggests that other aspects of the information imparted to Mr Ware by Lyttle in 1993 and 1994 were accurate.

- 18.37 British Irish Rights Watch's (BIRW's) 1999 report, 'Deadly Intelligence', cited John Ware's *New Statesman* article and repeated the allegations made by Lyttle

¹⁴ John Ware, 'Time to come clean over the Army's role in the "Dirty War"', *New Statesman*, 24 April 1998

¹⁵ John Ware, notes of interview with 'Tucker' Lyttle, 24 December 1993, London, p. 2

¹⁶ John Ware, submission to the Review

¹⁷ See my approach outlined in Chapter 1, para 1.40

to John Ware. BIRW stressed in particular their belief that the RUC officers involved were [name 1 redacted] and [name 2 redacted] and were based at Grosvenor Road RUC station. It seems likely that the information in BIRW's report originated from John Ware's notes of his interviews with Lyttle.

- 18.38 Kenneth Barrett made broadly similar allegations in the accounts he gave to BBC Panorama and the Stevens III Investigation. Barrett's comments to the Panorama journalists were broadcast in Part 1 of the 2002 programme 'A Licence to Murder'. Barrett described the reaction of UDA members after their release from Castlereagh as follows:

*"They'd have come out and said to us they [the RUC] said about Finucane, they say this and they say that, and they must have said it because kids wouldn't come out and say. They [the RUC] said it about Finucane because why would they [the UDA kids] mention Finucane? You understand what I mean? Finucane wouldn't have been a name in their [the UDA kids'] head."*¹⁸

- 18.39 Barrett's account to the Stevens III Investigation in 2002 was more specific regarding the alleged actions of RUC officers in Castlereagh. Barrett claimed that the plan to murder Mr Finucane started with "*detectives questioning people in Castle Reagh*". He said that the "*one particular one I can remember, [L/03] was being questioned*".¹⁹ Barrett claimed that the RUC officers proposed Patrick Finucane as a target in "*roughly '88*" and said he was "*nearly sure*" that the name of one officer was [name 1 redacted].

- 18.40 In his 2006 statement to Stevens III Barrett stated that:

*"... police officers at Castlereagh were putting the word out that Finucane should be hit (during interviews with loyalist detainees)."*²⁰

- 18.41 Brian Nelson also appears to have believed that RUC officers had encouraged loyalists in Castlereagh to attack Patrick Finucane but could not remember the loyalist to whom this had been suggested. John Ware's notes of his interview with Nelson on 18 April 1991 recorded him stating that:

*"I think it was [L/28] who was questioned by the RUC and to whom it was suggested in Castlereagh that the UDA should not waste its time on silly killings but go for the godfathers like Finucane. It may have been [L/22] – but I think [L/28]. Can't really remember now."*²¹

The arrest of L/03 by the RUC

- 18.42 I have examined the custody records for every UDA member suspected of involvement in, or awareness of, the conspiracy to murder Patrick Finucane. The critical period to examine is the period during which the conspiracy to murder

¹⁸ Panorama, 'A Licence to Murder', Part 1, 19 June 2002

¹⁹ Stevens III Investigation, intelligence only debrief, pp. 4–5, 19 February 2002 [see Volume II, pp. 146–160]

²⁰ Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

²¹ John Ware, notes of interview with Brian Nelson, 18 April 1991, p. 2

Mr Finucane was formulated and developed, that is to say December 1988 to February 1989.

- 18.43 The records show that only one UDA member with such awareness or involvement was arrested and interviewed in Castlereagh during the period. That individual was L/03, then a prominent military figure in the UDA's 'A' Company based in the Highfield area of Belfast.
- 18.44 RUC records confirm that L/03 was arrested under section 12 of the Prevention of Terrorism Act 1984 on 8 December 1988. Six interviews were conducted with L/03 on 8 December and three interviews on 9 December. L/03 appears to have been arrested on suspicion of involvement in the punishment shooting of L/16 on 7 July 1988. It is not clear from the records why L/03 was arrested on 8 December in relation to that shooting. As I noted in Chapter 10, however, William Stobie had provided information to his RUC SB handlers on 26 July 1988 linking L/03 to the attack.
- 18.45 Interview notes are available for each of L/03's recorded interviews. The notes are very brief summaries of what were lengthy interviews. Not surprisingly, none of the notes provides any indication that republican targets were discussed with L/03. It is, however, clear that the questioning ranged more widely than the punishment shooting. Several notes of the interview stated that "*other matters were discussed*", without providing any further detail of what these matters were.²²
- 18.46 The custody records do not corroborate BIRW's claim that two of the RUC officers interviewing L/03 were [name 1 redacted] and [name 2 redacted] and that these officers were based at Grosvenor Road RUC station. It appears that at least four RUC officers conducted the interviews, none of whom was [name 1 redacted] or [name 2 redacted]. Further, they were all based at Tennent Street RUC station, not Grosvenor Road.
- 18.47 Nevertheless, the Stevens III Investigation did pursue the claims made by BIRW that the RUC officers concerned were [name 1 redacted] and [name 2 redacted]. Stevens III identified three RUC officers at the time called [name 1 redacted] and three RUC officers called [name 2 redacted]. All but one of them were based at Castlereagh at the time, but none of them could recall having ever interviewed L/03.
- 18.48 I note that it appears to have been a reasonably frequent occurrence for RUC Special Branch (SB) officers to interview suspects during their detention at Castlereagh.²³ This would not be surprising as it was always an opportunity to recruit an agent and obtain intelligence of terrorist activity. In practice it is unlikely that any SB contact with a prisoner would have been noted in the custody record.
- 18.49 It was consequently entirely possible that RUC officers other than the four individuals identified in the records may have been involved in interviewing L/03.

²² RUC interview notes of L/03, 8–9 December 1988

²³ See, for example, Detective Superintendent Alan Simpson's statement, 13 February 2002 [see Volume II, pp. 133–145]

The custody records also show that a number of other officers were involved in his arrest and detention. Any of these officers could realistically have been in a position to speak to L/03 at some stage during his detention.

- 18.50 There are consequently severe difficulties facing any investigator seeking to establish individual responsibility for remarks allegedly made by RUC officers when interviewing suspected paramilitaries during the relevant period. The broader context in which RUC officers were interviewing suspects must also be considered. In 1988 there were no cameras in police interview rooms, let alone video or audio recording of what was discussed. Written interview notes were made but these were not a contemporaneous account and only really represented an officer's summary of the interview. In L/03's case, the notes are very brief and somewhat vague.
- 18.51 It is therefore unsurprising that the Stevens III Investigation was unable to present evidence to a criminal standard of proof against any individual RUC officer in respect of these allegations. No RUC officer or loyalist interviewed by the Stevens team admitted to having been involved in a conversation about targeting Patrick Finucane. In these circumstances it would, of course, be virtually impossible to demonstrate which individual RUC officer may have been responsible for making the alleged proposal to L/03.
- 18.52 My approach has been governed by these considerations. I have not felt constrained by that fact that the evidence is incapable of establishing whether an identified RUC officer proposed Patrick Finucane as a target to L/03 on 8 or 9 December 1988.
- 18.53 My remit is fundamentally different to that of the criminal investigation conducted by Sir John Stevens, which sought to establish admissible evidence of criminal offences committed by specific individuals. I have not been asked to establish the criminal liability of any individual. My remit enables me to take a broader view of the likelihood of certain allegations relating to State involvement or instigation of the murder, irrespective of whether it is possible to ascribe responsibility to a specific individual. I have, therefore, sought to examine the likelihood of the broader allegation that, at some point during L/03's detention in Castlereagh, Mr Finucane was proposed as a target by an RUC officer or officers.

Evidence supporting the loyalists' allegations that RUC officers proposed Patrick Finucane as a target

- 18.54 As I have already stated, four important loyalist sources have alleged that RUC officers proposed Patrick Finucane as a target in Castlereagh. Lyttle's and Barrett's accounts both make clear that the proposal was made specifically to L/03. The RUC records confirm that L/03 was interviewed in Castlereagh on 8 and 9 December 1988. L/03 was the only UDA member suspected of involvement in the conspiracy to murder Mr Finucane who was interviewed in RUC Castlereagh in the months prior to the murder.

- 18.55 The timing and broader context to L/03's arrest tends to increase the plausibility of these allegations. The UDA's conspiracy to murder Mr Finucane does appear to have first been formulated very shortly after L/03's detention in Castlereagh. In Chapter 16 I outlined the Security Service intelligence that plans to kill Patrick Finucane were due to be discussed at a UDA meeting in mid December 1988, shortly after L/03 was released from Castlereagh.
- 18.56 The context to the allegations and the accounts provided by the loyalist paramilitaries are important but I am mindful of their limitations. Whilst the four accounts from loyalists do tend to support each other, each account is in itself hearsay. Three of the loyalists concerned – Lyttle, Nelson and Sammy Duddy – are now dead and there are question marks about Barrett's reliability (see Chapter 19). Nelson's recollection of events in 1991 was clearly somewhat vague.
- 18.57 The fact that the UDA's conspiracy to murder Patrick Finucane appears to have been formulated shortly after L/03's release from Castlereagh increases the plausibility of the allegations. It does not, however, in itself establish the causal connection between L/03's detention in Castlereagh and the UDA's subsequent desire to attack Mr Finucane.
- 18.58 Consequently, I have conducted a rigorous analysis of the other available intelligence material to see whether it could lend support to the claim that RUC officers proposed Mr Finucane as a target during the questioning of loyalists in Castlereagh. There are two additional intelligence reports that are relevant to this issue:
- (i) Security Service intelligence received after the World in Action programme in 1991; and
 - (ii) intelligence that L/03 was provided with targeting information on a republican during his detention in Castlereagh.

Security Service intelligence

- 18.59 At paragraph 18.30 I outlined Duddy's comments on the World in Action programme broadcast on 17 June 1991. In addition to the reported comments, I have been able to review Security Service intelligence relating to the UDA's reaction to the broadcast.
- 18.60 The Security Service received intelligence to suggest that members of the UDA were alarmed by Sammy Duddy's television appearance. The intelligence indicated that UDA members questioned what business Duddy had in implicating the RUC.²⁴ I have been able to review all the relevant underlying material which provides the necessary context to this intelligence reporting. Consideration of the underlying material leads me to the view that Duddy's comments on the World in Action programme were highly unlikely to have been part of a UDA disinformation operation designed to falsely implicate RUC officers in Patrick Finucane's murder.

²⁴ Security Service intelligence files and correspondence with the Review

- 18.61 This intelligence material does not establish the truth of Duddy's comments but it does lead me to place a greater degree of weight on these allegations than would otherwise be the case.

Intelligence regarding L/03's detention in Castlereagh

- 18.62 My analysis of Force Research Unit (FRU) records has also revealed a significant account of L/03's experience of his detention at Castlereagh. The FRU Contact Form (CF) dated 31 January 1989 recorded discussions between L/03 and Nelson regarding targeting. In view of its significance, I have quoted the exchange in detail below:

"[Nelson] also met [L/03] at UDA HQ Shankill on Sat 28 Jan 89. [L/03] spoke to 'Tucker' Lyttle then to [Nelson]. [L/03] arranged with [Nelson] to meet him at [Nelson]'s house at 1300 hrs on Sun 29 Jan 89. [Nelson] was to give [L/03] a lift ...

En route [L/03] explained to [Nelson] and [L/23] that whilst in RUC Castlereagh recently [L/03] had been told some information. The RUC had commented on how easy it was to carry out an attack on [T/05] as he parks his mobile snack van ...

They did not see a snack van ... but on the way back they saw a mobile snack van at 'Seven Arches' car park at Dundrum. They stopped and [L/03] bought a drink of coke. [L/03] told [Nelson] and [L/23] that one of the two men in the snack van was almost certainly [T/05]."²⁵

- 18.63 This report does not mention Patrick Finucane but it is none the less important in several respects. The record of this discussion provides the only account that L/03 has given, or indeed is likely to give, of his experience in RUC Castlereagh on 8 and 9 December 1988. Nelson was generally reliable in his reporting of such issues to his FRU handlers.
- 18.64 It is difficult to envisage why either L/03 or Nelson would have invented this account of RUC officers in Castlereagh suggesting a republican target. I also consider it significant that the UDA's own 'recce' of the area appeared to confirm the accuracy of the information that had been provided. L/03 had clearly not been provided with misleading information designed to frustrate terrorist activity, but with accurate targeting information designed to facilitate a murder attempt.
- 18.65 On one view this intelligence could be taken to suggest that RUC officers in Castlereagh proposed T/05 rather than Patrick Finucane to L/03. If Mr Finucane had been proposed as a target to L/03, would L/03 have not informed Nelson of this fact on 28 January? I must, however, consider this issue in the light of my findings in Chapter 21 that Nelson did not provide his handlers with information about the targeting of Patrick Finucane. I do not, therefore, believe that any inference can be drawn from the fact that the CF does not record Mr Finucane's name. It is certainly possible that L/03 also mentioned Mr Finucane, but that Nelson did not pass this information on to his handlers.

²⁵ FRU CF 31 January 1989 [see Volume II, pp. 2–7]

- 18.66 Nevertheless, I recognise that L/03's comments about T/05 do not necessarily imply that Patrick Finucane would also have been proposed to L/03 as a target. It does, however, strongly suggest that the interviewing of L/03 in Castlereagh on 8 and 9 December 1988 did not solely represent a desire on the part of the RUC officers concerned to establish L/03's alleged involvement in loyalist terrorist activity. This provides important contextual evidence when considering the cumulative weight of evidence that Patrick Finucane was indeed proposed as a target by RUC officers in Castlereagh.

Overview

- 18.67 I do not believe that it is possible to establish with certainty whether RUC officers proposed Patrick Finucane as a target to UDA members in Castlereagh. In the absence of any admissions by the individuals directly involved in the interviews, it is clearly not possible to establish what happened with certainty.
- 18.68 The evidence is insufficient, even on the balance of probabilities, to enable me to ascribe responsibility to any RUC officer or group of officers, save for the observation that the comments must have been made by an officer with access to L/03 at some stage during his detention at Castlereagh. For the reasons I have given, the context in which the remarks were made makes any task to ascribe individual responsibility effectively impossible. Specifically, I do not believe that the evidence in any way corroborates BIRW's claim that two officers, [name 1 redacted] and [name 2 redacted], made the proposal to L/03.
- 18.69 However, an analysis of the circumstantial evidence on this issue, when considered cumulatively, enables me to draw a broad conclusion. I believe 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.

Chapter 19: Allegations that RUC officers facilitated the murder of Patrick Finucane

Kenneth Barrett's allegations

- 19.1 This chapter analyses Kenneth Barrett's allegations that Royal Ulster Constabulary (RUC) officers encouraged and facilitated the murder of Patrick Finucane. Barrett pleaded guilty to the murder in 2004.
- 19.2 First it is necessary to summarise the factual background to the recruitment of Kenneth Barrett as an RUC Special Branch (SB) agent and the various admissions and statements he subsequently made in relation to the murder of Patrick Finucane.

Background

- 19.3 On 1 October 1991 Detective Sergeant (DS) Johnston (Jonty) Brown of the RUC Criminal Investigation Department (CID) who, at one stage, was attached to the murder squad investigating the Patrick Finucane murder, received a telephone call from a man who eventually identified himself as Kenneth Barrett. Barrett wished to arrange a meeting. DS Brown recognised Barrett's name as that of a loyalist gunman whom he had encountered in the past.
- 19.4 At 11.43pm DS Brown and Detective Constable (DC) Trevor McIlwrath visited Barrett at his home. In a meeting that lasted about an hour, Barrett claimed to be the Military Commander of the Ulster Freedom Fighters (UFF) in West Belfast, expressed his disillusionment with the Ulster Defence Association (UDA) and volunteered to become an informant for financial reward. He stated that he wished to assist the RUC for six to nine months and then leave the country.
- 19.5 On 3 October 1991 at 9.05pm, another meeting took place with Barrett in an SB vehicle in which conversations could be covertly recorded. The RUC officers present in the vehicle were DS Brown and DC McIlwrath of the RUC CID and DC R/06 of the RUC SB.
- 19.6 During the course of this meeting, DS Brown asked Barrett directly who murdered Patrick Finucane. Barrett's reply was "*hypothetically, me*". In addition, during the course of the ensuing conversation, Barrett provided the officers with considerable detail about the circumstances of the murder of Patrick Finucane that was found to closely match aspects of the offence revealed by the police enquiries and the examination of the crime scene. The cumulative effect of the detail supplied by Barrett left DS Brown in no doubt whatsoever that he had been a party to the murder of Mr Finucane.¹

¹ See DS Johnston Brown's book, *Into the Dark*, Gill & Macmillan, 2005

- 19.7 I deal with the questions surrounding the recruitment of Barrett and the disappearance of the covert recording of the 3 October 1991 meeting in detail in Chapter 23.
- 19.8 On 10 October 1991 DS Brown and the same officers again met Kenneth Barrett. This meeting was also covertly recorded. During the course of this meeting, Barrett 'confessed' to the attempted murder of T/20. Barrett also professed knowledge of the alleged flow of information from members of the security forces to loyalist paramilitaries.
- 19.9 In April 1999 Sir Ronnie Flanagan, the then Chief Constable of the RUC, asked Sir John Stevens of the Metropolitan Police to return to Northern Ireland to investigate the murder of Patrick Finucane.
- 19.10 On Tuesday 27 July 1999 Barrett was arrested by the Stevens III Investigation team on suspicion of the murder of Patrick Finucane. Upon being cautioned he made no reply and remained largely silent throughout a series of interviews. When questioned in detail about information he had provided to DS Brown, DC McIlwrath and DC R/06 at the meeting of 3 October 1991, he exercised his right to silence. After his arrest his fingerprints were taken. On 30 July 1999 Kenneth Barrett was released without charge.
- 19.11 On 13 October 1999 Barrett was re-arrested by the Stevens III Investigation team as his left thumbprint had been found on a photograph recovered from intelligence material linked to Brian Nelson.
- 19.12 Photographs of the kind on which Barrett's print was found were an essential part of the material put together by the UDA for the purpose of targeting republican paramilitaries for assassination. Barrett was interviewed in the light of this new evidence, but once again declined to answer any questions. He was again released without charge.
- 19.13 On 1 May 2001, during the course of the Insight current affairs TV programme, DS Brown, by now retired, detailed the contacts he had had with Kenneth Barrett in October 1991. Although Barrett was not named, attention was drawn to the fact that an RUC agent had admitted involvement in the murder of Patrick Finucane.
- 19.14 On 4 May 2001, as a result of the revelations in the Insight programme, Barrett was warned by the RUC about the threat to his life and received the sum of £300 from RUC SB to facilitate his passage from Northern Ireland. This money was handed over to him by R/02.

Panorama

- 19.15 In June 2001, a BBC Panorama team set out to make a television documentary covering the allegations of collusion between members of the security forces and loyalist paramilitaries in the murder of Patrick Finucane. In connection with this project, they succeeded in establishing contact with Kenneth Barrett and a number of meetings and telephone calls took place. Many of these conversations were covertly recorded by the Panorama team.

- 19.16 During the course of these conversations, Barrett made a series of admissions and allegations regarding the murder of Patrick Finucane. He made allegations relating to Brian Nelson's role in carrying out a 'recce' of Mr Finucane's home, which I explore in detail in Chapter 21. Barrett also claimed that the "*killing of Pat Finucane was organised by the police*".² Barrett went on to make specific allegations regarding the actions of an RUC officer he named as 'McWhirter'. He claimed that McWhirter facilitated the murder of Patrick Finucane.
- 19.17 On 19 June 2002 the first instalment of the Panorama programme entitled 'A Licence to Murder' was broadcast on BBC television featuring material obtained from the meetings with Barrett. On 23 June 2002, the second instalment of the programme was screened, with further material from Barrett.

The Stevens III intelligence 'debrief'

- 19.18 In fear of reprisals, Barrett had by this time fled the family home and was finally tracked down by the Stevens team and offered protection via the Witness Protection Unit (WPU). On 18 January 2002, Barrett met the Deputy Assistant Commissioner of the Metropolitan Police, Hugh Orde. Barrett was advised that his life was in danger and made aware that safe passage out of Northern Ireland would be arranged for himself and his family should he wish it. Barrett accepted this offer and he and his family were resettled in England where they were provided with a home. Barrett was made fully aware that he would have to admit his involvement in criminality to a debrief team seeking to gather intelligence relevant to the murder of Patrick Finucane. Interviews were subsequently conducted by police officers from the WPU.
- 19.19 During these intelligence debriefings, Barrett outlined the role of Brian Nelson in the murder (see Chapter 21) and the involvement of other loyalist paramilitaries in the killing. He made allegations in respect of police officers in Castlereagh encouraging loyalists to shoot Patrick Finucane and the involvement in the murder of a police officer whom he named as 'McWhirter'.
- 19.20 Whilst Barrett was prepared to openly discuss the involvement of others in the murder of Patrick Finucane, he made it quite clear to the police officers that he would not discuss his own criminal involvement unless he received a suitable guarantee of immunity from prosecution. These meetings with Barrett were concluded on 19 February 2002.³

Intrusive surveillance

- 19.21 Sir John Stevens then employed two very successful strategies. Unbeknown to Barrett, his new home had been made subject to intrusive surveillance from February 2002, authorised under the Regulation of Investigatory Powers Act 2000. This surveillance continued for 14 months.

²Panorama transcript of recorded meeting with Kenneth Barrett, 18 December 2001

³Kenneth Barrett intelligence debrief, 19 February 2002 [see Volume II, pp. 146–160]

19.22 In recorded conversations with his partner, Barrett implicated himself in the murder of Patrick Finucane and maintained that there had been police collusion in the attack.⁴

Sting operation

19.23 In addition to the intrusive surveillance operation, in October 2002 Barrett was lured into an undercover operation run by the National Crime Squad in conjunction with the Stevens team. In conversation with two undercover police officers, ‘Steve’ and ‘Tom’, Barrett ‘admitted’ murdering Patrick Finucane. Once this important piece of evidence was obtained, the surveillance ended and Barrett was arrested.⁵

The conviction of Kenneth Barrett

19.24 I need not deal with the legal implications of the police questioning of Barrett in October 1991 without a caution after he first became a suspect, or whether the admissions he made were obtained by inadmissible means, as on 16 September 2004 Barrett pleaded guilty before Mr Justice Weir at Belfast Crown Court to 12 terrorism-related crimes, including the murder of Patrick Finucane.

19.25 In sentencing Barrett, Mr Justice Weir said:

“In opening this case to the Court, Senior Crown Counsel has pointed out that you have made the disturbing claim that this murder was encouraged and facilitated by members of the security services.”⁶

19.26 As Barrett has admitted his involvement in the murder of Patrick Finucane I must give serious consideration to his account of the circumstances of the murder and seek, if I can, to discover the truth in relation to the matters outlined below. My analysis of the various admissions and statements that Barrett has made give rise to three key issues for my Review:

- (i) Barrett’s account of the involvement of Force Research Unit (FRU) agent Brian Nelson in the murder of Patrick Finucane. I consider this issue separately when analysing Nelson’s involvement in Chapter 21;
- (ii) The recruitment of Barrett in 1991 and the disappearance of the covert tape recording dated 3 October 1991. I deal with this issue in Chapter 23 when examining the response of the State to the murder of Patrick Finucane; and
- (iii) Barrett’s allegation that RUC officers encouraged and facilitated the murder of Patrick Finucane.

19.27 I consider point (iii) in detail below.

⁴ Extract from intrusive surveillance on Barrett [see Volume II, pp. 169–172]

⁵ Extract from police undercover operation [see Volume II, pp. 163–169]

⁶ Judgment in *R v Barrett* as per Mr Justice Weir, 16 September 2004

Barrett's claim that RUC officers encouraged and facilitated the murder

- 19.28 I have examined in detail Kenneth Barrett's broad allegation, first made privately to RUC officers in 1991 and consistently maintained since, that the RUC provided the UDA with 'intelligence' on Patrick Finucane. I will then go on to consider the more detailed allegations made by Barrett from 2001 onwards in which he implicated a number of named RUC officers in the conspiracy.

Barrett's October 1991 comments

- 19.29 As I outline in Chapter 23, the tape of the 3 October 1991 conversation between Barrett and the RUC officers cannot be found. However, I have had access to the written note of the conversation of 3 October produced by DC R/06 of the RUC SB. This note recorded crucial details about Barrett's allegations that an RUC officer or officers facilitated the murder of Patrick Finucane. Although DS Brown has provided significant public accounts of the meeting on 3 October 1991, the critical evidence provided by R/06's note has never previously been disclosed.
- 19.30 R/06's note included the following information in relation to the murder of Patrick Finucane:

"The intelligence for this job came from the police but source [Barrett] could not elaborate any further as to whom. Intelligence given was that Finucane [sic] was laundering money for PIRA [Provisional Irish Republican Army] and that he was an officer in PIRA. He met with Gerry Adams and [T/13].

Finnucane had also been seen in the company of other suspect PIRA members, one of whom was a builder who owned ... Construction Co [referred to as CD] and was shot by the UVF [Ulster Volunteer Force] ... Apparently a brother of this person did a prison sentence of 15 years for attempted murder. This intelligence was good enough to get the go-ahead to carry out the hit. It took 6 weeks to plan as Finucane was hard to tie down to his home address."[Emphasis added]⁷

- 19.31 Despite the disappearance of the tape, I have no grounds to doubt the information contained in R/06's written note, which is itself broadly consistent with DS Brown's recollections of the conversation on 3 October 1991.⁸

The reliability of Barrett's October 1991 intelligence

- 19.32 A number of crucial details in the intelligence offered by Barrett at this meeting corresponded closely with police findings at the scene of the murder, including the method of entry and the fact that Patrick Finucane was holding a fork when he was killed.

⁷ DC R/06, typed intelligence report, 3 October 1991, p. 6 [see Volume II, pp. 107–109]

⁸ DS Brown provides a detailed account in his 2005 book, *Into the Dark*, though oddly his account does not make reference to Barrett's central allegation that 'the police' provided information to the UDA on Patrick Finucane

19.33 The RUC appear to have assessed the intelligence supplied by Barrett at the time as being reliable and, as a result of the information he had supplied, acted to prevent one UDA attack. Subsequently they recruited Barrett as an agent.

19.34 However, I believe it would be unwise to treat Barrett’s intelligence on this issue as being reliable without testing it further. I approach this intelligence with particular caution given that some aspects of Barrett’s information are of questionable reliability. He named L/14 as one of the gunmen involved in the murder of Patrick Finucane, something which he later retracted.⁹ From my analysis of the broader evidential and intelligence picture regarding the murder, I am satisfied that the allegation about L/14 was untrue.

19.35 A transcript of a further discussion held on 10 October 1991 suggests that Mr Finucane’s murder itself was not mentioned. The transcript does, however, provide an interesting insight into Barrett’s perception of the RUC. The following exchange was recorded after DS Brown noted that Barrett’s information might have helped to save the life of a republican:

“Barrett: ... I didn’t think you’s e would have wanted to save his fucking life Jonty.

DS Brown: We want to save anybody’s life.

Barrett: From what I hear like he’s well in, well in.

DS Brown: Wouldn’t matter.

DC McIlwrath: Sure it only means somebody else goes in retaliation then doesn’t it?

DS Brown: That’s right.

Barrett: I mean it’s [expletive deleted] like that you would like to see out of the game would you not?”¹⁰

19.36 It is worth noting Barrett’s apparent assumption that the RUC were intent on seeing people who were “*well in*” with the republican cause “*out of the game*” (even when speaking privately to RUC officers attempting to recruit him). At other points in the same conversation Barrett stated that the UDA had a police document on Brian Gillen and had several other RUC sources. Barrett even appeared at one stage in the conversation to suggest that his prospective RUC handlers should help him to confirm whether a potential UDA target was involved in terrorism (“*Well then you tell me if there’s files on them from the Peelers*”). Whilst this transcript provides no evidence of information being passed from the RUC handlers to Barrett, it raises questions about Barrett’s assumption that police officers might be willing to provide information on republicans and the basis, if any, for such an assumption on his part.

⁹ Panorama, transcript of recorded meeting with Kenneth Barrett, 11 October 2001, and Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

¹⁰ Kenneth Barrett meeting transcript, 10 October 1991

Barrett's subsequent allegations of RUC involvement

- 19.37 In paragraphs 19.106–19.112 I consider in greater detail Barrett's later accounts implicating specific RUC officers in the conspiracy to murder Patrick Finucane. At this stage I should note that, although Barrett's account of RUC involvement became more detailed and varied in his later statements, his accounts consistently suggested some form of 'police' instigation and facilitation of the murder.
- 19.38 In 2001 Barrett told the Panorama team:
- *"Finucane would have been alive today if the peelers hadn't interfered ..."*¹¹
 - *"... the killing of Pat Finucane was organised by the police. Right. The dogs on the street know that. Everyone knows it."*¹²
 - *"Eamon Hardy [BBC journalist]: Well I suppose all the information about Finucane was coming via the security services, the RUC ...
Ken Barrett: Via the RUC, it can't come from anywhere flipping else ..."*¹³
 - *"... the peelers wanted him whacked, we whacked him and that's the end of the story as far as I'm concerned."*¹⁴
- 19.39 During the intrusive surveillance in 2002, Barrett stated, *"Yes I would be the first to tell you ... there was collusion, do you know what I mean as I once told you, you didn't pick these names out of the phone book."* Later in the conversation he stated, *"I had information on a Republican terrorist which I acted on."*¹⁵
- 19.40 During the sting operation in 2003, Barrett was recorded saying:
- "He was a solicitor and everything else right? When we decided where he lived and all the rest of it – and I'll tell you details ... because we made contact with Policemen right?"*¹⁶
- 19.41 In Barrett's 2006 statement to the Stevens III Investigation, he said, *"We were told Pat Finucane was in the IRA. The police told us to take him out."*¹⁷
- 19.42 I do regard it as significant that Barrett has maintained an account of RUC involvement in the murder in a number of different contexts: when speaking to RUC officers in 1991, to BBC Panorama journalists, to his partner in the privacy of his own home and to an undercover police officer.
- 19.43 Although I take a highly cautious approach to his evidence, it is difficult to conceive of Barrett being capable of maintaining an elaborate misinformation campaign against the RUC in relation to this murder for over a decade. It is also unclear what motive Barrett might have had for inventing an account of RUC involvement in the murder when, for example, speaking to police officers in 1991.

¹¹ Panorama, 'A Licence to Murder', Part 1, 19 June 2002

¹² Panorama, transcript of recorded meeting with Kenneth Barrett, 18 December 2001

¹³ Panorama, transcript of recorded meeting with Kenneth Barrett, 19 December 2001

¹⁴ Panorama, 'A Licence to Murder', Part 1, 19 June 2002

¹⁵ Extract from police undercover operations, 5 June 2002 [see Volume II, pp. 168–169]

¹⁶ Extract from police undercover operation, 17 April 2003 [see Volume II, p. 166]

¹⁷ Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp.177–180]

Are Barrett's claims about the UDA's 'intelligence' corroborated?

- 19.44 Before assessing what weight to give to Barrett's claim that the RUC provided 'intelligence' on Patrick Finucane, I have sought to establish whether he was accurate in his description of the supposed 'intelligence' on Mr Finucane that the UDA possessed.
- 19.45 The UDA's public statement after the murder, drafted by Brian Nelson, contained a description of Patrick Finucane's brothers and stated that he was a senior PIRA member. Beyond this, however, it did not include any details of its supposed 'investigation' into Mr Finucane's activities, merely stating that the UFF could not "give operational details of individual targeting or reveal sources".¹⁸
- 19.46 However, analysis of RUC and FRU intelligence does shed light on the information that the UDA possessed on Patrick Finucane in 1989. The RUC records included intelligence received shortly after the murder referring to L/28's comments about the attack. The intelligence was reported in two slightly different forms in the RUC records, both of which are outlined below:
- The RUC SB Daily Intelligence Book included the following note: "[L/28] claimed responsibility for Finucane's [sic] murder ... he was an I.O. [Intelligence Officer] and had been seen with G.Adams + other top PIRA at a meeting."¹⁹
 - The RUC SB50 included the following text: "[L/28's] team was responsible and ... FINNUCANE [sic] was an Intelligence Officer for 3rd Batt PIRA and laundered money for PIRA through FINNUCANE'S firm of Solicitors."²⁰
- 19.47 The FRU Contact Forms (CFs) outlined Brian Nelson's discussions with other UDA members regarding his draft statement claiming UFF responsibility for the murder. The CFs again made reference to Patrick Finucane's meeting with Gerry Adams at a hotel which I shall refer to throughout as 'the AB Hotel'.
- 19.48 The FRU CF dated 2 March 1989, referring to Nelson by his source number, 6137, recorded that:
- "... on Thursday 23rd February, [L/28] ... told 6137 that 'Tucker' Lyttle had said that 6137 had to take out the reference to the [AB] Hotel. The statement had mentioned that Finucane had had a meeting with Gerry Adams, during the week prior to this assassination, in the [AB] Hotel. [L/28] said that this information was too specific."*²¹
- 19.49 In the CF dated 9 March 1989, Nelson provided further information regarding the AB Hotel meeting. The CF stated that Nelson "reports that this information came from [L/28] after the assassination and was on Finucane's personality card".²²

¹⁸ CF 2 March 1989, UFF statement [see Volume II, p. 21]

¹⁹ Daily Intelligence Book, 16 February 1989

²⁰ RUC SB50 intelligence report, 16 February 1989 [see Volume II, p. 99]

²¹ CF 2 March 1989 [see Volume II, p. 19]

²² CF 9 March 1989 [see Volume II, p. 24]

- 19.50 Nelson's information was reaffirmed by Barrett in his interviews with Panorama.²³ The most specific details regarding Patrick Finucane's alleged meeting with Gerry Adams were contained in further intelligence received by the RUC SB on 16 February 1989. The SB50 produced as a result of this intelligence included the following comments:

"Recent UDA intelligence indicated that [Pat Finucane] met with Gerry Adams and [T/13] last week in the [AB] Hotel ... and discussed PIRA politics, finance and future policy.

...

Pat Finnucane [sic] was shot by a joint team from A & B Coy, WDA [Woodvale Defence Association]. [L/28] was the operations officer and [L/20] and Ken Barratt [sic] were also involved ... Barratt may have been one of the gunmen."[Emphasis added]²⁴

- 19.51 The notes provided to me by John Ware of his conversations with Brian Nelson in 1991 offer further evidence that the UDA believed Patrick Finucane to have been involved in providing assistance to PIRA on financial matters. Nelson was recorded as having told Ware that:

"They were going for Adams but [L/28] was told – I don't know by whom – don't bother with Adams: Finucane is the man who really counts. He's the brains; he's the man who organises all the money to be laundered; he's the man who gives them advice. I assume that that came from the cops. I don't know but ['Tucker' Lyttle] had a very, very good police source."[Emphasis added]²⁵

- 19.52 There is no corroboration for Barrett's claim that the UDA knew at the time that Patrick Finucane was connected to someone from CD Construction. However, it does appear that the UDA believed that Mr Finucane had met Gerry Adams and T/13 prior to his murder, and that Patrick Finucane was in some way involved in PIRA finances. These reports do, therefore, largely corroborate Barrett's description of the UDA's 'intelligence' on Mr Finucane.

Did the UDA have police sources able to provide them with intelligence?

- 19.53 In Chapter 11 I outlined the broad nature of the 'contacts' between members of the RUC and the UDA. The UDA clearly had a number of RUC contacts in early 1989 who were willing to provide them with information. However, in order to assess the likelihood of Barrett's allegations, I have sought to identify specific contacts between those directly involved in planning the murder of Patrick Finucane and the security forces during the period in which the conspiracy was formulated and developed.

- 19.54 It should be clearly acknowledged that there is no document demonstrating that the RUC passed information on Patrick Finucane to the UDA. That is, in itself,

²³ Panorama, transcript of recorded meeting with Kenneth Barrett, 3 September 2001

²⁴ RUC SB50 intelligence report, 16 February 1989 [see Volume II, p. 98]

²⁵ Notes of John Ware's conversation with Brian Nelson, 12 April 1991

not surprising; in the event that it did occur it would have been extremely foolish for an officer to record such illegal activity in writing.

- 19.55 Analysis of the intelligence material reveals a number of potentially important contacts between the West Belfast UDA and the RUC during the relevant period. I consider the allegations that the UDA West Belfast Brigadier, Thomas ‘Tucker’ Lyttle, received information from an RUC contact separately in Chapter 20.
- 19.56 It is clear from the broad intelligence picture that L/20 and L/28 were both key players in the planning and execution of Patrick Finucane’s murder. L/20 is of particular relevance because both Barrett and Nelson indicated that he effectively instigated the targeting of Mr Finucane.
- 19.57 The reported contacts between L/28 and members of the security forces were detailed in FRU CFs from January and February 1989. Most of L/28’s security force ‘contacts’ appear to refer to members of the UDR, though there is one reference implying that he did receive information from RUC sources. The CF dated 4 January 1989 recorded the following information under the heading “[L/28] has SF [Security Force] Contacts”:
- “[L/28] said that a contact of his told him that the RUC knew of the targeting [of T/21] and this was confirmed by another of [L/28]’s contacts.”²⁶*
- 19.58 The CF was not explicit that L/28 received the information from the RUC, but that is certainly the implication of the text. L/28’s information was accurate: the RUC SB did know about the targeting of T/21 because the FRU had passed on Nelson’s reporting of the threat (see Chapter 21). The reference to T/21 is itself potentially significant because it was, according to Nelson, the decision to stop the targeting of T/21 that led to the UDA’s plan to attack Patrick Finucane instead.²⁷
- 19.59 There are no direct references to L/20 receiving information from members of the security forces in the months leading up to Patrick Finucane’s murder. However, one passage from the FRU CF dated 6 February 1989 implies that L/20 may have been receiving such information from an RUC contact at the relevant time which he then passed on to L/28.²⁸
- 19.60 The UDA’s clear belief that Patrick Finucane met with Gerry Adams and T/13 at the AB Hotel is also striking. The RUC intelligence outlined at paragraph 19.50 included the comment that the UDA believed that the three men had discussed “*PIRA politics, finance and future policy*”.²⁹ The UDA’s intelligence appears, therefore, to have been based not only on a sighting of the three men but also on the supposed broad content of their discussion. It is clear to me that ‘UDA Intelligence’ did not have the means to independently collate such information: they had not demonstrated a capacity to conduct their own electronic monitoring of conversations, nor did they run their own agents within PIRA.

²⁶ CF 4 January 1989, Items 2–3

²⁷ CF 14 February 1989 [see Volume II, pp. 10–15]

²⁸ CF 6 February 1989

²⁹ RUC SB50 intelligence report, 16 February 1989 [see Volume II, p. 98]

19.61 It may be significant that the UDA did appear to be in receipt of intelligence information from the E4A surveillance section of the RUC in January 1989. This intelligence related to the movements of republicans in the area of the building site referred to as EF, which was in close proximity to the AB Hotel. The CF dated 16 January 1989 noted that an RUC ‘contact’ had provided this information to a senior UDA figure. The information was recorded on a piece of paper passed through a number of UDA members to Nelson, as follows:

“[The name and home town of a republican]

Red Ford Cortina VOI [registration number given]

Working in [EF] building site

(Man arrives in overalls and drives car away to collect Gillen, [T/19] and two others). Gillen has been followed by E4A, seen in Dunmurry and Seymour Hill, [T/01] as well. Gillen seen talking [to another member of PIRA], Hatfield St.”³⁰

19.62 The FRU were clearly interested in finding out how the UDA had obtained this information and conducted their own visit to the EF building site on 27 February 1989. Although there was a mistaken number in the vehicle’s registration plate, the information was found to be otherwise accurate.³¹

19.63 The RUC and the Security Service appear to have also been aware of information being passed from an E4A source to the UDA around this time. The RUC Daily Intelligence Book recorded, “*Details on E4A contact, info passed via ... Seymour Hill*” [emphasis in original].³²

19.64 Seymour Hill is a residential area of Belfast in close proximity to the EF building site/AB Hotel area. The annotation in the margin of the Intelligence Book reveals that the Head of Special Branch was informed of the leak on 19 January 1989.³³

19.65 There is no evidence in the intelligence material to suggest that this RUC ‘E4A contact’ ever provided intelligence on Patrick Finucane to the UDA. Nevertheless, I do believe that it is potentially significant that the UDA were receiving such sensitive information in mid-January 1989 and that they shortly afterwards claimed an awareness of highly specific information about meetings involving Patrick Finucane that took place in very close proximity to the EF building site. I have sought to establish the nature and duration of any RUC E4A operation in progress at the time but I have been informed that there are no longer any records of surveillance operations conducted during this period.

19.66 The fact that the West Belfast UDA received information from RUC ‘contacts’ in the lead up to the murder cannot, in itself, be taken as meaning that information was passed by an RUC officer regarding Patrick Finucane. I have considered the evidence on this issue purely to establish, in a circumstantial sense, the

³⁰ CF 16 January 1989

³¹ FRU File Note G137A, 3 March 1989

³² RUC Daily Intelligence Book, 19 January 1989

³³ Ibid.

potential plausibility of Barrett's allegations. The evidence does suggest that the UDA had RUC contacts at the material time who could, as Barrett claimed, have been in a position to pass such information on Patrick Finucane to the UDA.

Did the UDA 'intelligence' correlate with RUC records?

- 19.67 I have established that Barrett's October 1991 account of the UDA's 'intelligence' on Patrick Finucane was largely accurate, and that the UDA had a number of police sources at the time who could have passed on such 'intelligence'.
- 19.68 However suggestive this analysis may seem, I must also assess whether the UDA's information correlated to any extent with the intelligence held by the RUC on Patrick Finucane. If the UDA's 'intelligence' on Mr Finucane was in fact at odds with the information held by the RUC, then it would self-evidently be unlikely that the UDA received the information from that source. If, on the other hand, the UDA's 'intelligence' mirrored to a significant extent the RUC perception of Patrick Finucane, then this would provide further powerful circumstantial evidence to support Barrett's claim.
- 19.69 I should note that, in carrying out this analysis, I have not sought to conduct a full assessment of the accuracy of the intelligence reports compiled by the RUC SB on Patrick Finucane. It is not relevant to my Terms of Reference to carry out a rigorous assessment of these documents.
- 19.70 For the avoidance of doubt, however, I should state that my position on Patrick Finucane is as I outlined in Chapter 14: I have not seen any evidence which would persuade me to displace the findings already made by Justice Cory and others that Patrick Finucane was not a member of PIRA. He did, of course, come into regular contact with PIRA personnel in the course of his work as a solicitor and as a result of his relationship with his two brothers, who were both members of PIRA.
- 19.71 The SB intelligence records on Patrick Finucane were fragmented, lacking in detail and mostly referred to his routine contact with republicans as part of his work as a solicitor. The significance of these reports should not be overstated, though they should be examined to the extent necessary to determine whether the UDA's adverse view of Patrick Finucane may have emanated from RUC sources.
- 19.72 The lack of any police records of surveillance operations during this period prevents me from seeking to establish whether E4A had observed Patrick Finucane meeting Adams and T/13 at the AB Hotel. Aside from the AB Hotel meeting, the evidence suggests that the UDA believed that Mr Finucane was a PIRA Intelligence Officer and that he laundered money for PIRA. According to Barrett, the UDA also believed that he had links to someone from CD Construction.
- 19.73 Analysis of RUC records shows that this information appears to bear a significant resemblance to material contained within their intelligence files. RUC SB officers routinely annotated Patrick Finucane's name with the word 'PIRA' or 'PIRA

solicitor', though he was also often described as 'NICRA' (Northern Ireland Civil Rights Association). Although he was never described as a PIRA Intelligence Officer, the records do appear to indicate that the SB considered Patrick Finucane to be an intelligence 'contact' able to provide PIRA with information.

19.74 A high-level RUC SB assessment of PIRA's Belfast Brigade produced after Patrick Finucane's murder included a section on PIRA's intelligence 'contacts' (as distinct from their Intelligence Officers who cultivated such contacts). The assessment noted that PIRA were seeking "*Another link into the Legal Profession to replace Pat Finnucane [sic]*".³⁴

19.75 It is unclear on precisely what basis Patrick Finucane was considered to be an 'intelligence contact'. Seamus Finucane was believed to be an Intelligence Officer for PIRA's Belfast Brigade at the time and the RUC SB clearly considered Patrick Finucane's relationship with his brother to be significant.³⁵ An intelligence report received in 1985 and another report of more questionable reliability received in 1987 gave indications that Patrick Finucane was able to provide information to PIRA, though these were somewhat isolated examples.

19.76 Significantly, RUC SB records also show that Patrick Finucane was being linked in police intelligence to CD Construction and republican finances in the months before his murder. Intelligence received on 9 November 1988 suggested that:

"T/29, [CD] Construction who is presently renovating the PSF [Provisional Sinn Fein] Centre in Leper Street will hand over all monies from the NIO [Northern Ireland Office] to PSF because PSF members are doing the work on the Centre themselves. [CD] Construction have the contract to renovate the Centre and PSF have a grant from the NIO.

*PSF will have to get in touch with Pat Finnucane [sic], Solicitor for advice on the re-mortgaging of the PSF Centre, Leper Street. [The republican] also said that someone will have to impersonate [a republican] to arrange for the premises to be re-mortgaged. [The republican] is in jail at present and the premises are in his name."*³⁶

19.77 This type of intelligence, if true, does of course fall far short of establishing that Patrick Finucane laundered money for PIRA. However, it is important to contextualise this type of information. In the febrile environment of Belfast in the late 1980s, loyalists would, I am sure, have drawn no distinction between Sinn Féin and PIRA finances, nor would they have been likely to appreciate the difference between, on the one hand, providing legal advice on grants and re-mortgaging, and, on the other, being 'involved' in republican finances.

19.78 Links between Patrick Finucane and the issue of 'republican finances' are also evident in other SB intelligence documents. SB50s produced in October 1987 and January 1988 both linked Patrick Finucane to NORAIID,³⁷ an American

³⁴ RUC intelligence assessment, 7 June 1989

³⁵ See RUC 'profile' on Patrick Finucane provided to Douglas Hogg MP [see Volume II, pp. 211–212]

³⁶ RUC SB50 PSF meeting, 8 November 1988

³⁷ RUC SB50 intelligence reports, 27 October 1987 and 12 January 1988

organisation widely known to be involved in fundraising activities for Sinn Féin and PIRA.

- 19.79 In analysing this issue, I have been conscious of the fact that the UDA routinely misinterpreted and mixed up intelligence material that they received from security force sources. However, in considering the evidence as a whole, I am struck by the correlation between the UDA's description of their 'intelligence' on Patrick Finucane and the material contained within RUC records. The correlation is by no means precise but the UDA 'intelligence' does tend to read as an exaggerated and embellished version of the references found in RUC documents and files. The two aspects of republican activity that UDA terrorists privately described Patrick Finucane as having been 'involved in' – intelligence and finances – were, broadly speaking, the same two areas with which he had been linked in some form in intelligence reporting.
- 19.80 In itself, the degree of correlation between RUC records and the UDA's 'intelligence' does not prove that the UDA received information from the RUC. However, this correlation must be considered alongside Barrett's statement that the UDA received the intelligence from a police source; the evidence that they had a number of police contacts at that time who were providing intelligence on republicans; their reliance on RUC or UDR 'leads' for their attacks (see Chapter 11); and the fact that they simply did not have the ability or means to gather intelligence independently on issues such as republican finances.
- 19.81 Even treating Barrett's overall account with the necessary caution, and fully acknowledging the lack of unequivocal documentary evidence, I am persuaded that his explanation on 3 October 1991 that the UDA received 'intelligence' on Patrick Finucane from an RUC source is essentially accurate.
- 19.82 In Barrett's later accounts he also claimed to be able to identify the RUC source providing intelligence to the UDA on Patrick Finucane. In the light of these allegations, and given my remit to produce a full public account of any State involvement in the murder, I have sought to establish whether it is possible to determine the identity of the RUC officer or officers involved in providing this information to the UDA.

Barrett's claims regarding 'McWhirter'

- 19.83 The note of the 3 October 1991 meeting stated that Kenneth Barrett was apparently 'unable' to elaborate further on the police source for the UDA's intelligence on Patrick Finucane.³⁸ Many years later, however, Barrett's accounts to Panorama journalists and the Stevens III Investigation team included further allegations regarding a specific RUC officer who he claimed had been primarily responsible for the passing of this intelligence. Barrett identified a police officer known as 'McWhirter', whom he portrayed as a powerful figure at the centre of a complex web of corruption.

³⁸ Typed intelligence report, R/06 meeting with Kenneth Barrett, 3 October 1991 [see Volume II, pp. 107–109]

Barrett's allegations about 'McWhirter' to Panorama

- 19.84 It is essential to outline the context in which Barrett was speaking to the journalists John Ware and Eamon Hardy in 2001. Barrett was addicted to gambling and was clearly in need of money. The Panorama journalists were, understandably, pressing Barrett for as much information as possible, and they eventually paid him £1,300 whilst holding out the prospect of resettling him in England if he gave an interview openly on camera.
- 19.85 The Review has had access to the transcripts of John Ware and Eamon Hardy's conversations with Barrett. These are extremely important sources of evidence and the Panorama team should be commended for their investigative skills. Nevertheless, I must examine these records rigorously to test the veracity of Barrett's allegations.
- 19.86 Barrett's allegations about McWhirter ranged far beyond the Patrick Finucane case. In the course of his conversations with Ware and Hardy, Barrett made the following claims:
- He was introduced to McWhirter by L/20 after having accused L/20 of being an informer.³⁹ At this meeting DC R/06 was driving the car.⁴⁰
 - McWhirter provided L/20 with the correct address for Gerard Slane, after Brian Nelson had supplied an incorrect address.⁴¹
 - McWhirter provided about 12 documents of accurate intelligence which facilitated the targeting of republicans.⁴²
 - McWhirter was involved in facilitating the theft of weapons from the UDR base at Palace Barracks in 1987.⁴³
 - McWhirter exerted considerable influence over the UDA; Barrett claimed that on the night of a riot in Belfast he was with L/20 when L/20 received a phone call from McWhirter telling him to call it off. This he did within five minutes.⁴⁴
- 19.87 However, Barrett's main allegations centred on the murder of Patrick Finucane. These are summarised below:
- On 19 September 2001 Barrett claimed that McWhirter had told him that Patrick Finucane was "*an IRA man*" who was "*doing their finances*", and that if he was hit they would have trouble replacing him. McWhirter added that Mr Finucane would "*have to go*", as he was "*a thorn in everyone's side*".⁴⁵
 - The week before the assassination a previous attempt was called off because McWhirter told them that Finucane was not likely to be at home as his car could not be seen outside his house.⁴⁶

³⁹ Panorama, transcript of recorded meeting with Kenneth Barrett, 19 September 2001

⁴⁰ Ibid., 18 December 2001

⁴¹ Ibid., 3 September 2001

⁴² Ibid., 18 December 2001

⁴³ Ibid.

⁴⁴ Ibid., 11 October 2001

⁴⁵ Panorama, 'A Licence to Murder', Part 1, 19 June 2002

⁴⁶ Panorama, transcript of recorded meeting with Kenneth Barrett, 3 September 2001

- McWhirter supplied L/20 with a diagram of Patrick Finucane's street including a suggested escape route.⁴⁷
- On the night of the murder a telephone message had been passed by McWhirter to the murder gang saying that they would be able to drive to Mr Finucane's house without being troubled by a security presence.⁴⁸ McWhirter had then phoned Barrett after the murder to show his satisfaction, saying "*well done*"⁴⁹ or "*good show*".⁵⁰
- McWhirter arranged for three men to be arrested for the murder whom he knew to be innocent, and stopped Barrett from himself being arrested.⁵¹
- McWhirter was now retired⁵² and Barrett had last met him in 1999 in a supermarket.⁵³
- McWhirter had warned Barrett to leave the country before the Stevens team arrived,⁵⁴ and then that they were about to arrest him.⁵⁵

19.88 Before turning to Barrett's subsequent accounts, it is worth noting some of the weaknesses in the accounts he gave to Panorama:

- I am sure that Brian Nelson in fact provided the UDA with the *correct* address for targeting Gerard Slane (as outlined in Chapter 7),⁵⁶ so Barrett's claim in this respect is incorrect.
- Barrett's account of his introduction to McWhirter also seems highly questionable. From my analysis of L/20's role within the UDA and his position in command of Barrett, it appears unlikely that he would have felt the need to 'prove' himself in such a way as a result of Barrett's accusations that he was an informer.
- The claim that McWhirter provided a diagram of Patrick Finucane's street to L/20 also seems inherently unlikely. As Ware and Hardy recognised when questioning Barrett,⁵⁷ a senior policeman deciding to pass targeting information to paramilitaries in his own handwriting would be acting in an extremely reckless manner. Furthermore, Barrett's description of McWhirter's suggested escape route to the north of the house is in conflict with eyewitness testimony recorded by the Stevens III Investigation, which suggested that the getaway car headed south.⁵⁸

19.89 These weaknesses in Barrett's accounts do not mean that all of his allegations can be dismissed, but they do reinforce the need for me to treat them with great caution.

⁴⁷ Ibid., 18 December 2001

⁴⁸ Ibid., 3 September 2001

⁴⁹ Ibid., 18 December 2001

⁵⁰ Ibid., 19 September 2001

⁵¹ Ibid.

⁵² Ibid., 3 September 2001

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid., 11 October 2001

⁵⁶ CF 21 September 1988

⁵⁷ Panorama, transcript of recorded meeting with Kenneth Barrett, 18 December 2001

⁵⁸ Ibid.

Barrett's statements to the Stevens III Investigation

19.90 Barrett provided two accounts to the Stevens III Investigation team: an 'intelligence only' debrief in 2002, and a statement made in the presence of his solicitor in 2006.

19.91 In February 2002, during the 'intelligence only' debrief with the Stevens team, Barrett made a number of claims regarding RUC officers. He repeated an earlier claim to Panorama⁵⁹ that the instigation for Patrick Finucane's murder could be traced to 1988 when officers questioning loyalists at Castlereagh Holding Centre were telling them that they were targeting the wrong people (see Chapter 18).

19.92 During this debrief, Barrett also maintained his account that McWhirter instigated the UDA's murder of Patrick Finucane. He stated that he "*would imagine*" McWhirter had given L/20 details on Patrick Finucane.⁶⁰

19.93 In 2006 Barrett changed his story in a crucial respect. Barrett had told Ware and Hardy that he had met McWhirter in a car with L/20, but in his 2006 statement he told the Stevens III Investigation that he had never met McWhirter:

*"I have had no dealings with 'McWhirter' ... I do not know who [L/20]'s police contact is but there is another police officer who does."*⁶¹

19.94 In his 2006 statement Barrett also claimed that information on Mr Finucane had been passed to UDA member L/36 by "*a police friend*".⁶² It should be noted that Barrett's 2006 statement includes several spurious claims (such as that the UDA knew that Nelson was an informer and that L/28 was an informer).

Barrett's 'proof' of the existence of 'McWhirter'

19.95 It should be noted that the Panorama journalists rightly sought corroboration for Barrett's allegations regarding McWhirter. Barrett agreed to provide supposed 'proof' of McWhirter's existence by phoning him in the presence of Eamon Hardy.⁶³ He rang an SB extension number on 5 December 2001 and was told he would be called back. This brief exchange was tape recorded by the Panorama team. The following morning, 6 December 2001, Barrett received a return telephone call from a person calling himself 'McWhirter'. The subsequent conversation between McWhirter and Barrett was also tape recorded.⁶⁴ The Panorama team understandably saw this as significant evidence supporting Barrett's account. However, as will be seen below, this evidence in fact tends to undermine Barrett's claims with respect to McWhirter.

⁵⁹ Ibid.

⁶⁰ Barrett intelligence debrief, 19 February 2002 [see Volume II, pp. 146–160]

⁶¹ Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

⁶² Ibid.

⁶³ Panorama, transcript of recorded meeting with Kenneth Barrett, 3 September 2001

⁶⁴ Panorama, transcript of recorded telephone call between Barrett and 'McWhirter', 6 December 2001

The RUC records on ‘McWhirter’

- 19.96 Having conducted a detailed analysis of the RUC records, I am satisfied that Barrett was, indeed, in contact with an SB officer whom he knew as ‘McWhirter’ in 2001.
- 19.97 In a statement to the Stevens III Investigation dated 3 February 2004, an SB officer, Detective Inspector (DI) R/02, outlined his conversations with Barrett in 2001. R/02 said that on 16 January 2001 he had been instructed by a Detective Superintendent to personally inform Barrett that his identity and role as an agent were likely to be made public during the upcoming trial of William Stobie.⁶⁵
- 19.98 In compliance with this instruction R/02 visited Barrett at his home accompanied by another officer, and introduced himself as Detective Inspector McWhirter. This name was chosen after consultation with his superiors to protect his identity and to act as a contact name for any future communication. Later that day Barrett rang R/02 on the SB number he had been given, asked for McWhirter and said that he wanted to leave Northern Ireland with his family.⁶⁶
- 19.99 Barrett went briefly to Scotland and had a number of telephone conversations with R/02 regarding his safety and intentions.⁶⁷ R/02 was then instructed to meet Barrett once more to provide him with financial assistance in order to leave Northern Ireland with his family.⁶⁸
- 19.100 R/02 stated that Barrett telephoned him on the SB number a few months later, suggesting that this conversation may well have been the one recorded by Panorama.⁶⁹ This was accurately reported on the same day to R/02’s superiors.⁷⁰ All of R/02’s contact with Barrett appears to have been properly accounted for in SB records.
- 19.101 On close analysis, a number of further inconsistencies can be found in Barrett’s evidence regarding his contact with McWhirter:
- Barrett told the Panorama team that he had not met McWhirter since 1999. He had, in fact, met R/02 several times in 2001.⁷¹
 - Barrett states that McWhirter was a Detective Chief Inspector in 1989, who had retired by 2001. R/02 was a Detective Sergeant in 1989 and was still serving in 2001.⁷²
 - Barrett’s description of McWhirter does not match a description of R/02’s appearance in the late 1980s obtained by the Stevens team.⁷³

⁶⁵ R/02, statement to Stevens III Investigation, 3 February 2004, p. 2 [see Volume II, pp. 173–176]

⁶⁶ *Ibid.*, pp. 2–3

⁶⁷ *Ibid.*, pp. 3–4

⁶⁸ *Ibid.*, p. 4

⁶⁹ *Ibid.*

⁷⁰ R/02 report addressed to HSB at RUC Headquarters, 6 December 2001

⁷¹ Panorama, transcript of recorded meeting with Kenneth Barrett, 19 December 2001

⁷² *Ibid.*, 3 September 2001

⁷³ Stevens III Investigation, analyst report, ‘McWhirter’, 24 July 2003

- 19.102 These inaccuracies and weaknesses in Barrett's account must be considered in conjunction with the contradictory statements he made to the Stevens III Investigation at a similar time. R/02's proper and detailed recording of his dealings with Barrett does not suggest an officer seeking to conceal criminal behaviour. In his 2004 statement to the Stevens III team, R/02 was adamant that he had never spoken to Barrett prior to the warning in 2001 and that he had never had any contact with L/20.⁷⁴
- 19.103 I am satisfied that Barrett's claims regarding McWhirter are so unreliable and contradictory that no weight can be placed on this aspect of his account. Specifically, there is no evidence to suggest that the officer known to Barrett in 2001 as 'McWhirter' was known to Barrett in 1989, or indeed was involved in any way in Mr Finucane's murder.
- 19.104 I note that, in his 2002 debrief and 2006 statement, Barrett implied that he had never actually met L/20's 'police contact'. When considering the evidence as a whole, I suspect that Barrett had never met the RUC 'contact' who provided information to the UDA on Patrick Finucane. This scenario would be consistent with Barrett's reported comments on 3 October 1991. His embellished offerings to Panorama were perhaps based on a desire to exaggerate his own importance and justify the money that had been promised to him.
- 19.105 Whilst circumstantial evidence and a pattern of UDA reliance on RUC or UDR 'leads' for their attacks (see Chapter 11) support Barrett's general proposition that the UDA received intelligence on Mr Finucane from an RUC source, an allegation he has made consistently since 1991, his later allegations made to the Stevens team and to journalists where he seeks to name specific individuals do not stand up to scrutiny.

Barrett's claims regarding other named RUC officers

- 19.106 In the light of what I find to be unreliable accounts provided by Barrett to Panorama regarding McWhirter, I am also inclined to treat Barrett's accounts to Panorama containing accusations against other named RUC officers with scepticism.
- 19.107 In the course of his conversations with Panorama, Barrett implicated the following RUC officers:

R/04

- 19.108 Barrett claimed that an officer acted as the 'linkman' between McWhirter and L/20⁷⁵ and would provide details about individuals about to be arrested.⁷⁶ Barrett may have been referring to an RUC officer named R/04. R/04 was, however, an RUC Communications Officer at the time, which makes these supposed activities seem unlikely. In his 2004 statement to the Stevens Investigation, R/04

⁷⁴ R/02, statement to Stevens III Investigation, 3 February 2004 [see Volume II, pp. 173–176]

⁷⁵ Panorama, transcript of recorded meeting with Kenneth Barrett, 11 October 2001

⁷⁶ Ibid.

noted that he had some limited dealings with Barrett's UDA colleagues in a later community policing role, but categorically denied any contact with Barrett in 1989 or any other impropriety.⁷⁷ I am satisfied that no weight can be placed on Barrett's accusations against R/04.

Detective Sergeant Brown

19.109 Barrett continually sought to implicate DS Brown in the passing of information to loyalist paramilitaries.⁷⁸ However, after the screening of the May 2001 Insight programme, it is clear that Barrett held a strong grudge against DS Brown. I note that in October 1991 Barrett offered intelligence to DS Brown on police officers passing information to the UDA.⁷⁹ This would have been an extremely surprising offer for Barrett to have made if he believed that he was himself speaking to a corrupt police officer. I am satisfied that no weight can be placed on Barrett's accusations against DS Brown.

Detective Constable R/06

19.110 DC R/06 was one of Barrett's SB handlers during the early 1990s,⁸⁰ and an examination of Barrett's SB50s shows that R/06 met Barrett between 26 October 1992 and 8 June 1993.

19.111 As with the case of DS Brown, Barrett's willingness in October 1991 to expose police officers providing information to the UDA to R/06 does not suggest to me that he believed R/06 himself to be a corrupt police officer.

19.112 In conclusion, and taking into account the lack of corroborating evidence, the relative late stage and context in which Barrett implicated these officers, and some of the inherent improbabilities in the accounts that I set out above, I am satisfied that no weight can be placed on any of Barrett's allegations against these three officers.

Other allegations of RUC involvement

19.113 For the sake of completeness, I must also cover two additional allegations which were considered by Justice Cory in his Report, but for which he could find no evidence to support the allegations of collusion. The first issue relates to the allegations that a vehicle checkpoint near the Finucane home had been deliberately removed to facilitate the murder. The second allegation was that an RUC officer was present in the hijacked mini-cab driven by the UDA hit team on the night of the murder.

⁷⁷ R/04 statement to Stevens III Investigation, 23 March 2004, pp. 3–5

⁷⁸ Panorama, transcript of recorded meetings with Kenneth Barrett on 18 December 2001 and 11 January 2002, and Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

⁷⁹ DS Brown's notebook, 1 October 1991

⁸⁰ Stevens III Investigation, Kenneth Barrett intelligence reports

The vehicle checkpoint

19.114 British Irish Rights Watch's (BIRW's) Report declared that "*Patrick Finucane's murder was procured by members of the RUC*",⁸¹ and stated that:

*"According to neighbours, police roadblocks in place up to an hour before the murder in close proximity to Patrick Finucane's home were removed, thus affording the murderers unfettered access to and escape from the house."*⁸²

19.115 Justice Cory dealt with the point at paragraphs 1.277–1.280 of his Report, but concluded that there was no evidence that the suspension of those activities was a sinister or collusive act.

19.116 Officers from the Stevens III Investigation examined the allegation, proceeding on the premise that an 'out of bounds order' would have been issued if police roadblocks in the vicinity of the Finucane home had been removed. However, they were unable to recover from the RUC any evidence either supporting or refuting the allegation, as they were informed that records of such orders had been maintained only since 1996 when a new computer system was installed. Prior to 1996, the Stevens III officers ascertained that any such orders would have been communicated by means of a 'message switch', but these would have been neither recorded nor kept by staff; any such message switch made in 1989 would have been stored on computer disk for a period of only one month before the disk was re-used.

19.117 However, the Stevens III officers did discover that there had been intensive Army activity in the Antrim Road area of North Belfast (approximately 1.5 miles from Mr Finucane's home) throughout most of the daylight hours of 12 February 1989, which had ceased approximately 70 to 80 minutes prior to the murder. The search operation was conducted by the Army at "*the instigation of and for the RUC who were also present during the searches*".⁸³

19.118 Over a period of approximately six months during the first half of 2000 A/22, an officer with 29 years' experience of military intelligence and then holding the rank of Major, carried out detailed research and analysis of all available records of transmissions recorded by the Army in North Belfast from 0001 to 2359 on Sunday 12 February 1989. He summarised the results of his research as follows:

"The regular Army units operating in North Belfast during the period were 2 Royal Anglian Regiment. Despite the 12 February falling on a Sunday Military Operations continued as on any other day of the week. On this particular day a pre-planned search operation was conducted by 'C' Company, 2 Royal Anglian Regiment. Also present on the ground is [sic] the area of Antrim Road were an element from the Army Search Team and a helicopter from Belfast City flight provided overhead cover for the operation. This was a joint operation conducted by the Army and RUC involving garage searches on the Antrim Road and adjacent streets.

⁸¹ BIRW report, *Deadly Intelligence*, para 11.1

⁸² *Ibid.*, para 11.14

⁸³ Statement of A/21, 25 April 2000, p. 2

[T]he operation commenced at 10:35am and was the only major operation carried out by the Royal Anglians that day ... Such operations are normally planned in advance to be carried out during daylight hours as additional resources would be required should the operation continue into the hours of darkness. The operation continued without incident and was completed at 1814 hours when the search elements of 'C' Company returned to their Barracks of Girdwood Park.

Throughout the period of the operation military vehicles would have been moving at irregular intervals up and down Antrim Road and adjacent streets and the foot soldiers would have adopted consistently changing positions. Those residents in the areas would have been aware that an operation was in progress by the heavy numbers of security forces deployed. As far as I can ascertain there were no other Army units active in the area once the search teams and cordons had withdrawn. My research also indicates that no areas within North Belfast had been placed out of bounds to military activity. Had any areas been placed out of bounds their locations would have necessarily been circulated over the radio net to the relevant Royal Anglian sub-units. After such intensive military activity in a relatively confined area the withdrawal of units would have been immediately apparent to the local community ... [S]oon after the Army units withdrew ... the RUC radio net broadcast a shooting at [the Finucanes' home] ...”⁸⁴

19.119 As Justice Cory noted in his Report, it was standard procedure for such checkpoints and searches generally to be carried out during the hours of daylight.⁸⁵ Sunset in Belfast in February would generally fall at around 5.30pm so the withdrawal of the unit at 6.14pm was entirely consistent with the practice of ending such procedures when darkness fell.

19.120 The only other evidence on the point comes from what Kenneth Barrett told the Panorama programme journalists John Ware and Eamon Hardy. However, as I noted earlier in this chapter, I do not believe that any weight can be placed on Barrett’s allegations, some years after the event, relating to the specific involvement of an RUC officer in allegedly helping to ‘lift’ the vehicle checkpoint.

Allegations that an RUC officer was in the mini-cab

19.121 Allegations have been made that an RUC officer was present in the mini-cab when the UDA team drove to Patrick Finucane’s home on 12 February 1989. Justice Cory considered this issue in his Report but found no evidence to support this allegation.⁸⁶ In his subsequent 2006 statement to Stevens III, Kenneth Barrett also denied that a fourth person had been present in the mini-cab.

19.122 I have found only one piece of evidence which could potentially be said to support the allegation that a member of the security forces may have been present in the mini-cab. Security Service intelligence received in 2001 suggested that one of the UDA members directly involved in the murder had admitted that a fourth person was present in the mini-cab. The intelligence indicated that:

⁸⁴ Statement of A/22, 21 June 2000

⁸⁵ *Cory Collusion Inquiry Report: Patrick Finucane*, 1 April 2004, p. 99, para 1.277

⁸⁶ *Ibid.*, para 1.281

“... there is a rumour in the UDA the fourth person in the car was a member of the security forces.”⁸⁷

19.123 The Security Service graded the source of this intelligence as reliable at the time. Some of the other intelligence received from the same source can also be corroborated by the wider evidence considered during this Review. However, in this particular instance I do not believe that this report is sufficiently strong to enable any weight to be attached to it. The intelligence was received 12 years after the murder and points to no more than a reliable source reporting the existence of a rumour that the alleged fourth person in the car was a member of the security forces. The fact that a rumour was circulating in the UDA is, in my view, insufficient to enable any wider inference to be drawn.

Overview

19.124 I am persuaded that Kenneth Barrett’s allegation of 3 October 1991 that the UDA received ‘intelligence’ on Patrick Finucane from an RUC source is essentially accurate.

19.125 I noted in Chapter 18 that the murder was likely to have been instigated as a result of suggestions made by RUC officers in Castlereagh on 8 or 9 December 1988. The further provision of information on Patrick Finucane’s alleged links to PIRA by an RUC officer would have served to confirm to the UDA the supposed legitimacy of their conspiracy to murder him.

19.126 I do not, however, believe that there is any reliable evidence to implicate any of the RUC officers named by Barrett in the various accounts he provided from 2001 onwards. I do not believe that Barrett’s account implicating an officer named ‘McWhirter’ is reliable. Accordingly, although I believe that an RUC officer or officers provided the UDA with ‘intelligence’ on Patrick Finucane to encourage an attack, I am not persuaded by Barrett’s other allegations in relation to assistance having been provided to the killers in the form of diagrams of Mr Finucane’s street or telephone calls to confirm whether a roadblock had been lifted.

19.127 Although I have had access to a much wider evidential base than was available to Justice Cory, I concur entirely with his conclusions in relation to the roadblock and the alleged presence of an RUC officer in the stolen mini-cab. In the light of the evidence I have seen, I do not believe that there was any link between the operations undertaken by the Royal Anglian Regiment in North Belfast on 12 February 1989 and Patrick Finucane’s murder; and still less that they ceased when they did in order, as the BIRW have alleged, to afford the murderers unfettered access.

19.128 I am also satisfied that there is no reliable evidence to suggest that a member of the RUC, or any other branch of the security forces, was present in the stolen mini-cab driven to Mr Finucane’s home by the UDA members responsible for the murder.

⁸⁷ Security Service intelligence report, 2001

Chapter 20: The role of Thomas ‘Tucker’ Lyttle and his relationship with RUC officers

20.1 It is central to my Terms of Reference to establish the link between any of the individuals involved in the conspiracy to murder Patrick Finucane and any State agency. I have, therefore, sought to examine in detail the admissions reportedly made by an Ulster Defence Association (UDA) ‘Brigadier’, Thomas ‘Tucker’ Lyttle, to journalists that he was aware of the conspiracy to murder Patrick Finucane and that he discussed the targeting of Mr Finucane with a Royal Ulster Constabulary Special Branch (RUC SB) officer.

Background

20.2 In 1989 ‘Tucker’ Lyttle was the UDA’s long-standing West Belfast ‘Brigadier’. As one of the so-called ‘Brigadiers’, he sat on the UDA’s Inner Council and by 1989 had become the ‘Chairman’ of the UDA. Lyttle was generally considered to be one of the older-generation, less militaristic figures on the Inner Council. His obituary in the *Irish Times* reflected this by noting that “*by loyalist paramilitary standards, he was a moderate figure*”.¹

20.3 Lyttle was active on the more political side of the UDA and was clearly viewed with suspicion by the younger, hardline elements of the organisation. Nevertheless, Lyttle was convicted of serious criminal offences and, as outlined in this report, he was undoubtedly involved in a number of UDA conspiracies to attack republicans.

The comments made by ‘Tucker’ Lyttle to journalists

20.4 ‘Tucker’ Lyttle provided at least two interviews to journalists outlining his knowledge of Patrick Finucane’s murder and his alleged conversations with an RUC ‘contact’ regarding the targeting of Mr Finucane.

20.5 In the book, ‘Stakeknife’, the alleged code name of a Force Research Unit (FRU) agent in the Irish Republican Army (IRA), the journalist Greg Harkin outlined his conversations with ‘Tucker’ Lyttle in early January 1990. Lyttle reportedly asked Harkin to visit him and Harkin stated that:

“We all have our police and Army friends ... I’ve got mine. But Brian’s [Nelson] got the very best of friends. He [Lyttle] predicted Nelson’s arrest and then said that there was ‘something big going down’ in relation to Pat Finucane’s murder ... The police and the Army had wanted Finucane dead, he told me, and the UFF were ‘happy to oblige’. Lyttle’s reason for calling me was simple: he expected to be arrested too and he wanted to issue a warning

¹ ‘Tucker’ Lyttle obituary, *Irish Times*, 20 October 1995

*that if he were charged in relation to the murder of Finucane, he would 'blow this whole thing wide open'. There was more to this than people thought, he said, and he knew exactly what had happened."*²

20.6 Harkin also recorded that Lyttle told him that:

*" ... within hours of Hogg's speech in the Commons on 17 January, he, Lyttle, met with his Special Branch handler ... Lyttle later claimed that his handler discussed Hogg's comments with him and said, 'Why don't you whack Finucane?' Brian Nelson was then summoned to Lyttle's home in Sydney Street West and told to prepare an intelligence file on the lawyer."*³

20.7 'Stakeknife' included the claim that Lyttle had told Harkin that all the UDA members involved in the killing, including Nelson, L/20 and Barrett, had attended a celebration party in Lyttle's house.⁴

20.8 It is difficult to assess the accuracy of the account provided to Greg Harkin. Lyttle certainly appears to have been tipped off in relation to developments regarding the arrest of UDA members so his claim to have known in advance that both he and Nelson would be arrested is plausible. There is, however, no corroboration for the claim that UDA members attended a celebration party in Lyttle's house. The context in which Lyttle spoke to Greg Harkin must also be considered: in early 1990 Lyttle certainly had an agenda in seeking to exploit the issue of 'leaks'. Given that Lyttle appears to have consistently denied being an RUC agent, it also seems highly unlikely that he would have referred to an SB officer as his 'handler' (as opposed to his 'contact').

20.9 For those reasons, I am inclined to prefer Lyttle's accounts provided to the BBC journalist John Ware in 1993 and 1994. By this stage, Lyttle no longer appears to have been involved in the UDA. John Ware has submitted to my Review the contemporaneous notes he made of interviews with Lyttle on 24 December 1993 and 20–22 June 1994.

20.10 John Ware summarised his discussions with Lyttle in a 1998 article in the *New Statesman*. The article included the following passage in relation to the murder of Patrick Finucane:

*"Lyttle ... confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: 'Have you put it to him yet?' They then suggested that the UDA shoot Finucane. Lyttle said that he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch: 'I told him: 'What the hell is going on in Castlereagh? Why is Finucane being pushed?' The officer said that it would be 'a bad blow for the Provos [the IRA] to have Finucane removed.' Did that amount to approval that he should be shot? 'Put it this way,' said Lyttle, 'He didn't discourage the idea that he should be shot'."*⁵

² Greg Harkin and Martin Ingram, *Stakeknife*, O'Brien Press, 2004, p. 203

³ *Ibid.*, p. 196

⁴ *Ibid.*, p. 204

⁵ John Ware, 'Time to come clean over the army's role in the "Dirty War"', *New Statesman*, 24 April 1998

- 20.11 John Ware's notes of his interviews with Lyttle provided a more detailed account of Lyttle's alleged conversations with an SB officer, as follows:

"With regard to the planned assassination of the lawyer Patrick Finucane, T L told [the RUC officer] that certain RUC officers were putting pressure on the UDA to have Finucane shot ... 'They [Provisional IRA] would take months to recover from this', T L reports [the officer] as having replied ... T L said this conversation with [the officer] took place early in 1989 after [L/03] had been arrested which was in December 1988. Finucane was considered a target by the RUC, according to T L, because of his brother his [sic] connection with the IRA ... T L said that [L/28] began to look at Finucane in January. T L said that there is no question that [L/28] selected Finucane for targeting after it was made clear to [L/03] and the two others by the RUC officers in Castlereagh that Finucane should be shot ... T L adds 'put it this way [the officer] didn't discourage the idea that Finucane ... should be shot. And if a man in his position doesn't discourage it then that amounts to approval.'"⁶

- 20.12 I have had access to the full record of John Ware's conversation with 'Tucker' Lyttle. Taken as a whole, I am struck by the general accuracy of the information provided by Lyttle to Mr Ware. Examination of the full note of the meeting in the context of the wider information available to my Review leads me to the conclusion that Lyttle was, broadly speaking, being candid with Mr Ware. That does not, however, mean that the specific allegations that he makes should be accepted in the absence of wider corroborative evidence. This is particularly the case given that Lyttle is now deceased, and so the opportunity to test his allegations further has been lost.

- 20.13 In view of the serious allegations made by Lyttle, I have conducted an extensive analysis to establish whether these claims can be corroborated. In order to pursue these allegations, I have sought to establish whether, in the first instance, Lyttle was aware of the conspiracy to murder Mr Finucane. I have then sought to analyse whether Lyttle discussed Patrick Finucane with an RUC officer. To provide the context for this issue, it is necessary to examine in detail whether Lyttle had been improperly receiving information from an RUC officer or officers in the period before and after the murder of Mr Finucane.

Was Lyttle involved in the conspiracy to murder Patrick Finucane?

- 20.14 Despite his apparent admission to journalists, the evidence with regard to Lyttle's potential involvement in the plot to murder Patrick Finucane is complex and, in parts, contradictory. The FRU documents, for example, recorded L/28 claiming that Lyttle was unaware of the 'operation'. The CF dated 14 February 1989 included the following passage:

⁶ John Ware, notes of conversations with Thomas 'Tucker' Lyttle, 20–22 June 1994

“[L/28] said that he would be annoyed if the UFF [Ulster Freedom Fighters] were not allowed to claim the attack. He added that ‘Tucker’ Lyttle had known nothing about the operation. [L/28] explained that he had been in [a club] at the time of the attack and Lyttle arrived as soon as he heard about the shooting. Lyttle was very nervous and chomped his way through a glass of ice cubes that [L/28] had had for himself.”⁷

- 20.15 Kenneth Barrett’s account to BBC Panorama provided a broadly similar picture. Barrett told Eamon Hardy in September 2001 that “[L/28] knew what was happening, do you understand me? Tucker didn’t.”⁸
- 20.16 The two key UDA figures directing the operation – L/20 and L/28 – were certainly wary of Lyttle and were capable of keeping him out of the loop with regard to plans for UDA attacks. In August 1988 Nelson reported the tension between L/28, L/20, L/03 and Lyttle.⁹ However, by November 1988 Nelson was reporting that Lyttle “was secure in his post of commander West Belfast Bde”¹⁰ and Lyttle was certainly involved in UDA operations around that time.¹¹ L/28 would certainly have had a motive to exaggerate his own power and influence by minimising Lyttle’s involvement, so it is not possible to rely on his account.
- 20.17 The available evidence does lead me to the conclusion that Lyttle was at least aware of the UDA conspiracy to murder Patrick Finucane. In addition to considering Lyttle’s own admissions to journalists, I have examined the following three intelligence reports linking Lyttle to the conspiracy to murder Mr Finucane:
- The FRU CF dated 20 December 1988 confirmed that Lyttle was present at the meeting at which, according to reliable Security Service intelligence, a UDA commander planned to discuss the targeting of three solicitors, including Patrick Finucane (see Chapter 16).¹²
 - RUC intelligence received on 16 February 1989, four days after the murder, indicated that Lyttle had “sanctioned” the murder.¹³ Having reviewed the background to this intelligence report, however, I am cautious about placing much weight on this source given his somewhat limited access to the central UDA figures.
 - Security Service intelligence dated 15 February 1989 recorded that Lyttle “had mentioned Home Office Minister Douglas Hogg’s comment about PIRA-sympathisers among the legal profession” in the week prior to the murder of Patrick Finucane. A Security Service officer noted that “Lyttle had therefore presumably had some foreknowledge of the Finucane shooting”.¹⁴

⁷ CF 14 February 1989, Item 18 [see Volume II, pp. 10–15]

⁸ Panorama transcript of recorded meeting with Kenneth Barrett, 3 September 2001

⁹ CF 23 August 1988

¹⁰ FRU report to Security Service, Stormont, 24 November 1988

¹¹ For example, Lyttle giving approval for attacks on Alex Maskey and Brian Gillen, CF 30 November 1988

¹² CF 20 December 1988

¹³ RUC SB50, 16 February 1989 [see Volume II, p. 96]

¹⁴ Security Service intelligence, 15 February 1989

- 20.18 John Ware's submission to my Review suggested that Lyttle was aware of the targeting of Patrick Finucane but that he disapproved of the actual shooting.¹⁵
- 20.19 I do not regard any of these reports in isolation as conclusive in answering the question as to Lyttle's knowledge of the conspiracy. However, when considered cumulatively, and in conjunction with Lyttle's apparent admissions to the two journalists, I am satisfied that Lyttle must have had foreknowledge of the UDA plan to murder Patrick Finucane. It is, however, none the less possible that, although Lyttle was aware of the targeting of Patrick Finucane, he was not privy to the operational details as to how and when the UDA hit team intended to murder him.
- 20.20 Having established Lyttle's awareness of the conspiracy to murder Mr Finucane, I turn to consider the nature of Lyttle's relationship, if any, with the RUC during the relevant period.

Did Lyttle discuss Patrick Finucane with an RUC officer?

- 20.21 I have found no evidence to corroborate Lyttle's claim that he discussed the targeting of Patrick Finucane with an RUC 'contact'. This is, in itself, not particularly surprising given that Lyttle's allegation relates to a conversation between two men that was not recorded. Following Lyttle's death in 1995 it is no longer possible to adequately test his allegation to determine the weight, if any, that it should be given.
- 20.22 However, in view of my remit, I have also sought to conduct a more wide-ranging examination of Lyttle's relationship, if any, with RUC officers during the relevant period.

'Tucker' Lyttle's links to RUC officers

- 20.23 It has been widely alleged in media reporting and in published books that 'Tucker' Lyttle was an RUC SB agent.¹⁶ Many of these allegations appear to be purely speculative and need to be treated with great caution. I am satisfied that there is no sound evidential basis for these reports.
- 20.24 However, I also recognise that, in the context of Northern Ireland in the late 1980s, there was a broad spectrum of possible relationships between paramilitary figures and members of the security forces. The officially sanctioned link between a handler and a paid agent represents only one such type of relationship. As my analysis in Chapter 11 demonstrated, some members of the UDA had security force 'contacts' who were willing to provide them with information and assistance during this period.
- 20.25 In the light of this, I have sought to examine whether Lyttle was receiving information or assistance from a member of the RUC during the relevant period. Although

¹⁵ John Ware, submission to the Review, p. 6. Mr Ware felt that this disapproval was genuine.

¹⁶ See for example, Ian S. Wood, *Crimes of Loyalty: A History of the UDA*, Edinburgh University Press, 2006, p. 144

it would be possible to conduct a similar examination of Lyttle's Ulster Defence Regiment (UDR) contacts, given the nature of the allegations in this case, I have focused analysis on whether Lyttle had RUC contacts during the relevant period.

20.26 I have considered the following sources of evidence on this issue:

- (i) intelligence relating to Lyttle's 'RUC contacts';
- (ii) Lyttle's account to John Ware of the kidnapping of L/39 in November 1988;
- (iii) evidence that Lyttle received RUC intelligence information on Seamus Finucane and others in February 1989; and
- (iv) FRU concerns about Lyttle's relationship with RUC officers.

Intelligence relating to Lyttle's RUC 'contacts'

20.27 Security Service and FRU reports suggest that, from at least 1986 onwards, 'Tucker' Lyttle had access to a number of RUC 'contacts' who could provide him with assistance. Security Service intelligence received in 1986 indicated that Lyttle was receiving assistance from an RUC officer at Superintendent level, though the extent to which this intelligence was subsequently investigated or corroborated is unclear.¹⁷

20.28 FRU reports from July and December 1987 suggest that Lyttle had a source who was able to supply large quantities of RUC photographs of republicans. Although it is not clear who Lyttle obtained this information from, it is certain that Lyttle had access to this material in December 1987 because he passed it to Nelson who in turn provided copies to his handlers.¹⁸

20.29 The FRU documentation shows that from May 1988 Lyttle was receiving information indirectly from the RUC via another member of the UDA. This contact related to the RUC SB operation to discredit James Pratt Craig and has been examined in more detail in Chapter 7.

20.30 The critical period relevant to my Review is late 1988 to early 1989 when the conspiracy to murder Patrick Finucane was being formulated. The FRU records suggest that Lyttle was receiving information from an RUC source in early 1989. The FRU CF dated 25 January 1989 recorded that Lyttle had warned L/28 that houses were due to be searched by the RUC. As a result of the warning, Nelson took two holdalls from L/28's house to his Intelligence Cell.¹⁹

20.31 The CF dated 2 March 1989 also suggested that Lyttle had received very detailed information about republicans suspected of targeting members of the UDA.²⁰ Checks made by the FRU handlers suggested that the information was likely to have been accurate. Nelson commented that the information:

*"... may have been obtained by the RUC via sources and in turn passed to the UDA hierarchy."*²¹

¹⁷ Security Service intelligence records, 1986

¹⁸ CFs 30 July 1987 and 15 December 1987

¹⁹ CF 25 January 1989

²⁰ CF 2 March 1989, Items 6–12

²¹ Ibid.

- 20.32 Later CFs implied that Lyttle had access to a supposedly senior RUC officer, though it is not clear whether or not Lyttle was receiving this information indirectly through another member of the UDA who maintained a number of RUC contacts.²²
- 20.33 Throughout his later statements and comments on this case, Brian Nelson maintained that Lyttle had an ‘SB source’ during this period (see paragraph 11.31). In his conversations with John Ware, Nelson repeatedly emphasised that Lyttle had a ‘good’ police source. On 12 April 1991 John Ware’s notes record Nelson having said that Lyttle had a “*very very good police source*”. On 13 June 1991, Nelson stated that “*TL had a good SB source*”.²³
- 20.34 RUC intelligence material also provides support for the proposition that Lyttle had a number of RUC ‘contacts’ during this period. Intelligence received in September 1988 suggested that Lyttle was being “*kept informed*” of RUC operations by a police contact.²⁴ Later intelligence received on 2 February 1989 suggested that Lyttle was checking information “*through various police contacts*”.²⁵
- 20.35 I have also seen Security Service records which strongly suggest that Lyttle was being offered information on the specific issue of the UDA’s links to the Provisional IRA (PIRA) by an RUC SB contact during this period.²⁶
- 20.36 The intelligence material, when considered as a whole, provides a concerning picture. It is difficult to corroborate Nelson’s reporting of specific leaks to Lyttle during this period, though when considered in conjunction with the RUC SB records, the evidence certainly provides indications that Lyttle maintained police ‘contacts’. The Security Service records, when considered in conjunction with the RUC SB operation in relation to James Pratt Craig, confirm that Lyttle was receiving information from an SB officer on UDA members who were believed to be in contact with PIRA.

Lyttle’s account to John Ware of the kidnapping of L/39 in November 1988

- 20.37 In the context of Lyttle’s allegations to John Ware, I have considered in detail his claim that an SB contact provided him with the details of a loyalist, L/39, who was suspected of having provided information to PIRA. L/39 was kidnapped and interrogated by the UDA in November 1988 and subsequently expelled from Northern Ireland.
- 20.38 In their conversations on 20–22 June 1994, Lyttle was recorded as having told John Ware the following information:

“... [the SB officer] offered to name [L/39]. [He] said ‘you’ve got a problem in South Belfast. I could help you with this man. But there are certain conditions.’

The condition was that no harm would come to [L/39]. TL gave him [the officer] that undertaking. [The officer] then disclosed to TL details of where

²² CF 20 March 1989

²³ John Ware, notes of conversations with Brian Nelson, 12 April 1991 and 13 June 1991

²⁴ RUC SB50, 16 September 1988

²⁵ RUC SB50, 2 February 1989

²⁶ Security Service intelligence records, 1988

*[L/39] went, his movements, his habits, so that the UDA could pick him up. [The officer] also suggested that his interrogation be videoed ... TL got the UDA's Inner Council approval for the [L/39] operation. [The officer] wanted a copy of the video ... [The officer] said the purpose of kidnapping [L/39] was to get him out of the way so as to disrupt PIRA intelligence."*²⁷

20.39 Lyttle's description of the reaction of the RUC officer to the operation was recorded in the following passage in John Ware's notes:

"TL said that [the officer] suggested the UDA seek publicity for this stunt and that they say [L/39] was being investigated by a special UDA unit called the 'Special Assignment Section' – a clear echo of SAS [Special Air Service].

*After [L/39] had been removed from the scene [the officer] told TL he was 'well pleased'. However, TL did not feel he was getting anything out of this relationship. TL said that [the officer] knew very well that what he wanted was help on senior PIRA leaders like Brian Gillen, Gerry Adams and [T/13]. [The officer] was stringing me along. He never said point blank that he wouldn't give me help – but help never materialised."*²⁸

20.40 It is important to note that Lyttle stated that he did not receive the assistance he was looking for in relation to senior PIRA figures. Many aspects of Lyttle's story regarding L/39 do appear to correlate with the facts of this case. Intelligence records show that the RUC SB had been receiving detailed information for a number of months indicating that L/39 was providing information to PIRA. In another example of the interconnected nature of the conflict in Northern Ireland at the time, the information provided by L/39 may, indeed, have been used by Seamus Finucane to target loyalists with the intention of murdering them.

20.41 Nelson reported to his handlers on 26 November 1988 that the UDA had "*found out who the PIRA informer was*". The CFs confirm Lyttle's claim that Nelson was given a copy of the video recording of L/39's confession.²⁹

20.42 It is also significant that L/39 himself subsequently observed how much information the UDA held on his links to PIRA. After having been expelled from the country, L/39 was quoted in *The Scotsman* as saying he initially believed that he was being questioned by PIRA members:

*"I thought that because they knew so much. They knew the names of my three Provo [PIRA] contacts and a contact telephone number. They knew of my meeting places and they knew I had set up a UDA man and that the murder was to take place in ... [a] ... shopping centre. I said I could set him up again and that they would get him this time. Then they told me who they were [UDA men]."*³⁰

²⁷ John Ware notes of conversations with 'Tucker' Lyttle, 20–22 June 1994

²⁸ Ibid.

²⁹ CF 26 November 1988, Items 13–14

³⁰ *The Scotsman*, 29 November 1988, quoted in Ian S. Wood, *Crimes of Loyalty: A History of the UDA*, Edinburgh University Press, 2006, p. 142

20.43 The most significant evidence which tends to corroborate Lyttle’s account, however, comes from later FRU documentary records. In an account of another case, the FRU recorded the following information about the kidnapping:

“[L/39] was later compromised to the UDA by RUC and subsequently interrogated and expelled from NI [Northern Ireland].”³¹

20.44 Having reviewed the FRU document in full, the context in which this information is recorded suggests to me that the FRU may have been informed by an RUC SB officer that L/39 had been deliberately compromised. The general fact that information was passed to Lyttle on the UDA’s links to PIRA would also be consistent with the Security Service records and the operation relating to James Pratt Craig outlined in Chapter 7.

20.45 Considering the evidence as a whole, I do believe that Lyttle was telling John Ware the truth about an SB officer compromising L/39 to the UDA. The FRU documentary record provides significant corroboration for Lyttle’s account. Although the SB ‘contact’ appears to have stipulated that L/39 should not be physically harmed, the passing of such information to a paramilitary organisation is none the less inexcusable. This led directly to the kidnapping, interrogation and expulsion of an individual from Northern Ireland.

Evidence that Lyttle received intelligence information on Seamus Finucane and others in February 1989

20.46 As I noted above, ‘Tucker’ Lyttle told John Ware that he was seeking information from his SB contact on PIRA figures but did not receive the assistance he was looking for. However, I have seen evidence suggesting that Lyttle did have knowledge of sensitive intelligence material only four days after the murder of Patrick Finucane. This information included intelligence about Patrick Finucane’s brother, Seamus.

20.47 In order to establish Lyttle’s access to such information, it is necessary to examine both the FRU and RUC SB documentary records. The FRU CF dated 22 February recorded the content of a conversation between Lyttle, L/28 and Nelson (referred to here by his source number, 6137) on 16 February 1989. Under the heading “*Information from Informer*”, the CF recorded the conversation as follows:

“Lyttle told [L/28] and 6137 [Nelson] that PIRA had had a meeting during the previous evening and they were ‘cracking up’. He said that Seamus Finucane was Brian Gillen’s Intelligence Officer and [T/30], [T/17] and [T/11] were members of Gillen’s team. Lyttle added that PIRA wanted an operation involving a limpet mine to be carried out.”³²

20.48 The CF recorded that Lyttle “*did not say where this information had come from*”.³³ The intelligence was passed by the FRU solely to the Head of the Belfast SB on 23 February 1989 as part of a MISR entitled ‘UDA/SF [Security Force] Contacts’.³⁴

³¹ Annex to FRU CF on a different intelligence operation

³² CF 22 February 1989 [see Volume II, pp. 17–18]

³³ Ibid.

³⁴ MISR 23 February 1989

- 20.49 The information imparted by Lyttle to Nelson is, on the face of it, highly detailed and specific information about PIRA operations and activity. In order to ascertain the potential source of the information, I have cross-checked Lyttle's 'intelligence' against the SB records to ascertain whether Lyttle could have received the information from an SB 'contact'.
- 20.50 It is not possible to ascertain whether PIRA did indeed hold a meeting on the evening of 15 February. However, Lyttle's description of PIRA's Belfast Brigade personalities does appear to have been essentially accurate: Seamus Finucane was an Intelligence Officer and T/30, T/17 and T/11 were all, in effect, members of Gillen's team.
- 20.51 The clearest evidence, however, that Lyttle was being provided with accurate and sensitive intelligence information is provided by the reference in the discussion with L/28 and Nelson to PIRA's plan to use a limpet mine. Analysis of the RUC SB's Daily Intelligence Book confirms that Lyttle's information about the limpet mine attack was accurate. SB intelligence recorded a specific PIRA plan to use a limpet mine. Subsequent RUC SB intelligence indicated that the operation had been abandoned.³⁵
- 20.52 It appears, therefore, that Lyttle had received sensitive information, which he then disseminated to other members of the UDA. I have also seen other intelligence material which provides circumstantial support for the proposition that Lyttle received this information from an SB 'contact' shortly after Patrick Finucane's murder.
- 20.53 The Police Service of Northern Ireland (PSNI) informed me that knowledge amongst loyalists of the roles played by individuals within Belfast Brigade PIRA was "*not unusual*" and that paramilitary groups had knowledge of terrorist personalities from the "*other side*".³⁶ It is certainly true that loyalists had a wealth of information on republican personalities. I have been able to examine the intelligence dumps held by the UDA and the exceptionally detailed records held by the FRU in relation to Nelson's knowledge of PIRA personalities. However, having examined this material, I am satisfied that the information imparted by Lyttle on 16 February was unusual in its level of detail. The UDA did hold records on such personalities but they generally did not know the precise roles played by specific individuals within Belfast Brigade PIRA.
- 20.54 The PSNI also informed me that the limpet mine threat would have been disseminated widely throughout the police and Army and so this information would therefore have been "*widely known*".³⁷ I have not found any records to confirm how the intelligence relating to the limpet mine threat was disseminated in February 1989. It is worth noting that other submissions to my Review have tended to stress the sensitivity with which such intelligence reporting would be handled.

³⁵ RUC SB Daily Intelligence Book, February 1989

³⁶ PSNI letter to the Review, 27 September 2012

³⁷ *Ibid.*

20.55 I am, however, faced with a clear documentary record that Lyttle passed extremely detailed information to other loyalist paramilitaries on 16 February 1989. The information about a PIRA meeting the previous evening cannot be confirmed, though there is no indication that Lyttle was inventing this very specific claim. The information about the make-up of PIRA's Belfast Brigade was accurate, as was his observation about the limpet mine. I have also been able to review broader intelligence reporting which provides some circumstantial support for the proposition that Lyttle received this information from an RUC SB officer.

FRU concerns about Lyttle's relationship with RUC officers

20.56 The documentary evidence suggests that the FRU were concerned about the nature of the relationship between the UDA hierarchy, including 'Tucker' Lyttle, and the RUC. The FRU report on Brian Nelson's activity during 1988 included the comment that:

*"It is a constant worry that information passed by 6137 eventually gets back to the UDA via the RUC. 6137 regularly feels himself under suspicion when this occurs ..."*³⁸

20.57 The FRU's concern was potentially well founded given that the interrogation of Nelson came about as a result of warnings made by Lyttle's SB 'contact' that PIRA knew about UDA targeting. Nelson was specifically asked by his FRU handlers in October 1988 whether Lyttle had mentioned his SB contact. Nelson replied that he had "*heard nothing*" at that stage.³⁹

20.58 A/13's statements to the Stevens I Investigation included comments that the FRU suspected information was being passed by the RUC to the "*UDA hierarchy*". When asked in December 1990 why Lyttle's name had been omitted from a MISR post-dating the murder of Gerard Slane, A/13 stated:

*"I believe that, at the time, information had been given to members of the UDA hierarchy by members of the RUC. I believed that either Tucker Lyttle or someone very close to him was talking with a member of the RUC. If the information regarding Tucker Lyttle's involvement ... had been passed to the RUC, there was a possibility that Tucker Lyttle would hear about it, therefore, in order to protect our source, Lyttle's involvement was not reported."*⁴⁰

20.59 It is difficult to assess the validity of the point made by A/13. The handler was being questioned in relation to omissions from a MISR and may therefore have been seeking to provide an excuse for the failure to pass on information. When A/13's statement was put to the PSNI, they stated that they believed this allegation to be an attempt to "*ameliorate the shortcomings in relation to the recording and dissemination of FRU intelligence rather than a potential leak from the RUC*".⁴¹

³⁸ FRU report on Nelson, 31 January 1989

³⁹ CF 11 October 1988

⁴⁰ Statement of A/13, 5 December 1990

⁴¹ PSNI letter to the Review, 27 September 2012

20.60 It is, however, clear that the concerns within the Army extended more widely than A/13. In a note sent to the Head of GS Sec in response to the Panorama programme, 'Dirty War', the then Commanding Officer of the Joint Support Group, A/16, stated that:

*"FRU had evidence that 'Tucker' Lyttle was often spoken to by his own admission, by senior RUC personnel and it seemed that Lyttle had been warned by an RUC contact of the impending arrest [by the Stevens investigation]."*⁴²

20.61 Although it is possible that the FRU may have sought to highlight Lyttle's links to the RUC in order to deflect criticism, these concerns were expressed in such a way as to lead me to believe that they are likely to have been genuine. I do, therefore, weigh the FRU's general concerns about the nature of the relationship between Lyttle and the RUC in the balance when reaching my overall conclusions on this issue.

Overview

20.62 I am satisfied that 'Tucker' Lyttle had foreknowledge of the plan to murder Patrick Finucane in 1989, though he may have been unaware of the details of the UDA's operation to kill Mr Finucane on 12 February. A detailed examination of the nature of Lyttle's activity both before and after the murder has highlighted his reported links to RUC 'contacts'. Most significantly, I believe that Lyttle was told by an SB officer of L/39's activity so that he could be subsequently interrogated and expelled from Northern Ireland; and that he was in receipt of sensitive intelligence information on 16 February 1989, including information regarding Seamus Finucane.

20.63 The evidence of Lyttle's links to RUC officers does not enable an inference to be drawn that he discussed the targeting of Patrick Finucane with an SB 'contact'. As Lyttle is now deceased, it is not possible to adequately test the veracity of this specific allegation, though I do note that other aspects of the information he imparted to John Ware in 1994 were accurate. I certainly cannot exclude the possibility that Lyttle did, as he told John Ware, discuss the targeting of Mr Finucane with an SB contact.

20.64 However, it is none the less important to draw the general conclusion that Lyttle's relationship with RUC officers during the relevant period is a source of serious concern. I do believe that Lyttle was being improperly assisted by RUC contacts in the period before and after Patrick Finucane's murder and that one of these contacts was an SB officer with access to intelligence information. In my view, Lyttle's links to some RUC officers during this period were so significant that they provided him with an entirely improper degree of protection and assistance in conducting his paramilitary activities as the 'Brigadier' for the West Belfast UDA.

⁴² A/16 to Head of GS Sec, 9 June 1992

Chapter 21: Brian Nelson and the murder of Patrick Finucane

The involvement of Brian Nelson in the murder

- 21.1 In order to determine the extent to which the State was implicated in the conspiracy to murder Patrick Finucane, it is necessary to consider the roles played by its agents. This section focuses on the extent to which Brian Nelson was involved in the conspiracy to murder Patrick Finucane. The question as to whether Nelson informed his Force Research Unit (FRU) handlers of his involvement in the plot, or of the threat to Mr Finucane, is considered separately in the next section of this chapter.
- 21.2 I am conscious that Brian Nelson was never convicted of any offence in connection with the murder of Patrick Finucane. I have also taken into account the fact that Nelson is deceased, so this Review has not benefited from any representations which he might have made. Nevertheless, to discharge my mandate it is essential that I produce an account of any involvement that I believe Nelson had in the murder. It should be emphasised that my account cannot, and does not, purport to establish criminal or civil liability.

Nelson's statements in relation to his involvement

- 21.3 The starting point for any analysis of Nelson's involvement in the conspiracy to murder Patrick Finucane must be the statements that he himself made at various times. These include:
- (i) his comments to his FRU handlers, as recorded in the FRU Contact Form (CF) dated 14 February 1989;
 - (ii) his statement to the first Stevens Investigation (Stevens I) on 15 January 1990;
 - (iii) the personal account contained in his 'journal'; and
 - (iv) Nelson's 1993 interviews.
- 21.4 All of these sources of evidence have been released alongside my Report. I consider each of these sources of evidence in turn below.

The Contact Form of 14 February 1989

- 21.5 The various CFs relating to meetings between Nelson and his FRU handlers prior to 12 February 1989 contain no record of him mentioning the targeting of Patrick Finucane.

21.6 It was only during the debriefing on 14 February, two days after the murder, that Nelson admitted to having been involved, unwittingly, by passing to L/28 on 7 February a photograph of Patrick McGeown that also included Patrick Finucane.

21.7 The CF recorded Nelson's claim that L/28 appeared to have been interested in targeting only McGeown. L/28 had asked Nelson for a photograph of McGeown "leaving court", adding that "McGeown was with Pat Finucane [sic] in the photograph". Nelson recounted how he had gone to his Intelligence Cell to extract the photograph that had been described to him, and then handed it to L/28 at a Community Centre. Nelson went on to say that the day after the murder L/28 had admitted to him that he had obtained the photograph of Patrick Finucane "by devious means".¹

The 1990 statement to the Stevens I Investigation

21.8 In his 1990 statement, Nelson stated that, "about six to eight weeks prior to the Finucane murder", L/28 had said to him, "I would really love to get that bastard Finucane".² L/28 had asked him to find out the location of Patrick Finucane's office and "anything else" that he could obtain. Nelson also stated that L/28 had said:

*"I have been told by someone ... that if I want to get someone really big get Finucane, he is the brains behind P.I.R.A. [Provisional Irish Republican Army] forget about Adams."*³

21.9 Nelson stated that, despite this targeting request, he "did not do any intelligence gathering on Finucane" because he "felt that there was something wrong possibly it was too hot". He checked with L/28 around two weeks before the murder as to whether he still needed Finucane's office details. L/28 told him that he had it "taken care of".⁴

21.10 Nelson went on to record that, "about a week before the actual murder", L/28 – accompanied by Kenneth Barrett – had asked him for a large photograph of McGeown. Nelson recounted how he drove to his Intelligence store with L/28 and Barrett, where he collected a copy of the spoof publication *An Phobcrapt*, which had a large photograph of McGeown leaving the Crumlin Road courthouse accompanied by Patrick Finucane. He gave the photograph to L/28 who in turn, as they were driving back to the Community Centre, gave it to Barrett, who said that it would "do fine".⁵ Nelson claimed then to have "heard nothing more until the night of the murder".⁶

The 'journal'

21.11 The account of these events in Nelson's 'journal' is broadly consistent with his 1990 statement. It records that two months before the murder L/28 asked him "to see what I could dig up on Finucane [sic]", but that two weeks prior to the murder L/28 had told him that "he had found out what he needed to know".

¹ CF 14 February 1989 [see Volume II, pp. 10–15]

² Brian Nelson, statement to Stevens I Investigation, 15 January 1990 [see Volume II, pp. 43–51]

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

- 21.12 The 'journal' account goes on to state that L/28 asked Nelson for "*copies of [the] spoof APRN [An Phobcraip]*",⁷ which included the McGeown/Finucane photograph and said that they had "*got onto the whereabouts of McKeown (?)*". Nelson recorded that Mr Finucane was murdered on 12 February, and stated that he "*... received a considerable amount of deserved flak over this murder*".
- 21.13 The 'journal' also included a list of attacks in which Nelson was involved. Next to Patrick Finucane's name the word "*murder*" appears.⁸

Nelson's 1993 interviews

- 21.14 Notwithstanding the account of events he had given previously to his FRU handlers and to Stevens I, Nelson denied any involvement in the murder of Patrick Finucane when interviewed on 17 February 1993 by Stevens II officers. He described any suggestions that he had assisted the Ulster Defence Association (UDA) in assassinating Mr Finucane as "*nonsense*".⁹
- 21.15 During a further interview under caution on 19 April 1993, Nelson denied writing a journal, claiming only to have written some defence submissions.
- 21.16 He also claimed on this occasion that he "*could not remember*" Patrick Finucane's name when the Stevens I officers had first mentioned it to him, and that, when he had reported the targeting of Mr Finucane to his handler, he "*could not remember the person [L/28] had referred to, other than that he was a solicitor*". He said that during the course of his conversation with L/28, two weeks before the murder, he had "*referred to Finucane as 'the solicitor', in the hope that [L/28] in reply would give me his name. Unfortunately this did not happen.*"¹⁰
- 21.17 Finally, Nelson went on to deny the existence of a 'P card' on Patrick Finucane and to refer back to the 1990 account he had already given in relation to passing the photograph to L/28.
- 21.18 Nelson was even less forthcoming during a further interview on 28 June 1993, merely responding to questions by stating that "*On the advice of my solicitor I have nothing to say*".¹¹

Why did Nelson change his story?

- 21.19 There is plainly a sharp contrast between the versions of events Nelson gave in 1993 compared with his 1990 statement. His claim in the April 1993 interview that he could not even remember Patrick Finucane's name seems unlikely given that Mr Finucane was such a high-profile target.

⁷ Extract from Nelson's 'journal' [see Volume II, p. 42]

⁸ Ibid.

⁹ Stevens II Investigation, interview, 17 February 1993 [see Volume II, pp. 55–61]

¹⁰ Ibid., 19 April 1993 [see Volume II, pp. 62–68]

¹¹ Ibid., 28 June 1993 [see Volume II, pp. 69–73]. NB Nelson was also interviewed by the Stevens III Investigation on 23 January 2001 but did not wish to add to his 1990 statement.

- 21.20 It is self-evident that Nelson’s recollection in 1990 of events that had occurred the previous year is likely to have been better than it would have been in 1993. In addition, the account of events that he gave in 1990 is largely consistent with his own ‘journal’. On that basis alone I am inclined to prefer the former as the more reliable.
- 21.21 However, there are other reasons which provide me with a powerful explanation as to why Nelson was so manifestly defensive in 1993 and anxious to distance himself from the circumstances of Patrick Finucane’s murder.
- 21.22 In July 1990 Sir John Stevens submitted a file to the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) which dealt with the possible involvement of Nelson in Mr Finucane’s murder and other criminal offences. Ministry of Defence (MoD) records reveal that from as early as September 1990 the Department wanted to dissuade Nelson from making further disclosures about his role as a FRU agent. As will be demonstrated below, this was facilitated by ongoing contact between FRU personnel and Nelson and/or his family, which undoubtedly gave Nelson a powerful incentive to comply.
- 21.23 As discussed in more detail in Chapter 24, a submission to the Secretary of State for Defence dated 26 September 1990 outlined the damage which the MoD believed would be caused in the event of Nelson appearing as a witness in criminal proceedings against loyalist paramilitaries or himself being prosecuted. The submission also included the observation that:
- “[Nelson] is now in a position where he has to rely on us to protect his life (either in or out of prison) and the lives of his [family]: such protection would be conditional on his remaining silent about our covert operations.”* [Emphasis added]¹²
- 21.24 The reference to Nelson and his family’s dependence on the MoD for protection is borne out by the interim resettlement package that was approved for him by the MoD Permanent Secretary in October 1990. This resulted in interim payments of £1,650 per month to Nelson’s wife.
- 21.25 An official-level note dated 6 November 1990 referred to the possibility of Nelson accepting an MoD-recommended solicitor, which would afford a “*channel of communication*” with him. Specifically, the note envisaged:
- “... [reassuring Nelson] that the Army is paying close attention to his case and looking after his wife; and will resettle him when he is released, subject to his remaining silent on what he knows.”* [Emphasis added]¹³
- 21.26 The Assistant Chief of Staff of the Army’s Intelligence Section (ACOS G2) responded on 5 December 1990 setting out the FRU’s comments on the issues raised. It is clear from that minute that the FRU were more cautious about the prospect of explicitly linking Nelson’s silence to the resettlement of him and his family. In particular, the minute noted the FRU’s view that:

¹² Loose minute from GS Sec 2 to Secretary of State for Defence through the Permanent Secretary, 26 September 1990

¹³ Loose minute from GS Sec 2 to MO2/HQNI, 6 November 1990

“This may appear as a threat, which it is, and therefore may backfire. He [Nelson] has already made a very full statement to the Stevens Team, reported to be some 800 pages long, and so has already broken the ‘suggested’ conditions.” [Emphasis added]¹⁴

21.27 Significantly, the FRU’s comments reveal that the condition relating to Nelson’s ‘silence’ was interpreted as meaning not just that he should refrain from publicly disclosing what he knew, but also further refrain from co-operating with a criminal investigation.

21.28 In fact, however, the contact between Nelson and the Army appears to have been initiated by Nelson, who on 23 August 1991 requested a ‘Boss meet’. Major A/03, the then FRU Operations Officer, visited Nelson in prison on 21 October 1991. The note of the visit suggests that Nelson’s statements to the Stevens I officers were discussed in detail. Nelson appears to have told Major A/03 that he made his 1990 statement because of concern for his personal safety, and because he was persuaded to do so by the Stevens I officers.¹⁵

21.29 The final financial settlement that was offered to Nelson and his family was outlined in a submission dated 8 April 1992 to the MoD’s Permanent Secretary.¹⁶ A subsequent letter to the Cabinet Secretary seeking approval of this settlement again demonstrated in stark terms the linkage between the settlement and Nelson’s ‘silence’, as follows:

*“The objective is to minimize the risk of the further disclosure of very sensitive information by satisfying Nelson that he and his family are being treated reasonably.”*¹⁷

21.30 Whether senior officials understood that objective to mean that Nelson should refuse to disclose information to future criminal investigations (as opposed to making disclosures through the media) is not apparent on the face of the documents. However, the FRU’s view, as noted by ACOS G2’s minute of 5 December 1990, clearly demonstrates that they interpreted Nelson’s ‘silence’ to include avoiding disclosures to a criminal investigation being undertaken by Sir John Stevens.

21.31 A further visit to Nelson in prison by A/05 in May 1992 is particularly significant in illustrating the Army’s attitude to Nelson’s co-operation with criminal investigations. A/05’s note of the visit recorded that:

*“We then talked a little about the Stevens interview technique and how he had been under the impression he was helping them to “clean up the UDA” rather than talking himself into the Dock. I summarised the position by gently reminding him that if he had obeyed the advice of his handler he would never have spoken to the Enquiry Team, would not have divulged his role and would not have been prosecuted.”*¹⁸

¹⁴ ACOS G2 to GS Sec 2, 5 December 1990

¹⁵ Major A/03 to Lieutenant Colonel (Lt Col) A/16, 23 October 1991, para 2a

¹⁶ Loose minute from GS Sec to Private Secretary of the Permanent Secretary, 8 April 1992

¹⁷ Draft letter from Permanent Secretary to Cabinet Secretary, Annex B, 8 April 1992

¹⁸ Note of ‘Visit to Brian Nelson’, A/05 to Lt Col A/16, 9 July 1992, para 13

21.32 The screening of the Panorama programme ‘Dirty War’ on 8 June 1992 prompted further contact between the Army and Nelson. A note from the Commanding Officer (CO) of the Joint Support Group (JSG) to the MoD dated 9 June 1992 again noted the linkage between Nelson’s silence and his resettlement, as follows:

“Nelson understands the quid pro quo of our care and custody of his wife and family during his prison sentence and his own ultimate resettlement and is fully conscious of his need to honour our requirement for his cooperation in silence.”¹⁹

21.33 Major A/03 visited Nelson again on 12 June 1992 following the screening of the Panorama programme. Discussion focused on how Panorama might have gained access to his ‘journal’. The note of the discussion clearly recorded that Nelson was “*very agitated and concerned*” that the DPP(NI) was reviewing the case, and he believed that the aim of that review was with a view not to bringing further charges against him but against A/05. It was noted that Nelson “*feels very badly about this*”, and was worried that suspicion from the Army that he had leaked a copy of his ‘journal’ might “*prejudice ... continued good relations and the future of his wife and family*”.²⁰

21.34 There is no evidence that the terms of Nelson’s resettlement package were altered once the Stevens II Investigation was established in April 1993. It is clear to me that by the time it was established, the Stevens II Investigation had little prospect of getting any further reliable information from Nelson about the murder of Patrick Finucane. The Army had consciously and comprehensively bought his silence by linking it to their continuing care and support of his family. Nelson’s predicament would have been reinforced by A/05’s clear suggestion to him that it was his failure to heed the Army’s advice that he should not co-operate with the Stevens I Investigation that led directly to his prosecution. It is difficult to imagine a more compelling inducement for Nelson to back-track from what he had told the Stevens team in 1990.

21.35 It is evident to me in these circumstances of clear financial inducement that no weight can be placed on the account of events Nelson provided in 1993. Whilst there are some inconsistencies as between the various versions he gave to his handlers on 14 February 1989, in his 1990 statement and in his ‘journal’, I am bound to prefer them as a closer approximation to the truth compared with what he said in 1993.

The extent of Nelson’s involvement in the murder

21.36 Given that Nelson’s 1993 version of events cannot be relied upon, I turn now to consider what his involvement was in the conspiracy to murder Patrick Finucane.

¹⁹ Note of ‘Nelson case allegations’, CO JSG to Head GS Sec, 9 June 1992

²⁰ Situation report, Ops Officer JSG to ACOS G2, 12 June 1992, para 4

- 21.37 My starting point is that there is no credible reason to explain why Nelson would have admitted in January 1990 that he had discussed the targeting of Patrick Finucane with L/28 if he had not done so.
- 21.38 At the very least, taking into account what Nelson said in his 1990 statement and in his 'journal', I am satisfied that prior to the murder he had discussions with L/28 about the targeting of Patrick Finucane. This would, of course, have been wholly in keeping with his position in the UDA as an Intelligence Officer. It is also clear from other available evidence that Nelson passed a photograph of Patrick Finucane with Patrick McGeown to L/28 and Barrett on 7 February 1989.
- 21.39 I now go on to consider the evidence that exists to indicate that, in fact, Nelson's involvement in the targeting was greater than he was prepared to admit.
- 21.40 I consider Nelson's claim in his 1990 statement that, despite L/28's request, he "*did not do any intelligence gathering on Finucane*" somewhat surprising. As I noted in Chapter 7, Nelson was by this stage carrying out extensive intelligence-gathering and targeting for the benefit of the UDA and was generally highly motivated in carrying out that work.
- 21.41 At this time Nelson was regularly being tasked with intelligence-gathering by L/28, whom he clearly thought of as a good friend. Whilst there were undoubtedly some occasions when Nelson deliberately stalled on the targeting tasks that had been allocated to him, there were usually specific reasons for this. Examples include the targeting of James Pratt Craig, when it was necessary for his own security, and in the case of T/21, when he was personally opposed to the murder of the chosen target. Set against his general enthusiasm for the extensive targeting with which he was involved, I am unconvinced by Nelson's assertion in his 1990 statement that he did not know what had stopped him targeting Patrick Finucane, suggesting only that it was his "*instinct*".
- 21.42 The relevant evidence to be considered regarding Nelson's role in Patrick Finucane's murder is as follows:
- Kenneth Barrett's comments to John Ware and Eamon Hardy in 2001
 - Barrett's statements to the third Stevens Investigation (Stevens III) in 2002 and 2006
 - Security Service intelligence regarding Nelson's role in undertaking a 'recce' of Patrick Finucane's home
 - Statements from a neighbour regarding the possibility of Nelson's involvement in a 'recce' of Mr Finucane's home
 - Thomas 'Tucker' Lyttle's comments to John Ware regarding Nelson's role
 - UDA concerns about Nelson's knowledge of Mr Finucane's murder
 - Neil Mulholland's 1999 account of William Stobie's comments regarding Nelson's attendance at planning meetings.

21.43 I go on to consider each individual source of evidence below, and indicate the weight I attribute to each. In the light of the above sources of evidence, I have analysed Nelson's statements and activity prior to the murder in order to help ascertain his true role in the targeting. Those analyses include a consideration of the accuracy of Nelson's account of his passing the photograph of Patrick Finucane to L/28, the implications of Nelson's awareness of the existence of a 'P card' relating to Mr Finucane, and Nelson's activity both before and after the murder.

Kenneth Barrett's comments to John Ware and Eamon Hardy in 2001

21.44 During conversations with John Ware and Eamon Hardy in 2001, Barrett made a number of comments in relation to Nelson's role in the targeting of Patrick Finucane. In summary, they were as follows:

- Whilst targeting Brian Gillen at the AB Hotel (which Barrett described as Nelson's "*favourite subject*"),²¹ Nelson had seen Patrick Finucane in the hotel car park.
- Nelson had been watching Mr Finucane "*for a wee while*".²²
- Prior to the murder L/28 had asked Nelson, whilst they were in L/28's house, for any "*clippings*" he had on Patrick Finucane.²³
- During the week before the murder, Nelson had handed over the photograph of Mr Finucane to L/28 and Barrett outside the UDA Headquarters (HQ).
- Barrett had expected Nelson to bring "*an ID card*" (presumably a reference to a 'P card'), whereas in fact he had brought out a "*newspaper clipping*" in "*a wee plastic bag*" which showed Patrick Finucane "*outside court or something with a Provie*".²⁴
- Barrett was sure that Nelson had never handed over a 'P card' on Patrick Finucane.
- Nelson was not tricked into handing over the photograph of Patrick Finucane, which he knew was to be used for targeting purposes, not to "*send him [Finucane] fucking postcards*".²⁵
- Nelson was with L/28 on the afternoon of Sunday 12 February 1989 and had been driving L/28 around on that day.²⁶

Barrett's statements to Stevens III in 2002 and 2006

21.45 Barrett provided accounts to the Stevens III Investigation in 2002 and 2006 which shed some light on Nelson's alleged role in planning the murder of Patrick Finucane.

²¹ Panorama, transcript of recorded meeting with Kenneth Barrett, 3 September 2001

²² Ibid.

²³ Panorama, transcript of recorded meeting with Kenneth Barrett, 11 October 2001

²⁴ Panorama, 'A Licence to Murder', Part 1, 19 June 2002

²⁵ Panorama, transcript of recorded meeting with Kenneth Barrett, 3 September 2001

²⁶ Ibid.

- 21.46 The first, on 19 February 2002, was a debriefing session in the presence of his solicitor for intelligence-gathering purposes only. It was not intended to use what Barrett said as evidence in the ongoing criminal investigation.
- 21.47 During that debrief Barrett recounted how Nelson had “*brought a newspaper cutting, it was Finucane’s photograph*”.²⁷ He recalled that Nelson gave L/28 the photograph because at the time no-one in the UDA “*had really any idea what Pat Finucane looked like*”. Barrett clearly indicated that the photograph was intended to be one of Patrick Finucane, and in fact he appears not to remember McGeown’s name (noting that in the photograph Patrick Finucane was walking out of court “*with somebody he was defending*”). Barrett went on to suggest that Nelson had “*done a bit of intelligence*” on Patrick Finucane’s address.²⁸ Barrett then also implied that both he [Barrett] and L/28 had also “*had a look*” at Mr Finucane’s address “*about two or three weeks*” before the murder.
- 21.48 Barrett also provided a statement to the Stevens III Investigation on 28 April 2006, in which he made no explicit mention of any ‘recces’ having been undertaken of Patrick Finucane’s home. However, the statement recorded that the planning of Mr Finucane’s murder took place “*in late 1988*”, and noted that “*people had taken an increased interest in him [Finucane] and documentation was produced*”. Barrett indicated that:

*“... those involved in the discussion were [L/28], [L/20], Brian Nelson and myself.”*²⁹

- 21.49 Barrett’s 2006 statement also included a new account of the occasion when Nelson handed over the photograph of Patrick Finucane, as follows:

*“Nelson produced a card for Finucane and provided it to [L/28] and I. The card had a photograph of Finucane on it that looked like it had been taken outside a prison. There was somebody else in the photograph blacked out. We were also given a newspaper article with his picture.”*³⁰

The reliability of Barrett’s accounts

- 21.50 I have considered the general reliability of Barrett’s accounts in detail in Chapter 19, where I conclude that in all the circumstances his accounts implicating others must be treated with caution unless there is independent corroborative evidence. It is clear that Barrett had little hesitation in manipulating names and events when it suited him. Further, given that he was offered a financial incentive to speak to the Panorama journalists, I must treat what he said to them with even greater circumspection.
- 21.51 One particular area of concern in Barrett’s accounts relates to the issue of the alleged ‘P card’ on Patrick Finucane. Barrett explicitly told the Panorama programme journalists that Nelson did *not* provide a ‘P card’ relating to

²⁷ Stevens Investigation, intelligence debrief, 19 February 2002 [see Volume II, pp. 146–160]

²⁸ Ibid.

²⁹ Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

³⁰ Ibid.

Patrick Finucane. Neither did he mention one in the 2002 debrief. It is only in 2006 that Barrett first appears to recall that Nelson had provided such a 'P card'.

21.52 In all the circumstances I cannot be satisfied as to Barrett's reliability where the accounts he has given are clearly contradictory. Accordingly, I cannot attach any weight to his evidence relating to the handing over of a 'P card' on Patrick Finucane.

21.53 Despite this concern, there are none the less important areas where Barrett does appear to have been consistent in what he has said at various times about Nelson's involvement in the murder. These include: that Nelson was directly involved in planning the murder and was carrying out targeting specifically on Patrick Finucane; that L/28 asked Nelson to provide a photograph (or 'clippings') of Patrick Finucane; and that Nelson subsequently provided L/28 and himself (Barrett) with a newspaper clipping showing a photograph of Mr Finucane together with a person he was defending.

21.54 Barrett's description of Nelson providing the photograph of Patrick Finucane is consistent in many respects with the accounts that Nelson provided, both as noted by his handlers in the CF of 14 February 1989 and in the statement he made in January 1990. Barrett would not have had access to either of these documents, which does suggest to me that the consistency between his accounts and the contemporaneous records are significant.

21.55 Broadly speaking, it is apparent from both accounts that: Nelson met L/28 and Barrett outside the UDA HQ during the week prior to the murder; Nelson provided the *An Phobcraip* photograph of McGeown and Patrick Finucane to L/28; L/28 then gave the photograph to Barrett; and Barrett confirmed that the photograph was sufficient for his purposes.

21.56 The two accounts differ as to whether L/28 asked Nelson for a photograph specifically of McGeown or of Patrick Finucane. This is considered further at paragraphs 21.88 to 21.98 below. Clearly, however, Barrett's account of that incident is based on a first-hand and, in at least some important respects, accurate recollection of events.

21.57 In summary, therefore, where Barrett has been consistent in the various accounts he has given at different times and there is independent evidence tending to support what he says, I do attach some weight to his allegations, whilst always treating them with caution.

Security Service intelligence

21.58 The Security Service received intelligence in late February 1989 indicating that Nelson had been involved in carrying out a 'recce' of Mr Finucane's home before the murder. The Service's record of the intelligence noted the source's assessment that Nelson:

“... *undoubtedly* did the recce on the solicitor, Pat Finucane.”[Emphasis added]³¹

- 21.59 I have sought to examine the reliability of this intelligence to determine its significance for my Review. I have considered a range of Security Service papers and assessments regarding the source from which it came. In particular, a document dated 27 January 1989 noted the reliability of the wide range of intelligence emanating from that source.³² Having carefully reviewed all of the background material, I have found no reason at all to doubt this assessment.
- 21.60 No further information is available to show how the Security Service’s source could be so sure that Nelson had carried out the ‘recce’. However, the use of the word “*undoubtedly*” clearly indicated a high degree of certainty. Indeed the use of such an unequivocal phrase appears to be unusual in the written records of Security Service intelligence that I have seen.
- 21.61 As with all such intelligence, this information does not in itself prove that Nelson carried out the ‘recce’. Nevertheless, I am struck by the apparent reliability of the source of the Service’s intelligence, and the forceful terms in which Nelson’s involvement in the ‘recce’ was reported at the time. I am, therefore, satisfied that I should weigh this material in the balance when reaching my conclusions as to Nelson’s role in the conspiracy.

The evidence provided by a neighbour

- 21.62 The day after the murder, a neighbour of the Finucanes gave a statement to the Royal Ulster Constabulary (RUC) in which she recounted the visit of two men claiming to be window cleaners to her house on Friday 10 February 1989.
- 21.63 The neighbour said that she had enquired as to the price of the cleaning, at which point one of the men asked to see round the back of the house. They quoted her a price of £5, which she thought to be “*a bit steep*” given that the normal price was £2. The two men then left. The neighbour described the man she spoke to as being “*of stocky build, about 5’8” tall*” and with “*a fair complexion*”.³³
- 21.64 Although this statement does not include any detail as to why the neighbour regarded this incident as significant, it is reasonable to infer that she must have been suspicious that the two men were in some way linked to the murder of her neighbour that occurred just two days later.
- 21.65 In 1999 the neighbour provided a further statement to the Stevens III Investigation about the incident. In that statement she recounted how she lived near the Finucane family home, and stated that “*right from them calling at my door I did not think they were window cleaners*”.
- 21.66 The neighbour went on to note that:

³¹ Head of Security Service operational section, *General Assessment*, 24 May 1989, para 10 [see Volume II, p. 201]

³² Head of Security Service operational section, 27 January 1989, para 4

³³ Statement of neighbour to RUC CID, 13 February 1989

“I think they had no intention of cleaning the windows, so sure of this that I remember telling my husband about them when he came home that night.”³⁴

- 21.67 She described the older man as “*in his 40’s*”, “*5’8-9*”, “*stocky sort of build with fair complexion*”, with hair “*darker than blond but lighter than light brown*”. The younger man she described as being in his 20s, slighter taller and with dark hair. Understandably, given the time that had elapsed, the neighbour was clear that she “*would not be able to recognise either man again*”.
- 21.68 The neighbour went on to say that “*between 1992 and 1994*”, after she had moved abroad, her father-in-law sent her a press article that had “*quite a large picture of a man named Brian Nelson*”. She remembered telling her family at the time that “*the man in the picture reminded me of the older window cleaner*”. The neighbour could not find the article again in 1999, but stated that the photograph was “*of his face, face on, and matched the description of the older window cleaner*”.³⁵
- 21.69 The neighbour appears to me to be an honest witness, willing to provide statements to both the original RUC investigation and then, despite having emigrated, to the Stevens III Investigation. Clearly, those involved in Patrick Finucane’s murder must have carried out a ‘recce’ of his home beforehand. The neighbour’s description of being visited only two days prior to the murder by the two men who claimed unconvincingly to be window cleaners does indeed suggest that the visit was a ‘recce’ of Mr Finucane’s home. The key question I must consider, however, is whether her statements provide satisfactory evidence that Brian Nelson was one of those two men.
- 21.70 I note that the description the neighbour provided of the older man purporting to be a window cleaner does broadly match Nelson, who would have been 41 at the time. Further, the CF dated 14 February suggests that Nelson was in Belfast the preceding Friday, 10 February, and did at least carry out some UDA activity (for example, the CF does briefly record his having had a conversation with L/24).³⁶
- 21.71 However, I cannot treat the neighbour’s statement that the press photograph she later saw of Nelson “*reminded her*” and “*matched the description*” of one of the window cleaners as amounting to a positive identification of him. Several years had elapsed between the incident and her seeing that photograph, which in itself would require me to treat what she says with caution. More importantly, however, Nelson’s alleged links to Mr Finucane’s murder had by this stage been widely reported in the media. The risk that such reporting could have affected her identification of Nelson is self-evident.
- 21.72 In all the circumstances, whilst I have no doubt that the neighbour was doing her honest best to assist the respective police investigations, her evidence falls far short of what any tribunal would require before it could be satisfied that Nelson was one of the two men who had called at her home. Accordingly, I can attach no weight to her evidence in coming to any conclusion as to Nelson’s involvement in the murder.

³⁴ Statement of neighbour to Stevens III Investigation, 20 May 1999

³⁵ Ibid.

³⁶ CF 14 February 1989

‘Tucker’ Lyttle’s comments to John Ware

21.73 John Ware has provided my Review with his original notes of conversations with ‘Tucker’ Lyttle on 24 December 1993 and 20–22 June 1994. I see no reason to doubt that Mr Ware’s detailed, contemporaneously recorded notes accurately reflect his conversations with Lyttle.

21.74 On 24 December 1993, Lyttle told John Ware the following relevant information on Nelson’s alleged role in the murder:

“BN [Brian Nelson] had driven [L/28] around Finucane’s house a couple of weeks before the shooting. BN should not have known when exactly the actual hit was to take place. The rules were that even TL [‘Tucker’ Lyttle] himself should not be given the details of when a hit was going to take place or where guns were held. So [L/28] should not have informed BN ... I [John Ware] pointed out that in his journal BN spoke respectfully about [L/28]. TL said [L/28] and BN were close and that BN was always driving [L/28] around and that [L/28] may therefore have broken the rules so far as BN was concerned by telling him more than he should in advance of a hit.”³⁷

21.75 John Ware’s notes of the meetings with Lyttle on 20–22 June 1994 include the following information on Nelson’s involvement in the targeting of Patrick Finucane:

“TL said that [L/28] had asked BN if he knew where Finucane lived. About 2 or 3 weeks before the shooting BN had driven [L/28] to his [Finucane’s] house. BN was also asked for a picture of McGeon [sic]. TL insists that BN was not told that the purpose of getting this picture from the Int dump was to target Finucane ...

TL said that BN had told him that Finucane had met Adams and [T/13] at a hotel in South Belfast ... TL said that BN had claimed the meeting had taken place on the Thursday night before Finucane was shot, or even the week before. TL said the knowledge of that meeting played a big part in the final decision to go ahead with the Finucane assassination.”³⁸

21.76 In Chapter 20 I concluded that ‘Tucker’ Lyttle was aware that Patrick Finucane was being targeted. Consequently, I am satisfied that Lyttle would have been in a position to have had knowledge of Nelson’s activity. I have also been struck by the fact that a significant proportion of Lyttle’s accounts to John Ware in 1993 and 1994 can be corroborated by the wider evidence uncovered during the course of my Review. Whilst Lyttle is now deceased, and his comments are untested when treated in isolation, I do believe that I can weigh his allegations in the balance when considering the evidence in relation to Nelson’s role.

³⁷ John Ware, notes of interview with ‘Tucker’ Lyttle, 24 December 1993, pp. 1–2

³⁸ John Ware, notes of interview with ‘Tucker’ Lyttle, 20–22 June 1994

UDA concerns about Nelson's knowledge of the murder

- 21.77 Some supporting evidence for Barrett's account of Nelson's role in the murder can be derived from intelligence reports received by the RUC Special Branch (SB) in 1990 and by the Security Service in 1992. Both intelligence reports appear to suggest that the UDA were concerned that Nelson knew a great deal about the murder of Patrick Finucane.
- 21.78 In late January 1990, the RUC SB received intelligence from a source with connections to the UDA. Nelson had been arrested by the Stevens I Investigation on 12 January 1990. The RUC source noted that the UDA were concerned that "*Brian Nelson knows the I.D of those involved in Finucane [sic] murder*".³⁹ If Nelson had been telling the truth in his 1990 statement when claiming that he could only speculate as to who was involved in the murder, there would have been no real grounds for concern in the UDA. As discussed in Chapter 7, Nelson was directly involved in several assassinations, which makes it potentially significant that the UDA were particularly concerned about his knowledge of Patrick Finucane's murder.
- 21.79 The Security Service received intelligence in 1992 referring to comments that L/20 allegedly made around the time of Nelson's trial and the screening of Panorama's 'Dirty War' programme. L/20 was reported to have confirmed that most of the publicity about Nelson's role was accurate. This was reported to have concerned L/20 because he, along with L/28, had carried out a number of operations, including "*the murder of Republican lawyer Pat Finucane when Nelson was in place at UDA Headquarters*".⁴⁰
- 21.80 In his various accounts of events, Nelson makes no mention of having had any contact with L/20 prior to Patrick Finucane's murder. If it was genuinely the case that Nelson had had no direct contact with L/20 about targeting Mr Finucane, it might be thought surprising that L/20 should be expressing anxiety over revelations about Nelson's role in the UDA.
- 21.81 Further, given that Nelson was closely involved with L/20 in a number of targeting operations (see Chapter 7), I consider it potentially significant that L/20 should have highlighted Patrick Finucane's murder as a specific concern.
- 21.82 As with all intelligence material, the above information is necessarily limited in its evidential value, though I have not seen any material to suggest there are any doubts as to the accuracy of this information. Whilst the evidence they provide is circumstantial, the reports do, in my view, tend to provide some limited support to Barrett's claim that Nelson had a significant role in the murder. At paragraphs 21.118–21.121, I consider further the significance of the intelligence Nelson provided to his handlers on 14 February 1989 as to who was responsible for the murder.

³⁹ Extract from RUC SB Daily Intelligence Book, late January 1990

⁴⁰ Security Service telegram, 1992

William Stobie’s statement to Neil Mulholland

21.83 A statement that the journalist Neil Mulholland provided to Stevens III on 3 June 1999 outlined discussions that he had with William Stobie in June 1990. His recollections of those discussions are supported by his contemporaneous notes.

21.84 Stobie was reported to have told Mulholland that Patrick Finucane’s name had “*come up again and again*” at a meeting that had taken place at a UDA club to discuss targets. Stobie allegedly said that the “*third time*” Mr Finucane’s name came up:

“ ... ‘Rece’ [sic] reports were discussed about his (Finucane’s) house and intelligence (Nelson) indicated that he would know when would be the best time for a clean job.”⁴¹

21.85 Stobie described the meeting as “*just a talk through*” and then went on to outline his own involvement in handing over guns prior to the murder. A detailed analysis of Stobie’s statements and alleged involvement in the murder is provided in Chapter 22. That analysis details the contradictions in Stobie’s statements around whether he knew that the target to be attacked was specifically Patrick Finucane (as opposed to a generic ‘top PIRA man’). In the light of those contradictions, and Stobie’s failure in later statements to mention the planning meetings, it is difficult to place any reliance on what he allegedly told Mulholland about Nelson’s attendance at such meetings.

21.86 I have also taken into account Stobie’s wider role in the UDA. He was a comparatively minor figure who dealt with UDA weapons. He was not regularly involved in targeting meetings such as the ones he described to Mulholland. FRU documentation suggests that knowledge about Patrick Finucane’s targeting was restricted to a reasonably tight circle. Given Stobie’s relatively lowly status within the UDA, it seems to me inherently unlikely that he would have been included in that circle to the extent of being involved in ‘planning meetings’.

Analysis of evidence relating to Nelson’s role in the murder

21.87 I turn now to my analysis of the evidence relating to:

- (i) the passing of a photograph of Patrick Finucane to L/28;
- (ii) whether Nelson compiled a ‘P card’ on Mr Finucane; and
- (iii) Nelson’s activity before and after the murder took place.

The passing of a photograph of Patrick Finucane to L/28

21.88 The evidence considered earlier in this chapter includes the accounts that both Nelson and Barrett gave regarding the passing of a photograph of Patrick Finucane to L/28 and Barrett on 7 February 1989. As I have noted, whilst Nelson’s and Barrett’s accounts were generally similar, they differed in one

⁴¹ Neil Mullholland, statement to Stevens III Investigation, 3 June 1999 [see Volume II, pp. 117–132]

critical respect: Nelson claimed that L/28 asked him for a photograph of Patrick McGeown, whereas Barrett said that L/28 specifically asked for a photograph of Patrick Finucane.

21.89 It must also be noted that, although he was not present when the photograph was handed over on 7 February, ‘Tucker’ Lyttle told John Ware that Nelson had *not* been told that the photograph was intended to be one of Patrick Finucane.

21.90 In Nelson’s varied accounts of the photograph incident he maintained that L/28 asked him for an image of McGeown. However, his descriptions of that request differed slightly, as follows:

- The CF of 14 February 1989 recorded that L/28 asked Nelson for the photograph of McGeown “*leaving court after the charges against him were dropped*”. It recorded L/28 as adding “*that McGeown was with Pat Finucane [sic] in the photograph*”.⁴² The CF also noted that Nelson travelled alone to collect the photograph, which was one that had appeared in the spoof publication *An Phobcrapt*, and handed it to L/28 at a Community Centre.
- In his 1990 statement, Nelson again stated that L/28 had asked for a photograph of McGeown. He went on to clarify that “*I knew that the only photograph, and I should state here that when [L/28] asked me originally for the photograph of McGeown he asked specifically for a large photograph not one of the small montage photographs*”.⁴³
- In his ‘journal’ account, Nelson said that he was “*asked by [L/28] if I had any copies of [the] spoof APRN ... In asking this [L/28] had said to me they had got onto the whereabouts of McKeown (?)*”.⁴⁴

21.91 By February 1989 Nelson had already been involved for a number of years in gathering intelligence on McGeown. I have released alongside my Report an index of the material relating to McGeown that was held in Nelson’s intelligence dump.⁴⁵ The dump included at least eight other photographs of McGeown and 18 separate references to McGeown in total. Nelson had compiled two ‘P cards’ on him including clear, ‘face on’ photographs.⁴⁶ Another clear, ‘face on’ photograph of McGeown appeared in the same edition of *An Phobcrapt* which contained the photograph of him with Patrick Finucane.

21.92 It would seem only logical, therefore, that if McGeown was the genuine focus of L/28’s attention, Nelson would have selected either McGeown’s ‘P card’ or one of the better photographs he had of him, rather than the one of him and Patrick Finucane that had appeared in *An Phobcrapt*. Mr Finucane was as much the subject of that photograph as was McGeown.

⁴² CF 14 February 1989 [see Volume II, pp. 10–15]

⁴³ Brian Nelson, statement to Stevens I Investigation, 15 January 1990 [see Volume II, pp. 43–51]

⁴⁴ Extract from Nelson’s ‘journal’ [see Volume II, p. 42]

⁴⁵ Statement, 12 November 1990 [see Volume II, pp. 52–54]

⁴⁶ Nelson’s ‘P cards’ on Patrick McGeown [see Volume II, pp. 40–41]

- 21.93 Significantly, however, it appears that the *An Phobcraip* photograph was the only one in Nelson's intelligence dump of Patrick Finucane and that Nelson knew him to be the other man it depicted (describing this as "*common knowledge*" in his 1990 statement). Mr Finucane was, of course, the target that L/28 had asked Nelson to gather intelligence on just a matter of weeks beforehand.
- 21.94 There are two other circumstantial considerations which might indicate Nelson knew that Patrick Finucane was L/28's real interest. First, Nelson would have known in February 1989 that the Ulster Volunteer Force (UVF) were already seeking to target McGeown. L/41 had visited Nelson on 2 October 1988 to ask him what he knew about T/31 and McGeown, both of whom L/04 – a close UVF associate of Nelson – was due to start targeting the following day. Nelson noted that McGeown was on remand at that time and gave L/41 "*the personality cards and photographs for [T/31] and McGeown*".⁴⁷
- 21.95 Given that knowledge, and bearing in mind that Nelson by this stage was an experienced UDA Intelligence Officer, it is reasonable to expect – if L/28 really had wanted to target McGeown – that Nelson would have told L/28 that he was already being targeted by another loyalist paramilitary group. A number of instances can be found, for example, of the UDA ceasing to target a particular individual on becoming aware of that individual being separately targeted by the UVF. Despite that, Nelson never stated in any of his accounts that he warned L/28 that McGeown was already being targeted by the UVF.
- 21.96 Further, by February 1989 Nelson believed that McGeown was in hiding. This can be seen from one of the 'P cards' on McGeown recovered from Nelson's dump, which shows that Nelson continued to take an active interest in him even after providing the targeting information to the UVF. For example, Nelson's handwritten annotations on the card included the comments "*Held for A/town murders – Released 11/88*" and "*Possible subject is in hiding 12/88*".⁴⁸ If Nelson had believed only a matter of weeks earlier that McGeown was in hiding, I consider it highly likely that he would have informed L/28 of this fact if asked for a photograph of him.
- 21.97 Taken cumulatively, the above weaknesses and inconsistencies in Nelson's story regarding the photograph make this aspect of his account seem inherently unlikely. In the light of the broader evidence that Nelson played a greater role in planning the murder than he was prepared to admit, it is reasonable to infer that he may have sought to downplay his involvement by creating a cover story which enabled him to claim that L/28 had asked for a photograph of McGeown rather than one of Patrick Finucane.
- 21.98 I am satisfied that Barrett's recollection that Nelson consciously provided a photograph of Patrick Finucane is the correct version of what took place on 7 February 1989.

⁴⁷ CF 6 October 1988

⁴⁸ Patrick McGeown's 'P card' [see Volume II, pp. 40–41]

Whether Nelson compiled a ‘P card’ on Patrick Finucane

- 21.99 At paragraph 21.52 I concluded that I could accord no weight to Barrett’s 2006 claim that Nelson provided a ‘P card’ relating to Patrick Finucane. I turn now to consider the other evidence which may assist in determining whether Nelson might have produced such a card. The FRU Contact Forms (CFs) of 2 and 9 March 1989 are critical to determining the answer to this question.
- 21.100 The CF dated 2 March described discussions of an Ulster Freedom Fighters (UFF) statement that Nelson had produced to justify Patrick Finucane’s murder. Nelson had been asked by L/28 to prepare that statement on 16 February.⁴⁹ He had produced a draft by 23 February. This contained a reference to Patrick Finucane allegedly meeting Gerry Adams at the AB Hotel in the week immediately preceding Mr Finucane’s murder. After seeing the draft, L/28 told Nelson on 23 February that ‘Tucker’ Lyttle had asked for that information to be removed because it “*was too specific*”.⁵⁰ The CF went on to note that:
- “The information regarding the meeting at the [AB Hotel] was on Finucane’s personality card. It is not known from whom the information originated.”⁵¹*
- 21.101 The CF dated 9 March reveals that Nelson provided further information to his handler regarding the alleged AB Hotel meeting. It stated that:
- “[Nelson] reports that this information came from [L/28] after the assassination and was on Finucane’s personality card.”⁵²*
- 21.102 As I noted at paragraph 21.75, ‘Tucker’ Lyttle told John Ware that Nelson himself had provided the information relating to the AB Hotel meeting (though it is possible to infer that Lyttle believed this because Nelson had drafted the UFF statement with this information in it).
- 21.103 I am satisfied that the FRU records establish that there was a ‘P card’ relating to Patrick Finucane, and that Nelson was aware of its existence and of its content. Nelson failed to mention this in his January 1990 statement to the Stevens I Investigation. On the contrary, he claimed in that statement that he had “*no real hard information to go on*” in drafting the UDA’s statement admitting responsibility for the murder, despite having access to this ‘P card’.
- 21.104 In his 1990 statement, Nelson recalled ‘Tucker’ Lyttle approving the UFF statement, which I am satisfied must refer to his discussion with Lyttle at UDA HQ on Friday 24 February. However, he makes no mention of the discussion the preceding day, Thursday 23 February, when L/28 asked him (at Lyttle’s request) to remove the reference to the meeting at the AB Hotel.
- 21.105 In 1993 Nelson denied having any knowledge of a ‘P card’ relating to Patrick Finucane. However, as indicated earlier in this chapter I have concluded that I can attach no weight to Nelson’s evidence in 1993. In my view, Nelson’s

⁴⁹ CF 22 February 1989 [see Volume II, pp. 17–18]

⁵⁰ CF 2 March 1989 [see Volume II, pp. 19–21]

⁵¹ *Ibid.*

⁵² CF 9 March 1989 [see Volume II, pp. 22–24]

omission of the discussion about the AB Hotel in his 1990 statement and his subsequent denial in 1993 of any knowledge of a 'P card' demonstrate a degree of evasiveness suggestive of a desire to conceal his true role.

- 21.106 In the event, when Nelson's intelligence dump was eventually seized by the Stevens I Investigation, it included no 'P card' relating to Patrick Finucane. That, in itself, is not altogether surprising given that it was clearly common practice by the West Belfast UDA to destroy these documents once a target had been murdered.⁵³
- 21.107 Nor was any 'P card' relating to Patrick Finucane recovered from the other UDA intelligence dumps located around Northern Ireland that the Stevens I Investigation team recovered.⁵⁴ The only conclusion I can draw from this is that, at the time Nelson distributed copies of the UDA's intelligence dump to other loyalists in October 1987, it contained no 'P card' for Patrick Finucane. The likelihood is, therefore, that the 'P card' on Mr Finucane was produced at some stage after October 1987.
- 21.108 Given that, on the available evidence, I am satisfied that the 'P card' did exist, I must go on to consider who was responsible for producing it. Analysis of the material included within the UDA's intelligence dump suggests that in Belfast the organisation had access to two different types of 'P card'.
- 21.109 The first type comprised cards which had originated from a former UDA Intelligence Officer who had been involved in compiling targeting material. It seems unlikely that Patrick Finucane's 'P card' was one of this category, as the material which he compiled would have been included in the copied dumps that were recovered by the Stevens I team.
- 21.110 The second type of 'P card' was a more detailed, handwritten document that was produced and updated by Nelson in the course of his role as the UDA's Intelligence Officer. Nelson appears to have been the sole producer of UDA 'P cards' during this period. Having extensively considered FRU, RUC and Security Service records, alongside all the statements made to the Stevens Investigations, I have not found any example of a UDA member other than Nelson producing and distributing a 'P card' during this period.
- 21.111 In view of Nelson's role as the UDA Intelligence Officer, and his access to the 'P card' shortly after the murder, it is reasonable to assume that a card on Patrick Finucane must have formed part of Nelson's intelligence material. This is significant because it suggests that Nelson may at some stage have become involved in producing the card. It is also significant that the 'P card' was, according to the CF dated 2 March 1989, updated in the week prior to Mr Finucane's death with a reference to the AB Hotel meeting. This could imply that Nelson had been personally updating the 'P card' shortly before the murder, though it is perhaps also possible that L/28 could have entered the Intelligence Cell himself to update the card.

⁵³ See, as an example, the shooting of T/14 in Chapter 7, paras 7.209–7.210

⁵⁴ Statement, 12 November 1990 [see Volume II, pp. 52–54]

21.112 There are a number of uncertainties in the evidence relating to the 'P card'. However, I can be sure that Nelson told his handlers that a 'P card' on Patrick Finucane existed; that Nelson had access to this document shortly after the murder; and that Nelson's job as the UDA's Intelligence Officer was to produce, update and store 'P cards'. Considering the evidence as a whole, I believe it is likely that Nelson was involved at some stage in producing, storing, and perhaps disseminating, a 'P card' on Patrick Finucane.

Nelson's activity before and after the murder took place

21.113 There is other evidence relating to Nelson's activity after the murder, from which it might be inferred that he had a greater role in the targeting than he was prepared to admit. I consider in turn:

- (i) Nelson's account of a discussion with L/28 following the murder;
- (ii) detailed and seemingly accurate intelligence provided on 14 February as to who had been involved in the murder; and
- (iii) significant apparent omissions from his account of a high-level meeting that took place on 15 February.

Nelson's account of a discussion with L/28 following the murder

21.114 In his 1990 statement, Nelson noted that, on the night of Patrick Finucane's murder, he had been listening to police communications on his radio scanner. He stated that after having discussed the targeting of Mr Finucane with L/28 a couple of weeks beforehand he:

*"... heard nothing more until the night of the murder when I was listening to my radio scanner on the Police frequency ... when I heard the controller tasking a car to a street in the Antrim Road area where reports of shots had been heard and a person had been shot."*⁵⁵

21.115 In the context of the evidence I have outlined at length above, I am sceptical of the implication in Nelson's statement that it was merely a coincidence that he was listening to his radio scanner on the night of the murder. The CFs do include examples of Nelson listening to the police frequency to ascertain operational information or even targeting details on republicans. These examples are, however, relatively infrequent and it would seem a surprising coincidence that Nelson happened to tune into the scanner on the night that the UDA murdered their most high-profile target.

21.116 I must also consider Nelson's behaviour in the light of his subsequent discussions with L/28 about the murder. Nelson did admit that he discussed the murder with L/28 on 13 February and then, having researched what L/28 referred to as the "*muck*" that could be produced on Patrick Finucane, drafted the UFF's statement justifying the murder. The CF dated 14 February reported that L/28 had asked

⁵⁵ Brian Nelson, statement to Stevens I Investigation, 15 January 1990 [see Volume II, pp. 43–51]

Nelson if he had previously told him that Patrick Finucane was the “*brains*” behind the IRA.⁵⁶ This would have been an odd comment for L/28 to have made if, as Nelson claimed, L/28 had deliberately kept him out of the loop on planning the murder – even to the extent of admitting to having deceived him into handing over the *An Phobcra* photograph.

- 21.117 I note that, whilst the DPP(NI) believed at the time of the Stevens I Investigation that there was insufficient admissible evidence to prosecute Nelson for the murder, he clearly held suspicions regarding Nelson’s role. In an undated analysis of Nelson’s potential involvement in the murder, the DPP(NI)’s office recorded that:

“Whilst the evidence is insufficient to warrant Nelson’s prosecution in respect of the murder of Finucane his account of minimal involvement is not convincing. Nelson listening to the appropriate police channel at the time of the murder and his involvement with [L/28] afterwards may point to a deeper involvement by Nelson in this murder.”⁵⁷

Intelligence provided on 14 February

- 21.118 At his debrief meeting with his handlers on 14 February Nelson provided intelligence that L/28, L/20, L/05, L/33, Barrett, L/25 and L/22 had all been involved in the attack. He retracted from this position in his 1990 statement, when he stated only that, although he had no direct evidence, he thought Barrett was “*one of the actual gunmen*” involved.⁵⁸
- 21.119 However, other intelligence suggests that the list of names Nelson provided on 14 February was essentially accurate. A/05 suggested to me that this was, in itself, evidence that Nelson was not complicit in the murder. He asked:

“... why would he have provided the names of all the people who were involved, if he himself had been involved with them? If they had been arrested, then there was clearly a risk of putting himself in the frame and a risk of arrest himself, because one of them would have talked about him or could have talked about him.”⁵⁹

- 21.120 However, as I noted in Chapter 17, past experience would have shown Nelson that UDA members were not being arrested despite the fact that he provided intelligence linking them to murders.
- 21.121 In fact, I believe that this intelligence tends to indicate that Nelson had a greater role than he was prepared to admit. It might be thought surprising that Nelson could provide seemingly accurate intelligence about those involved in the attack on the basis solely, as he alleged, of his observation of those individuals walking into a back room at the UDA HQ. This intelligence should also be seen in the light of the evidence that the UDA were concerned about Nelson’s knowledge

⁵⁶ CF 14 February 1989 [see Volume II, pp. 10–15]

⁵⁷ Attorney General’s Office, *The Stevens Inquiry*, undated note from the DPP(NI)’s office

⁵⁸ Brian Nelson, statement to Stevens I Investigation, 15 January 1990 [see Volume II, pp. 43–51]

⁵⁹ Transcript of meeting with A/05, 7 September 2012, p. 67

of the identities of those involved in the murder. If Nelson's knowledge was, as he claimed, based solely on observations of individuals walking into a room, it is unlikely that the UDA would have been particularly concerned about the information that he could reveal.

Omissions from Nelson's account of a meeting on 15 February

- 21.122 On Wednesday 15 February Nelson attended a UDA meeting at a club in North Belfast. The CF dated 22 February indicated that Nelson had not informed his handlers about any discussion of Patrick Finucane's murder at the meeting – instead, as he recounted it, there was only brief discussion about 'Operation Snowball', an ongoing UDA plan to target leading PIRA/Irish People's Liberation Organisation (IPL) figures.⁶⁰
- 21.123 However, intelligence received by the RUC provided a very different account of the same meeting. It confirmed that Nelson was present at the meeting, and recorded that "*the main topic of discussion*" at the meeting was the murder of Patrick Finucane. The intelligence indicated that L/28's "*team was responsible and that [the UDA believed that] Finucane [sic] was an Intelligence officer for 3rd Batt PIRA and laundered money for PIRA through Finucane's firm of solicitors*".⁶¹
- 21.124 The RUC's intelligence was graded as being reliable. Indeed, it might be thought surprising if such a group of UDA figures had *not* discussed the very high-profile murder of Patrick Finucane that had occurred just three days beforehand.
- 21.125 I believe that Nelson was present at that meeting and that the murder was discussed. However, he appears deliberately to have chosen to give a different, and misleading, account to his handlers of what was discussed at that meeting. Given that in his 1990 statement he was able to provide considerable detail both of his discussions with L/28 following the murder, and of his role in drawing up the UFF statement for publication in *Ulster* magazine (even to the extent of recalling exact phrases that were used in that statement), I am disinclined to think that the discussion of the murder was simply a detail that slipped Nelson's mind.
- 21.126 Albeit that the meeting took place after Patrick Finucane's murder, Nelson's apparently deliberate omission to mention the real subject of discussion, both in his statements and in his debriefing with his handlers, suggests a conscious desire to downplay his knowledge of the murder.

Overview

- 21.127 On his own admission, Nelson was told by L/28 to target Patrick Finucane approximately two months before the murder was committed. Despite Nelson's denial that he had undertaken any such targeting pursuant to that request, I am nevertheless satisfied that he did. I also believe that Nelson undertook a 'recce' of some description on the Finucane home.

⁶⁰ CF 22 February 1989

⁶¹ RUC SB50, 16 February 1989 [see Volume II, p. 99]

- 21.128 There is a wealth of circumstantial evidence to support my finding that Nelson played a direct role in the targeting of Mr Finucane. When considered cumulatively, the pattern of Nelson's activity I have outlined in this chapter; the UDA's apparent belief that Nelson played an important role in the murder; Nelson's evident desire to conceal the true nature of his involvement in events after the murder; and my view that it is likely that Nelson produced a 'P card' on Mr Finucane all suggest that his involvement in the targeting was greater than that to which he was prepared to admit.
- 21.129 Moreover, having regard to all the evidence I have reviewed, I am satisfied that L/28 asked Nelson to provide a photograph of Patrick Finucane and that he provided that photograph, taken from the *An Phobcraip* publication, to L/28 and Kenneth Barrett on 7 February 1989. The provision of that photograph was for the purpose of assisting the hit team to murder Patrick Finucane.
- 21.130 In conclusion, I am satisfied that the FRU agent Brian Nelson played a direct and important role in the conspiracy that led to Patrick Finucane's murder on 12 February 1989.

The FRU's knowledge of Brian Nelson's involvement in the murder

- 21.131 Having established Nelson's direct involvement in the murder, I now turn to consider what Nelson's FRU handlers knew about the targeting of Patrick Finucane.
- 21.132 Whilst there is ample evidence that Nelson's FRU handlers were aware of other individuals who were being targeted with a view to assassination, I must look at this question in relation to Patrick Finucane without making the automatic assumption that, because Nelson informed his handlers in other cases, it must follow that he also informed them about the targeting of Mr Finucane.
- 21.133 I have released Nelson's statements and the FRU CFs on this subject alongside my Report. There is evidently a significant degree of tension between Nelson's 1990 statement, his 'journal' account and the FRU documentary record. The picture becomes particularly complex in the light of my finding that Nelson was directly involved in the targeting of Patrick Finucane and, therefore, significantly downplayed the extent of his role in his 1990 statement and 'journal'.
- 21.134 I consider the different sources of evidence on this issue in turn below:
- (i) Nelson's relationship with his handlers;
 - (ii) Nelson's statements in relation to the FRU's knowledge of the targeting;
 - (iii) the statements of FRU personnel;
 - (iv) the FRU documentary record; and
 - (v) the allegations made by Ian Hurst.

Nelson's relationship with his handlers

21.135 Justice Cory drew a significant inference from Nelson's general activity as a FRU agent prior to Patrick Finucane's murder. The nature of the relationship between Nelson and his handlers at the time clearly influenced Justice Cory's conclusion that:

*"If Nelson was aware that Patrick Finucane was being targeted, it does seem more likely that he would have passed that information on to his handlers, particularly when he knew that FRU was looking for more from him."*⁶²

21.136 I have analysed the context to Nelson's intelligence reporting to assist my consideration as to whether Nelson passed on information about the targeting of Patrick Finucane to his handlers. If Nelson had always told his FRU handlers everything about the UDA's targeting activity, then it would have been most unusual for him to fail to pass on information regarding the conspiracy to murder Patrick Finucane. If, however, Nelson tended to be selective in the information he passed on to his handlers, and if there are other recorded instances of Nelson holding back information from them, then it would be far easier for me to infer that he may have failed to tell them about the targeting of Mr Finucane.

21.137 There is no doubt that Nelson passed on extensive and detailed intelligence to his handlers throughout his period as a FRU agent. The exceptionally detailed CFs produced by the FRU over a number of years clearly demonstrate the quantity and quality of intelligence provided by Nelson. My examination of other intelligence received by the RUC SB and the Security Service regarding UDA activity appears to confirm the accuracy and importance of Nelson's intelligence reporting.

21.138 However, it is also clear that Nelson did not always tell his handlers everything about his targeting activities as a UDA Intelligence Officer. In my analysis of Nelson's role in conspiracies to murder (see Chapter 7), I outline a number of occasions on which Nelson did not tell his handlers about the extent of his UDA activity (see, for example, the murder of Terence McDaid at paragraphs 7.121–7.140). Indeed, the FRU handlers themselves admitted Nelson's shortcomings in a particularly telling exchange with a Security Service officer on 27 June 1988. The Security Service officer's note of the exchange, which took place after a joint debriefing of Nelson (referred to here by his source number, 6137), included the comment that:

"... FRU admitted that 6137 [Nelson] was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of 'justifiable' actions, and to an extent he may attempt to use his agent role to gain intelligence from FRU. This confirms DHSB's [Deputy Head of Special Branch's] comments that 6137 has sometimes been caught out by RUC information ... which contradicts his own."[Emphasis added]⁶³

⁶² Cory Collusion Inquiry Report: Patrick Finucane, 1 April 2004, p. 51, para 1.145

⁶³ Security Service agent-running section to G8/0, 11 July 1988 [see Volume II, p. 305]

- 21.139 Whilst the importance of the FRU comments to the Security Service officer should not be overstated, this admission does highlight the need to avoid any assumption that Nelson would inevitably have told his handlers the details of all UDA targeting activity.
- 21.140 I have examined the CFs dating from the period during which I believe that the UDA formulated its conspiracy to murder Patrick Finucane. It is clear to me that there were three particularly important and competing pressures on Nelson that may have influenced whether or not he told his handlers about all his UDA activity at that particular time. The first was pressure from the FRU to provide higher quality intelligence on UDA targeting; the second was pressure from the UDA to provide better quality intelligence on republican targets; and the third was Nelson's own continuing fear of being exposed as an agent.
- 21.141 Justice Cory covered in his Report the pressure applied on Nelson by both the FRU and the UDA. The CF dated 10 January 1989 noted the FRU's intention "*for Nelson to be hit with the facts*" and asked to explain what he had done for them. The CF even included the comment that:

*"If possible, and handler feels it is, Nelson will be directed towards another aspect of UDA matters such as finance or racketeering."*⁶⁴

- 21.142 Around this time members of the UDA were also pressurising Nelson to produce better targeting information. The CF dated 25 January 1989 noted that Nelson was "*blamed for lack of intelligence and incorrect targeting*" at a UDA meeting on 20 January. Nelson apparently believed that he had convinced those in attendance "*that it was not his fault that operations had not been successful*".⁶⁵ Nevertheless, it is likely that Nelson would still have felt under some pressure from senior UDA figures to provide intelligence that would lead to a 'successful' attack.
- 21.143 Nelson had always been conscious of the need to maintain his cover and avoid falling under suspicion (see, for example, in Chapter 6 the conditions he sought to attach to his putative arms smuggling deal in 1986). Following his interrogation and torture at the hands of his UDA colleagues in August 1988, Nelson is likely to have had a strong desire to avoid falling under suspicion again.
- 21.144 Nelson appears to have been particularly concerned about his own safety when told by 'Tucker' Lyttle in November 1988 that the RUC were aware that the UDA had been targeting T/21. The targeting of T/21 had been kept to a tight circle of knowledge within the UDA. The CF dated 26 November 1988 recorded that:

*"6137 had visions of another interrogation during the week prior to the meet as he believed that suspicion would fall on him for telling the RUC of the targeting of [T/21]."*⁶⁶

⁶⁴ CF 10 January 1989, 'Case Development'

⁶⁵ CF 25 January 1989, Item 16

⁶⁶ CF 26 November 1988

- 21.145 Later CFs appear to confirm that Nelson was concerned about the risks of being exposed as an agent. The CF dated 4 January 1989 indicated that Nelson was:
- “... worried about his involvement in the UDA and the dangers he is exposed to but 6137 is not ready to retire as his retainer is keeping him in a lifestyle which he otherwise could not afford.”⁶⁷*
- 21.146 This context suggests to me that Nelson is likely to have been concerned about his own position and safety when he became involved in the conspiracy to murder Patrick Finucane. Nelson may have had the case of Gerry Adams in his mind, when steps were taken to frustrate a conspiracy against a very prominent target. In his 1990 statement to the Stevens team Nelson had used the phrase “*too hot*” in relation to Patrick Finucane.⁶⁸
- 21.147 If Nelson felt under pressure from L/28 and L/20 as a result of the alleged exposure of the targeting of T/21, he was likely to have been particularly nervous if he subsequently became involved in another conspiracy with them against a high-profile target.
- 21.148 His possible concerns in this regard need to be coupled with the fact that, as the FRU’s discussion with the Security Service in June 1988 shows, Nelson did not in any event always feel obliged to share with the FRU all details of ‘justifiable’ UDA actions.
- 21.149 Nelson’s character and the conflicting pressures to which he was subject in early 1989 present me with a complex picture. Nelson was certainly capable, as the FRU knew, of carrying out what he regarded as ‘legitimate’ UDA activity without feeling obliged to tell his FRU handlers. He may indeed have been more likely to withhold information from his handlers in early 1989 because of the pressure he faced from the UDA and his concern at being unmasked as an agent by ruthless commanders such as L/28.
- 21.150 However, Nelson was equally under pressure from the FRU to improve his performance as an agent and to provide them with higher quality intelligence. The FRU would clearly have expected Nelson to pass on intelligence about the targeting of a high-profile lawyer such as Patrick Finucane, but in these circumstances it is possible to envisage why Nelson may have taken the significant risk of concealing such important intelligence from his handlers. Nelson knew that the security forces had moved decisively to seek to thwart the conspiracy to murder Gerry Adams, and in the light of his fear of falling, yet again, under the suspicion of the ruthless men in the UDA, it is quite possible that he may have chosen to keep from his handlers the UDA’s designs on Mr Finucane’s life. It would not have been the first time that he had failed to pass on critical information.

⁶⁷ CF 4 January 1989, Additional Information

⁶⁸ Brian Nelson, statement to Stevens I Investigation, 15 January 1990 [see Volume II, pp. 43–51]

Nelson's statements in relation to the FRU's knowledge of the targeting

21.151 Nelson's statements regarding his awareness of the targeting of Patrick Finucane have been outlined in detail earlier in this chapter, and are released in full alongside my Report. Nelson admitted that he had conversations with L/28 six to eight weeks before the murder and two weeks before the murder about the targeting of Patrick Finucane. He also claimed, inaccurately in my view, to have been duped into handing over the photograph of Mr Finucane with Patrick McGeown. Although Nelson did not explicitly mention in his 1990 statement the nature of the intelligence on Mr Finucane that he passed to his handlers, he did state that he passed on "*all information concerning the Finucane affair*".⁶⁹

21.152 However, Nelson also implied in his statement that he anticipated being criticised by his handlers for not having deduced prior to the murder that Patrick Finucane would be attacked. In 1990 Nelson stated that, when he heard news of the murder, he thought:

*"... 'it's been [L/28] Christ I'm going to be in a bit of bother over this'. I have been too long in the intelligence game all the signs were there. I should have known what was going down and I did say to myself out loud, 'I'm gonna get a bit of stick from [A/13]' who was my handler at the time 'over this'."*⁷⁰

21.153 This is a somewhat confusing passage and appears to contradict Nelson's claims to have told his handlers of L/28's interest in Patrick Finucane. If Nelson had, as he admitted, two conversations with L/28 about the targeting of Patrick Finucane, then he would have at least had some idea about "*what was going down*". Nelson's comment could be referring to his allegedly having been tricked into handing over the photograph of Mr Finucane. He might therefore have been claiming that he would be in a "*bit of bother*" with his handler for not having deduced L/28's true interest in the photograph.

21.154 Nelson's 1990 statement also provided further detail in relation to his conversations with A/13 on the morning of 13 February. Nelson claimed that, in fact, two telephone conversations took place that morning. In the second conversation, Nelson said he "*confirmed that it was ours*" and added:

*"That was my way of telling [A/13] it was [L/28] because [A/13] would know about [L/28]."*⁷¹

21.155 This comment might imply that Nelson had previously informed his handler of his conversations with L/28 about Patrick Finucane. It is perhaps unlikely that the handler would have been able to specifically link L/28 with the phrase 'It was one of ours' without having had some prior knowledge of L/28's role in the conspiracy.

21.156 In his 'journal' account, Nelson referred again to the conversation with L/28 "*two months*" before the murder. Nelson stated:

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

“... at this time I informed my Handlers that [L/28] was showing interest in this solicitor.”⁷²

21.157 His ‘journal’ also mentioned the conversation with L/28 two weeks prior to the murder, though Nelson did not explicitly say that he informed his handlers about this conversation. The ‘journal’ does, however, tend to imply in general that all information received by Nelson was passed to the FRU. Nelson’s ‘journal’ includes a list of attacks he was involved in and the names of his handlers at the time. Next to the name of Patrick Finucane, Nelson recorded the names of his handlers.

21.158 In his 1993 statement, Nelson put forward the somewhat implausible story that he “*could not remember*” Mr Finucane’s name and only recalled that a solicitor was being targeted. When asked why there was no FRU record of Nelson reporting the targeting of a solicitor, Nelson stated:

“... all I can possibly imagine, which has happened before, was that [A/13], possibly because I was not able to put a name to the individual left it open in the hope that I would do so at a later date.”⁷³

21.159 This strikes me as an inherently implausible account. In any event, as I outlined earlier in this chapter, the conditions attached to Nelson’s settlement by the MoD were sufficiently stringent to lead me to believe that no weight can be attached to his 1993 statement. By that stage, Nelson had a powerful financial incentive to distance both himself and potentially the FRU from the circumstances of such a high-profile murder.

21.160 Having discounted the 1993 interview, I am left with Nelson’s 1990 statement and his ‘journal’ account as the remaining sources of his evidence on this issue. In both accounts, Nelson indicated that he passed on information to his handlers about the targeting of Patrick Finucane prior to his murder.

21.161 However, the credibility of his accounts is significantly weakened by my finding that, in both his 1990 statement and the ‘journal’, Nelson significantly downplayed the extent of his involvement in the murder of Patrick Finucane. If Nelson was willing to lie about the extent to which he was involved in the murder conspiracy, might he also have been willing to lie about having passed on the information to the FRU? In its submission to my Review, the MoD disputed that Nelson ever passed any information on the targeting of Mr Finucane to his handlers. The MoD submission raises the prospect that Nelson’s recollection in 1990 may not have been clear but also includes the comment that:

“an obvious possibility is that he [Nelson] believed that any culpability on his part would have been lessened if he had passed on the information he had [on the targeting of Finucane]; and that it was therefore in his interests to claim that he had done so.”⁷⁴

⁷² Extract from Nelson’s ‘journal’ [see Volume II, p. 42]

⁷³ Brian Nelson, statement to Stevens II Investigation, 19 April 1993 [see Volume II, pp. 62–68]

⁷⁴ MoD, *Observations* submission to the Review

21.162 Whilst I cannot be sure about Nelson's motivation in providing his accounts of Mr Finucane's murder, I do have significant concerns about the reliability of both accounts in the light of my findings earlier in this chapter. I do, therefore, take these concerns into account when considering the balance of evidence as to whether Nelson told his handlers about the targeting of Patrick Finucane prior to the murder.

The statements of FRU personnel

21.163 FRU officers have always denied that Nelson passed on any information in relation to the targeting of Patrick Finucane prior to his murder. Nelson's main handler during the relevant period, A/13, stated to Stevens I officers in December 1990 that:

*"I know that targeting did take place without the knowledge of Nelson and therefore unbeknown to us, and a murder did take place. By this I am referring to the murder of Patrick Finucane."*⁷⁵

21.164 A/05 stated in his 1993 interview that he had "*no recollection of anything about Finucane being reported*"⁷⁶ prior to the murder. When I met him during this Review, A/05 stated emphatically that:

*"I wish to state again that me and the FRU had no prior knowledge of any threat to the life of Patrick Finucane. Had we done so, we would have passed it to the RUC. This is clear from the pattern of reporting found in the MISRs [Military Intelligence Source Reports] and CFs in your possession. We did not know of the threat because Brian Nelson did not tell us."*⁷⁷

The FRU documentary record

21.165 The FRU CFs and Telephone Contact Forms (TCFs) prior to the murder included no reference to the UDA's targeting of Patrick Finucane. However, the documentation relating to the period after the murder is none the less significant and must be analysed to establish whether it could indicate that Nelson might have provided intelligence to the FRU prior to the murder.

The TCF dated 13 February

21.166 The first documented discussion of the Patrick Finucane murder can be found in the TCF dated 13 February 1989. Nelson phoned his handler, A/13, at 10.20am in a call lasting only a minute. The exchange on the murder of Mr Finucane went as follows:

"S [Nelson]: It was ours, this morning.

H [A/13]: Was it?

S: Yes

*H: Ok thanks."*⁷⁸

⁷⁵ A/13, statement to Stevens I Investigation, 6 December 1990

⁷⁶ A/05, statement to Stevens II Investigation, 2 August 1993

⁷⁷ Transcript of meeting with A/05, 7 September 2012, p. 78

⁷⁸ TCF 13 February 1989 [see Volume II, pp. 8–9]

21.167 The handler commented that Nelson was referring to the murder of Patrick Finucane. The Officer Commanding of the FRU's East Detachment (East Det FRU), A/01, added that this intelligence was "*passed to Source Unit before it was claimed on Downtown Radio*". I have released the original TCF of 13 February 1989 alongside my Report.

21.168 Justice Cory considered this exchange significant, observing that:

*"On 13 February 1989, the morning after the murder, Nelson telephoned his handler and said: "It was ours this morning". From this cryptic comment, the handler was able to divine, with apparent certainty, that Nelson was referring to the murder of Patrick Finucane the night before. This might suggest that the handler did have some background information, and that the telephone call on the 13th was not the first time the Patrick Finucane case was discussed."*⁷⁹

21.169 However, the MoD questioned this interpretation of the TCF in its submission to my Review. The MoD stated that:

*"... the murder of Mr Finucane early on the previous evening, obviously by Loyalist terrorists, would have been known to FRU by then and would have been raised immediately with their prime source of intelligence on the UDA/UFF."*⁸⁰

21.170 Unlike Justice Cory, I do not believe that any firm inferences can be drawn from the TCF. It is true that the conversation is somewhat cryptic, but all such telephone conversations with agents were generally conducted in guarded terms for security reasons. The murder of Patrick Finucane was leading news in Northern Ireland by the morning of 13 February and it is not unreasonable to think that many observers would have believed loyalist paramilitaries to be the main suspects for the murder. The FRU handler might well have assumed that Nelson was talking about the murder of Patrick Finucane because no other sectarian murder had taken place to which he could possibly have been referring.

Subsequent Contact Forms

21.171 As I have already outlined, the CF dated 14 February 1989 recorded Nelson's story of being tricked into handing over a photograph of Mr Finucane to L/28 and Kenneth Barrett on 7 February 1989. The CF noted that, during a discussion about the murder, L/28 told Nelson:

*"... that he was not told about the operation because he did not need to know."*⁸¹

21.172 The CF does not suggest that the FRU handlers disbelieved Nelson's account of the photograph incident nor that they questioned whether Nelson had really been kept out of the loop with regard to the targeting of Patrick Finucane. In fact, the

⁷⁹ Cory Collusion Inquiry Report, p. 100, para 1.284(i)

⁸⁰ MoD submission to the Review, p. 2

⁸¹ CF 14 February 1989 [see Volume II, pp. 10–15]

CF suggested that Nelson's reported ignorance of the targeting of Mr Finucane was itself the source of serious concern to his handlers. The CF included the comment that Nelson:

"... seems to be left out of major operations only finding out about them after the event. 6137 was unaware of the targeting of Pat Finucane [sic] and [L/28] wanted it kept this way."[Emphasis added]⁸²

21.173 In addition to recording the intelligence received from Nelson, the FRU CFs typically also included a 'Case Development' section which could deal with the agent's welfare and overall performance. The Case Development section of this CF recommended a 'boss meet' with Nelson to encourage him to become more active within L/28's team.

21.174 The 'boss meet' was a tactic used by the intelligence agencies when an agent's performance needed to be significantly improved or the agent needed to be reprimanded. The handler's suggestion of a 'boss meet' therefore suggests a significant degree of disquiet on the part of the FRU that Nelson had been kept out of the loop with regard to the targeting of Patrick Finucane. Later CFs show that Nelson had been tasked to work specifically on his relationship with L/28.⁸³

21.175 The CF also recorded that Nelson was admonished for having phoned on Monday 13 February confirming that the UFF had carried out the murder without actually knowing that this was the case. The CF noted:

*"Handler realised from the meeting with 6137 that he was not told who had committed the murder until after telephoning handler. Up until that point he only assumed, although rightly, that it was the UFF. 6137 has been told that he should only report facts and not what he thinks are the facts."*⁸⁴

21.176 As I set out earlier in this chapter, I am satisfied that Nelson knew that the West Belfast UDA had carried out the murder because he had been directly involved in targeting Patrick Finucane prior to the attack. However, the comments made by the handler suggest that the FRU believed that Nelson had initially been speculating on responsibility for the murder. The handler's comment thus reinforces the overall impression provided by this CF that the FRU believed Nelson's claim at the time to have been kept out of the loop with regard to the targeting of Patrick Finucane. This impression is powerfully reinforced by the handler's apparent criticism of Nelson for allowing himself to be kept out of the loop.

The CF dated 22 February 1989

21.177 As outlined above, the CF dated 22 February 1989 recorded Nelson's account of the 15 February meeting of UDA military commanders. According to the CF, Nelson reported that those present at the meeting discussed Operation Snowball, which was a UDA plan to murder members of PIRA/IPLO who were believed to be targeting loyalists.

⁸² Ibid.

⁸³ CF 2 March 1989, 'Case Development', Item 8

⁸⁴ CF 14 February 1989 [see Volume II, pp. 10–15]

21.178 In stark contrast, RUC intelligence indicated that the murder of Patrick Finucane was the “*main topic of discussion*” at the meeting of 15 February.⁸⁵ The absence in the CF of any record of a discussion of Mr Finucane’s murder on 15 February suggests to me that Nelson may again have been concealing important intelligence from his handlers.

References to a ‘P card’ on Patrick Finucane

21.179 Two CFs post-dating the murder included references to the existence of a ‘P card’ on Patrick Finucane. These two references have been outlined in detail earlier in this chapter. In summary, they are as follows:

- A CF dated 2 March included the comment: “*The information regarding the meeting at the [AB] Hotel [between Patrick Finucane and Gerry Adams] was on Finucane’s personality card. It is not known from whom the information originated.*”⁸⁶
- A CF from 9 March included the comment: “*6137 reports that this information [the AB Hotel meeting] came from [L/28] after the assassination and was on Finucane’s personality card.*”⁸⁷

21.180 Both CFs were produced by A/13. The CFs demonstrated the FRU’s awareness that Nelson had access to a ‘P card’ on Patrick Finucane shortly after the murder.

21.181 Nelson’s FRU handlers were well aware that Nelson’s job as a UDA Intelligence Officer was to prepare and distribute ‘P cards’. The admission by Nelson that he had access to such a card should, therefore, have immediately raised the question as to whether he had been involved at some stage prior to the murder in producing and distributing this ‘P card’. The CF dated 9 March suggested that the FRU may have asked for some clarification around how Nelson received the information about the AB Hotel meeting, but the handlers do not appear to have ever queried whether he produced the ‘P card’ or how he got access to it.

21.182 I believe that the references to a ‘P card’ should have demonstrated to the FRU that Nelson was likely to have been involved at some stage in gathering and distributing targeting information on Patrick Finucane. No concern at all was expressed by the handlers that Nelson may have been involved in the production of such a ‘P card’ without appearing to have informed them. This conduct is consistent with the pattern I outlined in Chapter 7, in which the FRU tacitly approved Nelson’s dissemination of targeting material on republicans without even being informed of the names of those whose details were being disseminated. However, the evidence in this regard is insufficient to infer that the FRU’s failure to question Nelson further about the ‘P card’ indicates that they had prior knowledge of the threat to Patrick Finucane’s life.

⁸⁵ RUC SB50, 16 February 1989 [see Volume II, p. 99]

⁸⁶ CF 2 March 1989 [see Volume II, pp. 19–21]

⁸⁷ CF 9 March 1989 [see Volume II, pp. 22–24]

The CF dated 7 April 1989

21.183 Despite Nelson’s admission that he had access to a ‘P card’, a later CF implied that the FRU continued to believe his denials of any knowledge of the targeting of Patrick Finucane. The CF dated 7 April 1989 positively asserted that Nelson did not know about the targeting. The CF referred to the relationship between L/28 and Nelson as follows:

“6137 has always maintained that he is a close friend of [L/28] and that [L/28] trusts 6137. Handler believes this to an extent but there are still operational matters which [L/28] does not discuss with 6137. One example which springs to mind was the shooting of Pat Finucane which 6137 knew nothing about, even though he supplied a photograph.” [Emphasis added]⁸⁸

21.184 This reference again suggests that the FRU continued to believe Nelson’s account that L/28 had excluded him from the circle of knowledge regarding the targeting of Patrick Finucane and had even gone so far as to trick him into handing over a photograph of Mr Finucane.

References to Patrick Finucane as a member of PIRA

21.185 Justice Cory outlined in his Report his belief that the FRU may have perceived Patrick Finucane to be a member of PIRA. His report included the following findings on this issue:

“... the documents do suggest that FRU and the UDA may have perceived [Patrick Finucane] as being affiliated with PIRA. The following references to Patrick Finucane appear in FRU documents “Patrick Finucane, RC, 21 Mar 49(D) PIRA P2327”. ‘PIRA’ indicates that FRU associated Patrick Finucane with the Provisional wing of the IRA. ‘P2327’ is a file reference number, indicating that FRU had a file on Patrick Finucane or a ‘P’ card, or both. Neither such a file nor such a ‘P’ card would appear to exist now.”⁸⁹

21.186 This interpretation of the evidence has, however, been strongly refuted by A/05 in his evidence to my Review. A/05 stated that the ‘trace’ appearing next to an individual’s name was based on the records from the Army’s All-Source computer and not FRU records.⁹⁰ He also denied that the documents referred to a FRU ‘P card’ on Patrick Finucane. He stated that:

“... the number p2327 at the end of the trace does not refer to any FRU personality card, but a reference to an HQNI [Headquarters Northern Ireland] file ... So it was not a FRU personality card, it was not a FRU file.”⁹¹

21.187 Having examined this matter, I accept that the ‘traces’ included at the end of CFs were based on Army computer records and not the interpretation of FRU handlers as to whether an individual was a member of a paramilitary organisation. It is also worth noting that the computer system for adding traces appears to have

⁸⁸ CF 7 April 1989, Additional Information, Item 8 [see Volume II, p. 25–26]

⁸⁹ Cory Collusion Inquiry Report, p. 41, para 1.110

⁹⁰ A/05, written submission to the Review

⁹¹ Transcript of meeting with A/05, 7 September 2012, p. 64

been somewhat variable in its results. Three separate CFs include the word 'PIRA' next to Patrick Finucane's name, but the CF dated 9 March 1989 included the annotation 'NST' (No Subversive Trace) next to Mr Finucane's name.

21.188 A/05 argued strongly against what he felt was the implication in the Stevens and Cory Investigations that the FRU had a motive to ignore any threat to Patrick Finucane's life because they believed him to be an important PIRA figure. He stated, convincingly in my view, that:

*"We knew who was on the Provisional IRA Army Council, Northern Command and Belfast Brigade. Patrick Finucane did not figure. That is precisely why Stevens found no evidence in the intelligence files to suggest otherwise. The fact that HQNI had traced Patrick Finucane as PIRA was not as a result of any information we (FRU) had provided. Traces came from a large database, often originated from many years before, and may have been based simply and indeed wrongly on association with terrorist members ... I repeat that we did not consider Patrick Finucane to be an important PIRA figure."*⁹²

21.189 In the absence of any evidence in Army files to support the notion that Patrick Finucane was a member of PIRA, the word 'PIRA' should not have appeared next to his name in the documents. I do, however, accept the submission made to me that these references were included only as a result of an administrative reference received from the Army's computer system and not because of the views held by FRU handlers on Patrick Finucane. In any event, I do not believe that these references in the documents provide any evidence to suggest that the FRU had advance knowledge that Mr Finucane was being targeted by the UDA.

The significance of the FRU documentary record

21.190 I should note at this stage that I consider the FRU CFs to be critical sources of evidence regarding Nelson's activities. The CFs are exceptionally detailed contemporaneous documents recording a wealth of intelligence passed by Nelson to his handlers. Although the CFs were withheld from Sir John Stevens for a considerable period of time, I have not found any evidence to suggest that they were doctored to remove incriminating material. Indeed, as Chapter 7 demonstrated, many of the CFs contained material that was highly damaging to the FRU, including direct admissions that targeting information was passed to Nelson by his handlers. In these circumstances, it seems inconceivable that there was a conspiracy to amend the content of the CFs, since this damaging material would surely have been altered or deleted.

The allegations made by Ian Hurst

21.191 Ian Hurst was an agent-handler working in the FRU's West Detachment at the time of Patrick Finucane's murder. In interviews with the Stevens III team held on 22 and 27 June 2000, and in a written statement dated 7 July 2000, Hurst made a number of allegations regarding the assassination of Patrick Finucane.

⁹² Ibid., p. 79

These were based on the following alleged conversations held with members of East Det FRU:

- (i) conversations with Nelson's handler, A/13, at a bar in Ashford, Kent and, in particular, a discussion with A/13, A/09 and possibly A/17, at an official function in the Sergeants' Mess during June 1989; and
- (ii) conversations with A/04 in the house they shared in County Fermanagh in 1990.

21.192 In the following two exchanges between Hurst and Detective Superintendent S/02, Hurst claimed that the FRU had foreknowledge of the targeting of Patrick Finucane:

"Hurst: There was ... intelligence pre the actual attack ... I was told by A/04 that that information had been passed to the RUC ..."

S/02: ... do you know as a fact or did you take it that that information was supplied to the FRU by Nelson.

Hurst: Oh that, without a shadow of a doubt that is the only, that was the only conduit.

...

S/02: But are you saying that within the FRU there was knowledge that Finucane was a target?

*Hurst: Oh yeah that was undoubted that."*⁹³

21.193 In his statement Hurst was to clarify this claim:

*"My clear understanding [from conversations with A/04] was that there was pre-emptive intelligence in regards to Finucane on two occasions and that there is little doubt that Nelson had told FRU that Finucane was being targeted. I believe that the RUC were informed on the first occasion. I don't know why the first targeting did not actually take place as I recollect it was the most serious of the threats but the second was allowed to proceed."*⁹⁴

21.194 Hurst further claimed that the FRU aided the targeting of Patrick Finucane by providing Nelson with a photograph of him:

*"I am 80/90% certain that [A/04] said there was a photograph of Finucane passed to Nelson by FRU of Finucane."*⁹⁵

In relation to the murder he claimed that A/13 was:

*"... happy and was content with ... [the] role that ... [was] played in regards handling Nelson and basically ... [A/13] was happy because Finucane was up to his neck in it [republicanism]."*⁹⁶

⁹³ Interview of Ian Hurst by Stevens III Investigation, 22 June 2000, pp. 13–14

⁹⁴ Ian Hurst, statement to Stevens III Investigation, 7 July 2000, pp. 5–6

⁹⁵ *Ibid.*, p. 5

⁹⁶ Interview of Ian Hurst by Stevens III Investigation, 22 June 2000, p. 10

21.195 In these alleged views, A/13 appears to have enjoyed the support of the Commanding Officer:

“[A/13] said quite clearly that [A/05] ... held the view that he was content with the case and it was ‘bomb proof’ and being overseen by political masters.”⁹⁷

21.196 Hurst also claimed that CFs had been doctored:

“In January 1990 I remember [A/04] explaining to me that in relation to Nelson he would be spending several months sorting the CFs out as there were a few problems and there needed to be a few subtle changes made to the CFs.”[Emphasis added]⁹⁸

21.197 In his statement Hurst said that A/04 “*would be required to travel from Fermanagh to Lisburn for this reason*”.⁹⁹

Consideration of Hurst’s allegations

21.198 In 2000 at least, Hurst clearly had mixed feelings towards the FRU, stating that he found John Ware’s articles on the subject “*unbalanced*”. Although he presented himself as a whistle-blower aiming to expose State wrongdoing, he was not, therefore, universally critical of his former employers.

21.199 However, Hurst himself never worked in East Det FRU, in which Nelson’s handlers were based. Although Hurst’s accounts of the comments of A/13 are of particular interest, as the handler was clearly in a position to know in detail the FRU’s knowledge of the targeting of Patrick Finucane, contact between Nelson and both A/09 and A/04 appears to have been limited to a single telephone call. What is more, when questioned by the Stevens III Investigation, A/04 denied that he ever discussed the murder of Mr Finucane with Hurst.

21.200 I have seen no evidence to support Hurst’s claim that a FRU handler would doctor CFs, which I have found throughout my Review to be a thorough and accurate record of FRU intelligence-gathering. As I have already indicated in Chapter 7, the existing FRU CFs contained seriously damaging material about what the handlers and their superiors knew about Nelson’s targeting activities. If there had been a plan to sanitise the CFs, I would not have expected this material to have survived.

21.201 I must also consider Hurst’s wider credibility. When speaking to the Lawyers Committee for Human Rights he said that there had been three attempts to kill Patrick Finucane within the space of six months. Two of these attempts were supposedly prevented, whilst the third resulted in Patrick Finucane’s death.¹⁰⁰ Hurst apparently told the Committee that he had seen FRU CFs outlining the first two murder plans. Having conducted an extensive review of the available evidence, I am satisfied that there is simply no substance to these claims.

⁹⁷ Ian Hurst, statement to Stevens III Investigation, 7 July 2000, p. 6

⁹⁸ *Ibid.*, p. 8

⁹⁹ *Ibid.*

¹⁰⁰ Lawyers Committee for Human Rights, *Beyond Collusion*, p. 52

21.202 Further, I note that in relation to evidence provided to the Bloody Sunday Inquiry relating to surveillance reports which Hurst said referred to the movements of Martin McGuinness on that day, the Inquiry Report concluded that:

“We are of the view that Martin Ingram [Ian Hurst] to a substantial degree exaggerated the importance of his role at HQNI and his level of knowledge and access to intelligence.”¹⁰¹

21.203 This evidence that Hurst had previously exaggerated his level of knowledge of such events must invariably lead me to treat any allegations made by him with caution.

21.204 In summary, I am left in significant doubt as to whether Ian Hurst was in a position to have the degree of detailed knowledge of the handling of Brian Nelson that he claimed to possess. I am satisfied that there is no substance whatsoever to his allegation of three separate conspiracies within six months to murder Patrick Finucane. Given his general lack of credibility, I do not attach any weight to his allegations with respect to the FRU and the murder of Mr Finucane.

Allegations that the FRU provided information to Nelson on Patrick Finucane

21.205 I note that there have been allegations that the FRU provided information to Nelson regarding Patrick Finucane. Media articles have alleged that FRU handlers provided Nelson with maps and photographs and took part in ‘recces’ of Mr Finucane’s home.¹⁰² Having reviewed all the available evidence, I have found no material at all to support this allegation.

21.206 As an aside, I note that both the FRU and the RUC appear to have been unaware of Patrick Finucane’s correct home address at the time of the murder. All FRU CFs and MISRs naming Mr Finucane prior to his murder noted incorrectly that his address was on Dungloe Crescent. These documents outlined Patrick Finucane’s attendance at social events alongside PIRA figures, as well as a report that he was willing to provide advice to PIRA on the impact of new laws relating to the right to silence.¹⁰³ Similarly, the RUC SB briefing on Patrick Finucane provided to Douglas Hogg MP in January 1989 incorrectly recorded Mr Finucane’s home address as being on Dungloe Crescent.¹⁰⁴

Overview

21.207 As I noted earlier in this chapter, I am satisfied that Brian Nelson played a direct role in the conspiracy to murder Patrick Finucane. The question as to whether Nelson told his FRU handlers about the targeting of Mr Finucane is, however, in many respects a more complex and challenging one to answer.

¹⁰¹ The Rt Hon The Lord Saville of Newdigate, *Report of the Bloody Sunday Inquiry*, Vol. VIII, para 147.270

¹⁰² See for example, Greg Harkin, *Sunday People*, 16 June 2002

¹⁰³ MISR 27 October 1988 on Patrick Finucane’s SB file

¹⁰⁴ RUC profile on Patrick Finucane [see Volume II, pp. 209–213]

- 21.208 Having discounted the accounts provided by Ian Hurst, the only potentially credible evidence that the FRU did know in advance that Patrick Finucane was a target is to be found in Nelson's 1990 statement and 'journal' account. I must, however, consider these sources in the light of my own finding that, in both accounts, Nelson concealed the true extent of his involvement in the conspiracy to murder Patrick Finucane. In this context I do not believe that much weight can be placed on his claim to have told his handlers about the targeting of Mr Finucane.
- 21.209 Having considered and analysed a great deal more evidence than was available to Justice Cory, I must respectfully differ with inferences he draws in relation to the FRU's prior knowledge of the targeting of Patrick Finucane. I am firmly of the view that in this instance Nelson withheld critical information from his handlers.
- 21.210 In my view, the decisive evidence on this question is to be found in the contemporaneous FRU CFs. The CFs appear to show that Nelson did not pass on any information prior to the murder to suggest that the UDA were targeting Patrick Finucane. Furthermore, after the murder Nelson told his handlers the same fictitious story about the McGeown/Finucane photograph that he was to maintain subsequently in his 1990 statement and in his 'journal' account.
- 21.211 Critically, in my view, the CFs show that only two days after the murder the FRU handlers were concerned that Nelson had been apparently kept out of the loop on the targeting of Patrick Finucane and even went so far as to propose a 'boss meet' during which Nelson would be encouraged to become more involved in L/28's team. Had the FRU known that Nelson had been involved in the targeting to the extent that I believe he then was, then they would surely not have been concerned about his supposed ignorance of UFF activity. Nor would the FRU handlers have believed his implausible story that L/28 had tricked him into handing over a photograph of Patrick Finucane.
- 21.212 In my view, the proposition that Nelson told his handlers about the targeting of Patrick Finucane cannot be persuasively sustained in the light of the evidence provided by the contemporaneous intelligence records. For this proposition to hold, one must believe that the references in the FRU documents to Nelson's ignorance of the targeting of Patrick Finucane were deliberately fabricated. I have seen no reliable evidence to suggest that the CFs were fabricated and, as I have outlined above, the fact that a number of these documents included material that was highly damaging to the FRU leads me to the conclusion that they are in fact an accurate representation of the agent-handler's records.
- 21.213 I must also consider the significance of this specific conclusion for my Review. I am conscious that some might contend that my finding that Nelson appeared to have kept his FRU handlers in the dark over the targeting of Patrick Finucane might imply that I have effectively absolved the FRU of any criticism in relation to this murder. That is not the case.
- 21.214 To consider the significance of this finding one must position it within my overall conclusions as to the role and handling of Nelson as a FRU agent. By February 1989, Nelson had been tasked to target republican figures and his actions were

leading to people being attacked; the FRU had known since at least June 1988 that he was willing to conceal information from his handlers relating to ‘justifiable’ conspiracies; and the RUC SB were not generally exploiting his intelligence to prevent attacks.

21.215 The very nature of Nelson’s re-recruitment from Germany and his subsequent handling leads me to the conclusion that by 1989 Nelson was, to all intents and purposes, a direct State employee. The FRU must, therefore, bear a degree of responsibility for whatever targeting activity Nelson carried out in his dual role as a UDA Intelligence Officer and a FRU agent during this period, whether or not in a specific case he shared with his handlers the full state of his knowledge. As A/05 himself put it at Nelson’s trial:

“... whatever [Nelson] may or may not have done throughout his time with the UDA since 1987, he would not have done it had we in FRU not reinstated him in the UDA in the first place.”¹⁰⁵

¹⁰⁵ Trial transcript, *R v Brian Nelson*, 29 January 1992, A/05 evidence in mitigation

Chapter 22: William Stobie and the murder of Patrick Finucane

- 22.1 In Chapter 10 I outlined the background to the recruitment and handling of William Stobie by the Royal Ulster Constabulary Special Branch (RUC SB). In this chapter, I consider Stobie's involvement in the murder of Patrick Finucane.
- 22.2 I am conscious that William Stobie was never convicted of any offence in relation to the murder of Patrick Finucane. Although the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) believed that the evidence against Stobie passed the Test for Prosecution, his trial collapsed in 2001 after journalist Neil Mulholland refused to testify on medical grounds and a verdict of not guilty was entered. I have also taken into account the fact that Stobie is deceased, so this Review has not benefited from any representations that he may have made. It is, however, important that I produce an account of the involvement that I believe he may have had in the murder. This account, by its nature, cannot be taken to establish criminal or civil liability.

The Special Branch documentary record

- 22.3 The Stevens III Investigation received a significant amount of RUC SB documentation in relation to William Stobie. In addition to the normal SB50s recording Stobie's intelligence, the Stevens III officers received contemporaneous handwritten debrief forms detailing Stobie's meetings with his handlers.
- 22.4 It is worth recording the circumstances in which the Stevens III Investigation received these documents. The debrief forms were discovered by Detective Chief Inspector (D/CI) R/11 in his desk drawer in December 2000 and subsequently handed to the Stevens III Investigation team.
- 22.5 In view of the importance of these debrief forms to the work of my Review, I have declassified and published these documents alongside my Report.
- 22.6 The critical issue to consider in relation to Stobie's involvement in the murder relates to his alleged provision of a 9mm Browning pistol to the Ulster Defence Association (UDA) hit team. As I noted in Chapter 12, one of the weapons used to murder Patrick Finucane was a 9mm pistol stolen from Palace Barracks in 1987.
- 22.7 The written SB debrief form dated 30 January 1989 provides the context to Stobie's possession of UDA weapons prior to the murder of Patrick Finucane. He told his handlers that L/15 had given him a 9mm Browning pistol to look after. Stobie retained this weapon in addition to the sub-machine gun, Heckler & Koch (H&K) pistol and the 9mm Browning he already had.¹ Although the serial numbers of the guns are not recorded, this documentary evidence demonstrates that, two

¹RUC SB debrief form, 30 January 1989 [see Volume II, pp. 81–82]

weeks prior to the murder of Patrick Finucane, Stobie was in possession of two 9mm Browning pistols in his role as a UDA Quartermaster.

22.8 On 7 February 1989, five days before the murder of Patrick Finucane, Stobie attended a debrief with his handlers. He informed them that he had been in contact with L/03 at the weekly UDA meeting the previous evening. At around 6.30pm L/03 had asked him for a 9mm pistol. Stobie left the UDA meeting and returned with a 9mm H&K pistol, without its magazine and rounds, and gave this weapon to L/03.

22.9 Stobie went on to explain that later that same evening, at 11.30pm, L/20 had told him that “*they had a hit planned on a top PIRA man*”. No comment was made on the debrief form as to the identity of the “*top PIRA man*”. L/20 told Stobie that he didn’t like the small H&K. He instructed Stobie to get him a 9mm Browning pistol.² L/20 told Stobie that he would “*require the gun for either Thursday or Friday of this week (9th & 10th)*”. Stobie stated that it was most likely that L/33 and L/20 would then move with the gun to the Woodside area prior to going on the operation. Stobie suggested specific locations. The debrief form stated that:

“Source has been tasked to delay handing over 9mm Browning until he contacts handler accordingly.”³

22.10 The next contact between Stobie and his RUC handlers appears to have been a telephone call made by Stobie on 9 February 1989 at 8.55pm. A debrief form provided a record of this telephone call. The form recorded Stobie’s message to his handlers as, “*Tell them the parcel was not delivered to-night, ask the boys to ring me at midnight.*”⁴ A note underneath connects this to the debrief form dated 7 February. A comment in the margin noted that Detective Constable (DC) R/08 was informed.

22.11 In later interviews R/08, one of Stobie’s handlers, was unable to recall when he received this message. He was on duty from 3.00pm to 11.00pm on 9 February. DC R/08 said that, “*I cannot recall if I contacted Stobie at midnight.*”⁵

22.12 I find it extremely surprising that R/08 cannot recall whether or not he had a conversation with Stobie at midnight. This is particularly so in the context of what R/08 concedes was a “*serious threat to life*” and indeed, the murder that was to follow shortly after. He explained that his journal contained no reference to a message from Stobie or of him phoning Stobie back. Another of Stobie’s handlers, R/06, explained that he could not recall being notified of this message by the RUC Source Unit or anybody else.⁶

22.13 The SB files contain no reference to any further contact between Stobie and his handlers prior to the murder. The next debrief form on 15 February merely recorded that:

² RUC SB debrief form, 7 February 1989 [see Volume II, pp. 83–85]

³ Ibid.

⁴ RUC SB debrief form, 9 February 1989 [see Volume II, p. 87]

⁵ DC R/08, statement to Stevens III Investigation, 6 March 2000, p. 11

⁶ DC R/06, statement to Stevens III Investigation, 21 October 1999, p. 4

“In respect of the 9mm Browning requested by [L/20] (see debrief of 7/2/89). No further contact was made with source regarding same.”⁷

- 22.14 In view of the telephone call made by Stobie on 9 February, this reference in the debrief form is unsatisfactory. The clear inference of Stobie’s call on 9 February is that he must have had some further contact with the UDA regarding the weapon.

Was any action taken as a result of Stobie’s pre-murder intelligence?

- 22.15 William Stobie’s Special Branch handlers were questioned by Stevens III officers as to whether any action was taken as a result of the intelligence provided by Stobie prior to the murder. DC R/08 stated, in an interview with Stevens III officers that he had no knowledge of any police action being taken as a result of this information.⁸ DC R/05, who is now deceased, simply stated that, *“this information was passed on to our Source Unit”*.⁹
- 22.16 R/06 was providing security cover for this meeting. He stated that no overt or covert operations were mounted with his knowledge as a result of the information provided by Stobie. He also noted that in these circumstances he *“would expect to be aware of such an operation based on information supplied by an agent I will meet”*.¹⁰
- 22.17 Stobie’s handlers disseminated his intelligence to the RUC Source Unit and Tasking and Co-ordinating Group (TCG). The signatures on the original handwritten debrief form dated 7 February 1989 indicate that the officers receiving this intelligence included a Chief Inspector in the TCG and an unidentified individual in the RUC Source Unit. When interviewed by the Stevens III Investigation, no officer recalled any action being taken as a result of this intelligence. The annotations in the Daily Intelligence Book also demonstrate that Detective Superintendent (D/Supt) R/24 in the TCG was informed of the intelligence.¹¹
- 22.18 I have examined TCG records, the RUC Threat Book, the RUC Daily Intelligence Book and other RUC records for any note of the action taken as a result of Stobie’s intelligence. There is no indication in any of the documentation to suggest that the RUC took any action as a result of the intelligence about an imminent attack provided by Stobie. Given the handlers’ apparent lack of knowledge of any resulting action, I must conclude that no action was taken as a result of Stobie’s intelligence.
- 22.19 This is extremely surprising given the high-value nature of the intelligence that had been provided by Stobie to his handlers. By the evening of 9 February, the SB had the following information:

⁷ RUC SB debrief form, 15 February 1989 [see Volume II, pp. 89–92]

⁸ DC R/08, statement to Stevens III Investigation, 6 March 2000, p. 11

⁹ DC R/05, statement to Stevens I Investigation, 10 December 1990, p. 3

¹⁰ DC R/06, statement to Stevens III Investigation, 21 October 1999, p. 3

¹¹ Extract from RUC SB Daily Intelligence Book, 7 February 1989 [see Volume II, p. 86]

- An imminent hit was planned on a “*top PIRA man*”.
- L/20 was a key figure in the operation.
- Stobie was storing two 9mm Browning pistols along with some other weapons for the UDA.
- Stobie had supplied an H&K pistol for the hit, and had been asked to hand over a 9mm Browning pistol.
- DC R/08 had been informed, via a message from a telephone call, that the gun was not handed over on 9 February and that Stobie wished to speak to his handler again.

22.20 It is also important to note that some corroborative intelligence had been received on 7 February which complemented Stobie’s reporting that the UDA were planning a high-profile attack. This intelligence does not appear to have been transferred into an SB50. The only record of the intelligence has been found in the Daily Intelligence Book. The entry in the Book recorded the following information:

“UDA active with targeting but only have 6-12 good members. Highfield UDA may be working on a big job.”¹²

22.21 This intelligence was somewhat vague but would have provided some support for the intelligence being provided on the same day by Stobie. As there is no full record of the intelligence that was received, it is not clear whether a greater degree of detail was provided to the RUC SB but not recorded in the Daily Intelligence Book. However, even judging the intelligence as it was recorded in the Intelligence Book, the RUC SB would have known at the time that loyalists such as L/03 and L/20 would have been referred to as members of the “*Highfield UDA*”.

22.22 The intelligence picture as a whole was certainly sufficient for the RUC to have considered a range of options to attempt to prevent the UDA’s planned attack. Analysis of the Daily Intelligence Book and the Threat Book shows the RUC regularly and successfully taking action to prevent attacks on the basis of vaguer intelligence than the information provided by Stobie in the week preceding Patrick Finucane’s murder. The RUC could have considered a range of options to seek to thwart the attack, including, for example, placing the UDA suspects under surveillance, taking action in relation to the weapons in Stobie’s possession or pre-emptively arresting some of those plotting the attack, such as L/20.

22.23 It was also entirely foreseeable that, after the 9 February telephone call, Stobie would hand over a Browning pistol to other UDA members. The lack of records, or any recollection on the part of the handler, suggest that the SB may not have returned Stobie’s call. If the SB did indeed decide not to return Stobie’s call, then they must have known that there was a reasonable prospect that Stobie would decide to hand over the weapon, having unsuccessfully sought further guidance from his handlers.

¹² Ibid.

Stobie's accounts of events following the telephone call

22.24 William Stobie provided a number of different accounts of the sequence of events following his telephone call to the SB on 9 February. I consider these accounts in turn below.

Stobie's account to Neil Mulholland

22.25 On 6 June 1990 Stobie contacted Neil Mulholland, a journalist at the *Sunday Life* newspaper in Belfast. Stobie told Mulholland that he had information about the activities of the SB. A meeting was arranged for later that day. When they met, Stobie claimed that he had been working as an informant but that the SB had betrayed him and put his life in danger.

22.26 Stobie spoke at length to Mulholland about his involvement in the UDA and with the SB. Mulholland felt that Stobie chose to speak to him because he feared his life was in danger from the UDA. In his signed statement to the Stevens III Investigation, Mulholland explained that:

*"Stobie told me that he didn't want me to write a story about this but if he was 'whacked' then he wanted me to tell the whole story so that the full truth would be revealed."*¹³

22.27 Stobie provided Mulholland with an account of his involvement in Patrick Finucane's murder. Stobie said that he had attended a meeting in a UDA club about targets and that Mr Finucane's name had come up again and again. Mulholland recounted how Stobie:

*"... said that 'Rece' [sic] reports were discussed about his [Finucane's] house and intelligence [Nelson] indicated that he would know when would be the best time for a clean job."*¹⁴

22.28 Stobie said that weapons were discussed and that it was decided that the best guns for the job would be a 9mm H&K and a Browning pistol. He claimed that some time later, after this 'talk through', he was told to bring the H&K and the Browning to the UDA club at 5.00pm.¹⁵

22.29 Stobie told Mulholland that he took the guns to the club, handed them to the local Commander in the back room, finished his pint and went home. He claimed that he rang his handlers as soon as he returned home and informed them that he had handed the weapons to L/03. He said that the target was almost certainly Patrick Finucane. He also stated that he had made an arrangement to collect the guns the following day at a given address.¹⁶ Stobie said he was expecting the SB to intervene.

¹³ Neil Anthony Mulholland, statement to Stevens III Investigation, 3 June 1999, p. 12 [see Volume II, pp. 117–132]

¹⁴ *Ibid.*, p. 8

¹⁵ Mulholland's 1999 statement noted that Lyttle had told Stobie to bring the weapons to the club. However, in 1990 it appears that Mulholland told the police that L/03 had told Stobie to deliver the guns. Considering the evidence as a whole, it seems far more likely that Stobie had referred to L/03, not Lyttle.

¹⁶ Neil Anthony Mulholland, statement to Stevens III Investigation, 3 June 1999, p. 8 [see Volume II, pp. 117–132]

22.30 Stobie told Mulholland that the day after the shooting he went to pick up the guns from L/03. He also claimed to have cut ties with the SB because of Mr Finucane's murder and that he had no contact with them for six months until being stopped at a roadblock.

The reliability of Stobie's statement to Mulholland

22.31 I believe that in a number of respects Stobie's account to Neil Mulholland is of dubious reliability. Stobie's claim to have been involved in a number of targeting meetings relating to Patrick Finucane is, on the face of it, unlikely given his role in the UDA at the time. He became aware of UDA targets on a single occasion in August 1988 but was generally not involved in such targeting meetings.

22.32 The Force Research Unit (FRU) Contact Forms (CFs) do not record any instance of Stobie attending a targeting meeting with Nelson during the period 1988–89. The knowledge of the targeting of Patrick Finucane appears to have been kept to a reasonably tight circle within the UDA and it would seem unlikely that a comparatively minor figure such as Stobie would have been brought within that group.

22.33 I should also note that Kenneth Barrett was generally dismissive of Stobie's involvement in the murder plot (in contrast to his statements in relation to Brian Nelson's involvement). In his 2006 statement, Barrett said that Stobie "*had nothing to do with Finucane, he took no part*".¹⁷

22.34 At complete variance with what Stobie said to Mulholland are his many later accounts in which he did not claim to have known that Patrick Finucane was a UDA target. Consequently, in the light of my doubts as to whether Stobie would ever have been involved in a number of targeting meetings, I am inclined to treat his claim to Mulholland that he knew Patrick Finucane was the target with great caution.

22.35 My view in this regard is reinforced by the fact that aspects of Stobie's account to Mulholland are demonstrably untrue. Stobie's claim that he had severed contact with the SB for six months because of his disgust at their lack of action to prevent Patrick Finucane's murder is inaccurate. The SB records show that, in the two months after his release from a short custodial sentence in April 1989, Stobie did meet with his SB handlers.

Stobie's 1990 interview in RUC Castlereagh

22.36 Stobie was arrested and interviewed on 13 September 1990 at RUC Castlereagh after Neil Mulholland had approached the police regarding Stobie's confessions to him.

22.37 When interviewed, Stobie denied any involvement in the Brian Lambert or Patrick Finucane murders. He stated that he "*was not involved*".¹⁸ When it was put to Stobie that the police believed that he supplied the weapons used in the murder of Patrick Finucane, Stobie replied, "*I did not*".¹⁹

¹⁷ Kenneth Barrett, statement to Stevens III Investigation, 28 April 2006 [see Volume II, pp. 177–180]

¹⁸ Statement of R/21, 1 November 1990, p. 2

¹⁹ *Ibid.*

- 22.38 Stobie did, at one stage, admit to speaking to Mulholland and said that he had told Mulholland the truth.²⁰ However, Stobie later informed the RUC that he had not told Mulholland that he had supplied the guns used in the murder and had not told him that he was aware that Patrick Finucane was the target. Stobie claimed that he had exaggerated his role when speaking to Mulholland. When asked why he had admitted to Mulholland that he was involved in the Brian Lambert murder, Stobie replied, “*I don’t know why, I must have beefed it up.*”²¹ When pressed on why he had told Mulholland that he knew Patrick Finucane was going to be shot, Stobie replied, “*I don’t know I was under pressure. I wanted to make myself out to be the big man in the organisation.*”²²
- 22.39 Stobie said that, prior to the murder, he had taken the H&K to L/03 who handed it to L/28. He acknowledged that he was asked to delay handing over the 9mm Browning pistol, but stated that he never actually handed over the gun. He said that some time after the shooting he received the H&K and a Browning from L/33.²³ Stobie denied knowing that the weapons he collected were used in the murder of Patrick Finucane.
- 22.40 Stobie agreed that the account of his actions on the day as recorded in the RUC debrief forms was correct. When it was put to him that he had handed over the guns on the day Mr Finucane was shot, Stobie stated, “*Definitely not, I have told Special Branch what I did and that is the truth.*”²⁴

Stobie’s account to Ed Moloney

- 22.41 Stobie provided further accounts of his involvement in Patrick Finucane’s murder to the journalist Ed Moloney in 1990. Stobie spoke to Moloney at least three times after having first met him in September 1990. Moloney subsequently published an article in June 1999 in the *Sunday Tribune* based on the notes of his conversations with Stobie.
- 22.42 I should note that the Stevens III Investigation subsequently took legal action to attempt to recover Moloney’s notes for potential use in criminal proceedings against Stobie. This legal action was, however, unsuccessful. For the purposes of my Review, the account provided by Stobie is sufficiently summarised in Ed Moloney’s published article in 1999. I have no grounds to doubt that Moloney accurately recorded what Stobie had told him. There has, therefore, been no need for me to seek to recover Moloney’s interview notes. I acknowledge that such requests, whether by criminal investigations or by independent inquiries or reviews such as this, in themselves raise contentious issues about journalistic ethics and the protection of sources.
- 22.43 In his *Sunday Tribune* article, Ed Moloney explained Stobie’s motivation for speaking to him as follows:

²⁰ Ibid., p. 3

²¹ Ibid., p. 10

²² Ibid., p. 14

²³ Ibid., p. 5

²⁴ Ibid., p. 12

“He feared that his life was in danger and he needed reliable insurance, someone who would make his story public if anything happened to him.”²⁵

22.44 In contrast to his account to Mulholland, Stobie told Moloney that he did not know prior to the murder that Patrick Finucane was the UDA’s target. He did, however, insist that the SB had been given enough information by him, and in sufficient time, for them to have prevented Mr Finucane’s death.²⁶

22.45 Moloney reported that:

“Stobie delivered the guns to the UDA Killers on the Sunday afternoon/evening of 12 February, the day of Patrick Finucane’s death.”²⁷

22.46 Stobie’s account to Moloney suggests that he presumed that both the H&K and the 9mm Browning pistol were the murder weapons, though in fact only the 9mm Browning could have been used in the attack (the other gun used in the murder was a .38 Special/.357 Magnum-type weapon). Stobie apparently delivered the guns to the UDA hit team at the local UDA club. Ed Moloney’s account of the conversation with Stobie recorded the following passage:

“... he saw S, McK and K along with three others in the club – all are heavy drinkers but that evening they were only drinking Coke – this was a sure sign that something was on because they only drink Coke when they’re on a job.”²⁸

22.47 Stobie stated that, after having visited his mother, he had returned home and phoned his handlers that evening between 7.00pm and 7.30pm to inform them about the delivery of the guns. Stobie claimed that when he later complained to his handlers about the RUC’s failure to act on his intelligence, he was told:

“... they [the RUC] hadn’t time to get things organised and ‘anyway he [Finucane] was just an IRA man’.”²⁹

22.48 Stobie provided Moloney with an account of how he collected and distributed these weapons after the murder. Stobie claimed that he collected the guns on Tuesday 14 February and then handed the Browning pistol over to another UDA figure on 15 February. Moloney recorded Stobie’s account as follows:

“... arranged for McK to pick up the Browning on Wednesday – met McK who had arrived in landrover at local shops, handed gun over and McK then did a car switch – he (Stobie) said he phoned SB before McK arrived and after McK picked up gun – but cops did nothing except to set up a roadblock on Forthriver Road – made no apparent attempt to track or arrest McK.”³⁰

22.49 This account differs somewhat from the previous accounts provided by Stobie. The account provided to Moloney, for example, appears to be the only occasion on which Stobie claims to have given the 9mm Browning pistol back to L/28 on 15 February.

²⁵ Ed Moloney, ‘PAT FINUCANE and how the RUC could have stopped it’, *Sunday Tribune*, 27 June 1999

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

The 1999 police statement

22.50 On 22 June 1999 William Stobie was arrested on suspicion of the murder of Brian Adam Lambert and Patrick Finucane. When the charge was put to him, Stobie replied as follows:

“Not guilty of the charge that you have put to me tonight. At the time I was a police informer for Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot.”³¹

22.51 After having initially denied any involvement in terrorism, Stobie handed the Stevens III officers a single sheet of A4 paper on 23 June. Stobie explained that he had dictated it to his solicitor that morning. In the statement he said that:

“On Sunday the 12th February 1989 I informed my Special Branch handlers twice by telephone that a man was to be shot ... My handlers realised the full significance of this information.”³²

22.52 The statement ended with:

“I will not be adding to this statement and therefore I do not wish my instructing solicitor to be present for my next interview.”³³

22.53 Although he did not explicitly say so, the implication of Stobie’s statement was that he had phoned his SB handlers twice because he had handed over the guns to the UDA hit team on Sunday 12 February 1989.

22.54 Following the collapse of his trial, William Stobie gave several interviews to the media. In the Ulster Television programme ‘Justice on Trial’ broadcast on 4 December 2001 Stobie gave another account of the intelligence he had provided to the SB prior to the murder. He said:

“They [the SB] knew that something was going down, that it was a top Provie. I told them it was a top Provie.”³⁴

Special Branch records of events following the murder

22.55 The first record of contact between Stobie and his handlers after the telephone message on 9 February is a debrief form dated 15 February 1989, three days after Patrick Finucane’s murder. The debrief outlined Stobie reporting that a meeting took place at a club on Sunday 12 February at 1.00pm. L/20, L/25, L/33, L/30, L/28 and L/11 had apparently been present. Stobie also explained that at 8.00pm he was upstairs in another UDA club when he saw Kenneth Barrett, L/20, L/25, L/33, L/22 and L/28 arrive at various times.

³¹ Statement of R/26, 24 June 1999, p. 2

³² Statement handed over during interview of William Stobie, 23 June 1999, p. 51

³³ Ibid.

³⁴ Ulster Television transcript, ‘Justice on Trial’, 2001

22.56 The debrief form also stated:

“In respect of the 9mm Browning requested by [L/20] (see debrief of 7/2/89) No further contact was made with source regarding same ... Source not aware of Finnuane’s [sic] murder until the late news on Sun night 12/2/89.”[Emphasis added]³⁵

22.57 This note perhaps suggests that Stobie told his handlers that he did not hand over the 9mm Browning pistol prior to the murder, though, as already noted, the wording of the document is unsatisfactory. However, the debrief form does confirm that Stobie was asked to collect a 9mm Browning by L/20 on 15 February. Stobie reported that on the morning of the debrief he drove L/03 to L/20’s house. L/03 then told Stobie, on behalf of L/20:

*“... to call with [L/20] to-night (15/2/89) at 9pm + collect a Browning pistol + hide same.”*³⁶

22.58 Although this request was made after the murder, in my view it provides important contextual evidence with respect to whether Stobie did hand over a 9mm Browning pistol prior to the murder. It would seem logical for Stobie to be asked to collect and store a gun that he himself had previously provided.

Overview

22.59 I am sure that William Stobie provided the SB with significant intelligence prior to Patrick Finucane’s murder that an imminent attack would take place on a “*top PIRA man*” using a 9mm Browning pistol. Stobie had also identified one of the key UDA terrorists behind the murder plot, L/20.

22.60 Stobie’s intelligence was disseminated within the SB and to the TCG. I am satisfied that no action was taken to frustrate the UDA’s planned attack. This finding must be seen in the light of the concerns I have already expressed in Chapter 16 about the RUC’s response to threat intelligence.

22.61 Stobie provided contradictory accounts as to whether he did actually hand over weapons on the day of the murder, Sunday 12 February 1989. The context to Stobie’s admission must, however, also be considered. He was storing two 9mm Browning pistols for the UDA prior to the murder, and had been asked by L/20 to provide a 9mm Browning on 6 February. After the murder, he was asked to collect a 9mm Browning from L/20’s house. It would be logical for Stobie to be asked to collect and store a gun that he himself had provided to the UDA for the murder.

22.62 Despite the contradictions in Stobie’s accounts, the fact also remains that he made direct admissions, against his own interest, to two journalists and an implied admission in his 1999 statement to police. There is no logical explanation as to why Stobie would have invented, and maintained, a story of having handed over weapons on the Sunday if he had not in fact done so. In the light of his

³⁵ RUC SB debrief form, 15 February 1989 [see Volume II, pp. 89–92]

³⁶ *Ibid.*

admissions, and the broader context I have considered above, I am satisfied that Stobie did indeed provide the 9mm Browning to the UDA hit team on Sunday 12 February. I do not, however, believe that Stobie knew that the UDA's target was Patrick Finucane.

22.63 It is possible that, as Stobie claimed in some accounts, he informed his handlers on the Sunday evening that he had handed over the gun. The evidence on this question is, however, inconclusive. Even if this was the case, Stobie's account to Ed Moloney would tend to suggest that he only informed his handlers of his actions around the time the attack took place.

22.64 Whether or not Stobie provided any intelligence to his handlers on the Sunday, I am satisfied that it was entirely foreseeable to the SB from the evening of 9 February that Stobie would subsequently hand over a 9mm Browning pistol for use in an imminent UDA attack.

The RUC SB's failure to act on Stobie's post-murder intelligence

22.65 The RUC received forensic confirmation very shortly after Patrick Finucane's murder that one of the weapons used in the attack was a 9mm Browning pistol. This confirmation was sent in a written memo from the RUC's Weapons and Explosives Research Centre (WERC) on 13 February 1989. This memo must have been distributed to the RUC SB because a copy of it has been found in Patrick Finucane's SB file. I have released a copy of this memo alongside my Report.³⁷

22.66 Within days of the murder there was, therefore, a clear potential link between the intelligence provided by Stobie prior to the murder about a 9mm Browning pistol planned for use in an imminent attack; the fact that a 9mm Browning was used in Mr Finucane's murder; and the fact that Stobie told his handlers he was required to collect a 9mm Browning from L/20's house on 15 February.

22.67 Although there are discrepancies in Stobie's accounts as to the circumstances in which he collected a 9mm Browning from the UDA after the murder, I am satisfied that Stobie did indeed collect this weapon. I believe it is likely that Stobie was asked to collect the weapon in the circumstances described in the contemporaneous debrief form of 15 February.

22.68 The intelligence Stobie provided to the RUC on 15 February was potentially highly significant. It presented the RUC with what should have been a valuable opportunity to recover the likely murder weapon and to arrest one of the UDA figures involved in Patrick Finucane's murder. I recognise that such an operation was likely to be difficult and carried its own risks. The RUC would have needed to consider how best to effect the arrest and recover the weapon without endangering Stobie's life. There is, however, no evidence that the possibility of exploiting this intelligence was even considered by the SB.

³⁷ WERC memo re 9mm Browning, 13 February 1989 [see Volume II, p. 105]

Was this information shared with the RUC CID?

22.69 One means of exploiting intelligence such as that supplied by William Stobie on 15 February 1989 would have been for the information to be shared with the RUC Criminal Investigation Department (CID) murder squad and for a means to be devised of acting on the information to arrest the suspects.

22.70 D/Supt Alan Simpson, the CID officer in charge of the murder investigation, told the Stevens III Investigation that he was not made aware by the SB of either the existence of Stobie or of any of the material from the SB documentation detailed above.

22.71 However, the SB debrief form produced by R/05 as a result of the meeting between Stobie and his handlers on 15 February suggested that some, more limited, information was passed to the CID on the same day:

“CID murder squad have been informed of the names on this debrief in relation to the Finucane [sic] murder enquiry – as the possible murder team.”³⁸

22.72 The SB50 subsequently produced from that meeting also suggests that the information was passed on. Dated 17 February 1989, it recorded that:

“Antrim Road CID Murder Squad made aware of the persons named on this report as the possible UVF [sic] murder team involved in the Finucane [sic] murder at ... Fortwilliam Drive at approximately 7.30pm on Sunday 12 2 1989.”³⁹

22.73 Significantly, however, the SB50 itself did not include any reference to the critical intelligence that Stobie had been asked by L/03 on 15 February to collect a 9mm Browning from L/20 that evening. Nor was this critical intelligence ever shared with the investigation team.

22.74 There is also other evidence which is, on the face of it, inconsistent with the SB debrief form and SB50 relating to the 15 February meeting with Stobie. The CID Murder Investigation Team received a message on 16 November 1989 from R/05, the officer who had produced those documents. The message suggested that it was not until then that the CID had received the summary of the names of individuals who Stobie said had attended meetings on 12 February. I have released a copy of the original message alongside my Report.

22.75 There are a number of reasons which might explain the inconsistency between what these documents show, including the following:

- (i) the names were passed to the CID on 15 February, either orally or in writing, but the information was mislaid on receipt;

³⁸ RUC SB debrief form, 15 February 1989 [see Volume II, pp. 89–92]

³⁹ RUC SB50, 15 February 1989 [see Volume II, pp. 93–94]

- (ii) the SB debrief form and SB50 were written up by R/05 in the expectation that (contrary to what those forms purport to show) the information was *going to be passed* to the CID but then, through genuine error, that did not happen until 16 November;
- (iii) after R/05 had produced the SB debrief form and SB50 in the expectation that the information was going to be passed on, a decision was then taken at a more senior level that it should not be passed on for operational reasons, such as source protection; or
- (iv) the documents were produced in order to create a false trail which would disguise the deliberate intention not to pass the information on, in order that Patrick Finucane's killers would not be brought to justice.

22.76 I note that even the message of 16 November failed to mention the movement of firearms or any of the intelligence that Stobie had provided on 7 February. However, it may be significant that the very next day, 17 November, the CID arrested L/22 (one of those identified in the message) and two other loyalists, L/05 and L/43, on suspicion of Patrick Finucane's murder. As L/22 was also identified in the SB debrief form and SB50, it is possible that he would have been arrested a good deal sooner if the information about suspects had been passed on to the CID at that time.

22.77 It is possible that R/05 might have been able to explain the apparent discrepancy in these records, but he has long since died. Like the Stevens Investigations before me, therefore, I have not been able to reach a firm conclusion as to where the truth lies. On the face of it, however, the message of 16 November is consistent with D/Supt Simpson's claim that critical intelligence relating to the murder investigation he was conducting was withheld from him.

Overview

22.78 The intelligence provided by William Stobie after the murder of Patrick Finucane could have led to the recovery of the gun likely to have been used in the murder and the arrest of at least one of the key UDA suspects. I am satisfied that the SB unjustifiably withheld this critical intelligence from the RUC CID.

Chapter 23: The response of the State to the murder of Patrick Finucane

The protection of defence solicitors after the murder

- 23.1 The murder of Patrick Finucane on 12 February 1989 clearly caused great shock within the legal profession in Northern Ireland. It was the first time that loyalist paramilitaries had murdered a practising solicitor during the Troubles.
- 23.2 In view of the significance of the attack, I have examined the response of the State to the protection of defence solicitors after the murder of Patrick Finucane. Two solicitors identified as being under threat from loyalist paramilitaries after the murder were Paddy McGrory and Oliver Kelly.
- 23.3 In considering the handling of threat intelligence relating to both solicitors, I am mindful of my conclusions in Chapter 16 in relation to the 1981 threat to Oliver Kelly; the briefing provided to Douglas Hogg MP about Oliver Kelly; and the involvement of the Security Service in a propaganda exercise which incorporated both solicitors.

Irish Government representations after the murder

- 23.4 The then Taoiseach, Charles Haughey TD, issued a public statement on 13 February 1989 in response to the murder of Patrick Finucane. The statement included a specific reference to the need for the UK Government to protect other defence lawyers working in Northern Ireland. The Taoiseach stated that:

“It is essential that their role as officers of the court be respected, facilitated and upheld by the British Government and that their security be assured.”¹

- 23.5 The Irish Ambassador raised similar concerns at his meeting with the Cabinet Secretary on 13 February 1989. The note of the meeting recorded that:

“His [the Irish] Government’s concern had been increased by information that the police in Castlereagh were encouraging Protestant paramilitaries to attack Republican lawyers. In this context, the names of Messrs Finucane, McGrory and Kelly had been mentioned. The murder of Mr Finucane had shown that these concerns were justified. The Irish Government welcomed the statement by the Secretary of State for Northern Ireland that no pains would be spared in bringing the perpetrators of this crime to justice. It would welcome further assurances about what measures were being taken to protect other Republican lawyers.”²

¹ Statement of the Taoiseach, 13 February 1989

² Note for record, ‘Call by Irish Ambassador’, 13 February 1989 [see Volume II, pp. 306–307]

- 23.6 Similar information was transmitted by Irish Government officials through the British-Irish Secretariat based in Maryfield. A Northern Ireland Office (NIO) submission to the Secretary of State for Northern Ireland noted that Irish officials had referred again specifically to “*concern for security of other named lawyers*”.³
- 23.7 It is clear that, in the light of the murder of Patrick Finucane, those at the highest levels of the UK Government must have been alerted to the threat to defence lawyers in Northern Ireland. In this context it is particularly instructive to examine whether the State subsequently took reasonable steps to protect those defence lawyers.

Threat intelligence relating to Paddy McGrory and Oliver Kelly

- 23.8 It is clear that the Security Service and the Royal Ulster Constabulary (RUC SB) were aware of the severity of the threat against both Paddy McGrory and Oliver Kelly in the aftermath of the murder of Patrick Finucane.
- 23.9 In Chapter 16 I considered the Service’s handling of threat intelligence relating to Oliver Kelly, Paddy McGrory and Patrick Finucane. The Security Service’s assessment of the threat to solicitors produced on 17 February 1989 has been released in full alongside my Report. The Northern Ireland Intelligence Report (NIIR) explicitly states that “*the possibility of attacks against them [McGrory and Kelly] remains*”.⁴
- 23.10 The RUC SB also received intelligence pointing to the Ulster Defence Association’s (UDA’s) targeting of both Oliver Kelly and Paddy McGrory. I should note that Justice Cory refers in his report to a series of Force Research Unit (FRU) Contact Forms (CFs) produced after the murder of Patrick Finucane outlining threats to Paddy McGrory and Oliver Kelly.⁵ On close examination, I am satisfied that the CFs referred to by Justice Cory were in fact SB50 documents produced by the RUC SB. There is no evidence to suggest that the FRU received intelligence in February 1989 to indicate a threat to the lives of either Mr Kelly or Mr McGrory.
- 23.11 The RUC SB received two source reports outlining what I would consider to be a potentially serious UDA threat to these solicitors:
- One source report received on 16 February 1989 stated that “*Oliver Kelly is also being targeted by the UDA*”.⁶ This report was marked “*No Downward Dissemination*”.
 - Another source report received on 16 February 1989 suggested that “[*L/03*], [*L/28*] and [*L/20*] were overheard in the ... Club saying that Oliver Kelly and Paddy McGrory will be next on the list.”⁷ This report was marked “*Limited Dissemination*”.

³ Submission to Secretary of State for Northern Ireland, 13 February 1989, para 3

⁴ NIIR 17 February 1989 [see Volume II, pp. 197–198]

⁵ *Cory Collusion Inquiry Report: Patrick Finucane*, 1 April 2004, pp. 38–39

⁶ RUC SB50, 16 February 1989 [see Volume II, p. 96]

⁷ RUC SB50, 16 February 1989 [see Volume II, p. 97]

Action taken to protect Paddy McGrory and Oliver Kelly

- 23.12 It should be acknowledged that, under pressure from the Irish Government, some action does appear to have been taken by the RUC to seek to protect Paddy McGrory in the immediate aftermath of the murder of Patrick Finucane. In a 2002 article by John Ware, Barra McGrory QC, Paddy McGrory's son, recalled that a senior Irish Government official visited the family home the day after the murder and made:

*"... telephone representations to the RUC at a very high level that lawyers like my father should be protected, and that the security forces should be aware of the dangers."*⁸

- 23.13 Although Mr McGrory apparently declined the RUC's subsequent offer to receive armed escorts, he did apply for a personal protection weapon (PPW). NIO records show that Irish Government officials continued to make representations through the British-Irish Secretariat to seek to speed up the process relating to the approval of the PPW application. The documentary record shows that the PPW application was approved around 31 March 1989.⁹

- 23.14 The records are incomplete with respect to Oliver Kelly, though it appears that he was warned by the RUC in the aftermath of the murder of Patrick Finucane. In his witness statement to the Rosemary Nelson Inquiry, Oliver Kelly stated that he moved home and office after the murder of Patrick Finucane but that he was not prepared to seek protection from the RUC. His statement included the following passage:

"When the police approached me to advise me that I had been targeted, I told them that I could look after myself. They said they wanted to give me advice about my safety, but I thought what – bolt your door? I knew how to do that ...

The police then handed me a booklet on personal safety. They mentioned the possibility of a personal weapon, but I told them that I wouldn't know who to shoot at. The police had done me no favours ...

*It didn't occur to me to apply to the RUC for protection. I wouldn't have wanted them to know about the detail of my personal security. They were not to be trusted."*¹⁰

The failure to warn Paddy McGrory in July 1989

- 23.15 The CF dated 10 July 1989 recorded that another UDA member passed on targeting information received from a 'contact' to Brian Nelson. The targeting material itself was attached to the CF. The third page of the targeting material referred to 'P.J. McGrory' and his visits to the 'Chester' restaurant with T/45 and to the Kitchen Bar with his son, Barra McGrory. The note outlined how Mr McGrory visited the Kitchen Bar every Sunday with his son and parked the car "out of the road".

⁸ John Ware, 'Plot to kill Belfast lawyers revealed', *Guardian*, 2 August 2002

⁹ NIO, Law and Order Branch note, 10 April 1989

¹⁰ Witness statement of Oliver Kelly, 6 December 2007, RNI-811-037, Rosemary Nelson Inquiry

- 23.16 The CF itself produced by the FRU noted only that “*mentioned in the ‘report’ were a ... [T/45] and ‘The Kitchen Bar’*”.¹¹ Inexplicably, the CF itself did not mention Paddy McGrory, who was clearly the main subject of the targeting information. No Military Intelligence Source Report (MISR) was provided to the RUC as a result of this intelligence. As this information was not passed to the RUC in a MISR, there was clearly no prospect of the RUC being able to take any action to warn or otherwise protect Mr McGrory.
- 23.17 As a result of the Stevens I Investigation, senior RUC officers appear to have raised concerns with the FRU about the handling of the July 1989 threat intelligence. A/14, the then Commanding Officer of the FRU, wrote to the Deputy Head of Special Branch (DHSB) on 30 September 1991 explaining why the information relating to Paddy McGrory had not been passed to the RUC SB. The letter stated that:
- “The name of McGrory, which was contained on what was obviously a scruffy piece of paper, was not, as far as Nelson was concerned, a UDA target. The bit of paper went into a dump and as far as we are aware was not surfaced as targeting material ... With regards to warning McGrory, there would have been no requirement as he was not a target. To have warned all those contained in the intelligence dump would have been a nugatory task as the vast majority were clearly not being targeted.”*¹²
- 23.18 I am not persuaded by the FRU’s rationale for not passing the threat intelligence to the RUC SB, nor indeed by their suggestion that there was no need to warn Paddy McGrory. There are a number of additional factors not mentioned by A/14 in his letter: the threat level against Mr McGrory in July 1989 was clearly generally high; Nelson had a track record in proliferating targeting material across the UDA (see Chapter 7); and the ‘piece of paper’ had emanated from another source who could well have decided to provide it to other members of the UDA. The targeting detail included on the piece of paper was also so specific that the UDA might have been tempted to mount an attack reasonably quickly after having received the information.
- 23.19 I have also taken into account the fact that, as FRU officers have consistently pointed out in their statements to the Stevens Investigation and to my Review, the RUC SB had primacy in determining how threat intelligence should be exploited. It was not, therefore, for the FRU to decide, without any reference to the SB, the level of risk faced by an individual or whether a warning needed to be provided to that individual.

The failure to warn Paddy McGrory in October 1989

- 23.20 However, the evidence that I have reviewed demonstrates that the RUC themselves subsequently failed to act on threat intelligence relating to Paddy McGrory. The RUC SB became aware of an Ulster Volunteer Force (UVF) plan to kill Mr McGrory in October 1989.

¹¹ CF 10 July 1989 [see Volume II, pp. 27–28]

¹² Lt Col A/14 to DHSB, 30 September 1991

- 23.21 The UVF were reported to be aware of Mr McGrory's home and work addresses and planned to kill him because of his role in the 'Gibraltar' inquest.¹³ A note recorded in the RUC SB's Threat Book suggests that the DHSB, Brian Fitzsimons, asked for the threat to be added "*to morning briefing for C.C. [Chief Constable] for decision re action on 11/10/89*". Whilst it is not clear whether or not the Chief Constable was ultimately consulted regarding the threat, a note in the Threat Book recorded, "*NFA [No Further Action] on instructions of DHSB*".¹⁴
- 23.22 Although no action was taken in response to either the July 1989 or October 1989 threat intelligence, fortunately neither the UDA nor the UVF ever mounted an attack on Paddy McGrory.

Overview

- 23.23 There is no doubt that there was a serious threat to the lives of both Paddy McGrory and Oliver Kelly in the aftermath of Patrick Finucane's murder. The RUC did take action to seek to protect Paddy McGrory after the murder, albeit it may be the case that this action was prompted by representations made by Irish Government officials. Oliver Kelly was warned by the RUC that his life was in danger but appears to have declined to seek or receive RUC protection.
- 23.24 The handling of threat intelligence relating to Paddy McGrory in July and October 1989 demonstrates a serious failure by the authorities to take proportionate steps to protect a solicitor whose life was in danger. In July 1989, the FRU failed to pass important threat intelligence to the RUC SB. In October 1989, the RUC took no action to warn Mr McGrory that the UVF were seeking to murder him. Although the responsibility for these omissions lies with the FRU and the RUC respectively, this failure must also be positioned in the context that representations had previously been made to very senior figures in the UK Government requesting that the necessary steps be taken to protect Mr McGrory.

The investigation into the murder

- 23.25 In Chapter 22 I noted the withholding by the RUC SB of the significant intelligence supplied to them by William Stobie relating to the probable murder weapon. It is important to my Terms of Reference to conduct a wider examination of the original RUC investigation into the murder.
- 23.26 In view of the Judgment in the case of *Finucane v The United Kingdom*, I will now consider what the European Court of Human Rights had to say regarding the murder investigation, before I come to examine the critical question as to whether the RUC SB withheld further relevant intelligence from the Criminal Investigation Department (CID) team and, if so, to what extent.

¹³ The inquest into the deaths of three members of the IRA shot by the SAS in Gibraltar in March 1988

¹⁴ RUC Threat Book, October 1989

The Judgment of the European Court of Human Rights

- 23.27 In July 1994 Geraldine Finucane, the widow of the murdered Patrick Finucane, applied to the European Commission of Human Rights alleging that there had been no effective investigation into the death of her husband, which had occurred in circumstances giving rise to suspicions of collusion between his killers and the security forces. This, she alleged, constituted a violation of Article 2 of the European Convention on Human Rights (ECHR), which holds that “*Everyone’s right to life shall be protected by law.*”¹⁵
- 23.28 As part of settled procedural jurisprudence, it has been held in relation to breaches of Article 2 that:
- “... there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.”*¹⁶
- 23.29 The case was transmitted to the European Court of Human Rights which, in its Judgment of July 2003, was to say the following:
- “The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention’, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force ...”*¹⁷
- 23.30 The Judges recognised that “[w]hat form of investigation will achieve those purposes may vary in different circumstances”.¹⁸ Nevertheless, the Court made a unanimous finding that the UK Government had breached its procedural obligations under Article 2 of the Convention in respect of the response of the State to the murder of Patrick Finucane. It discussed a number of general principles and their application to the investigations that followed the murder.

Independence

- “... it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events ...”*¹⁹
- 23.31 Although the subsequent Stevens Investigations from 1989 were conducted by officers from a separate police force, the first police investigation into the death had been conducted by colleagues of the RUC officers who were suspected by the applicant of making death threats against Patrick Finucane. The investigation was led by the RUC Chief Constable, who himself “*played a role in the process of instituting any disciplinary or criminal proceedings*” against members of his force. There was, in the view of the Court:

¹⁵ Article 2(1), European Convention on Human Rights

¹⁶ *McCann and Others v The United Kingdom* (No. 18984/91) 27 September 1995, para 161

¹⁷ *Finucane v The United Kingdom* (No. 29178/95), 1 July 2003, para 67

¹⁸ *Ibid.*

¹⁹ *Ibid.*, para 68

“... a lack of independence attaching to this aspect of the investigative procedures, which also raises serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued.”²⁰

Effectiveness

23.32 The Court held that an investigation should be:

“... capable of leading to a determination of whether the force used was or was not justified in the circumstances ... and to the identification and punishment of those responsible ...”²¹

23.33 The first two Stevens Investigations did not deal substantially with the death of Patrick Finucane.²² The inquest into the death, which lasted for one day, was only concerned with its immediate circumstances, and had not considered wider allegations of collusion. The court also noted that, although it was apparent that a gun believed to have been used in the murder had come into the hands of loyalists via a member of the Ulster Defence Regiment (UDR), the officer leading the investigation stated that none of the 14 persons being interviewed had any connection with the security forces. The Court therefore expressed concern that it was:

“... not apparent to what extent the initial police investigation included inquiries into possible collusion by the security forces in the targeting of Patrick Finucane by a loyalist paramilitary group.”²³

23.34 Having examined the case in detail, it is clear that the CID investigation did not in any way examine the possibility of collusion by the security forces in the murder of Patrick Finucane. Furthermore, as the Court noted, the coroner had refused Mrs Finucane’s request to make a statement regarding allegations of threats on the grounds that it was not relevant to the proceedings.²⁴

Promptness and expeditiousness

23.35 The Court held as follows:

“... a prompt response by the authorities ... may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law ...”²⁵

23.36 The Court found that the RUC investigation started *“immediately after the death and that the necessary steps were taken to secure evidence at the scene”*.²⁶ Although a number of loyalist suspects were interviewed, it noted that the investigation resulted in insufficient evidence to support a prosecution. In relation

²⁰ Ibid., para 76

²¹ Ibid., para 69

²² Ibid., para 79

²³ Ibid., para 75

²⁴ Ibid., para 78

²⁵ Ibid., para 70

²⁶ Ibid., para 74

to the third Stevens Investigation, which was specifically concerned with the murder, the Court noted that it was not begun until a decade after the events.²⁷

Public scrutiny

23.37 This requirement is important for achieving accountability in the investigative process. The level of scrutiny required may vary according to what is appropriate from case to case,²⁸ but one element to be considered is the involvement of the deceased's immediate family in the procedure. The results of the first two Stevens Investigations had not been made public and the applicant had not been informed of their findings.²⁹

23.38 Due to these failings, the Court found that the RUC investigation, the inquest and the Stevens Investigations did not individually or cumulatively satisfy the requirements of Article 2. It therefore held unanimously that there had been a failure to provide an effective investigation into allegations of collusion in the death of Patrick Finucane, and awarded costs.

23.39 The Court, however, refused Mrs Finucane's application for an order compelling a new investigation, stating that in a case such as this:

*"The lapse of time and its effect on the evidence and the availability of witnesses inevitably render such an investigation unsatisfactory or inconclusive, by failing to establish important facts or put to rest doubts and suspicions."*³⁰

Alleged comments by RUC officers after the murder

23.40 The findings made by the European Court of Human Rights in relation to the independence of the investigation seem to me to be particularly pertinent in view of the wider allegations relating to the contact between RUC officers and loyalists in Castlereagh (see also Chapter 18). In particular, two intelligence reports disclosed to my Review raise questions as to the comments that may have been made to loyalist paramilitaries being questioned by RUC officers after the murder.

23.41 The FRU CF dated 9 March 1989 included the following report of comments allegedly made by RUC officers when Thomas 'Tucker' Lyttle was in custody that month:

"[L/27] told [Nelson], [L/28] ... [etc.] that the RUC had told 'Tucker' Lyttle that the attacks on Pat Finucane [sic] and Gerard Slane had been the best hits the UDA had had in a long time. The RUC also said that PIRA were so incensed by these successes that they had men on Shankill Rd ready to

²⁷ Ibid., para 62

²⁸ Ibid., para 71

²⁹ Ibid., para 79

³⁰ Ibid., para 89

*shoot on sight members of the UDA/UVF. The RUC named 'Tucker' Lyttle, [L/28], ... [and other UVF members] as PIRA's main targets."*³¹

23.42 It should be noted that Lyttle was being questioned by the RUC CID but not by the murder investigation team. Whilst it is not possible to corroborate the contents of the CF, the recorded comments about PIRA targeting of leading loyalists do seem to be borne out by the RUC records at the time. This report was passed by the FRU to the RUC SB, though there is no evidence of any follow-up action being taken by the RUC.³²

23.43 A further CF dated 29 November 1989 reported alleged comments made by RUC officers to L/22 when he was being questioned about the murder. The CF recorded the following:

*"[L/22] stated that they had been closely questioned, albeit in a friendly fashion, concerning the murder of Pat Finucane. [L/22] said the RUC congratulated them on a fine job, but said it should not have been done in such a fashion, ie in front of Finucane's wife and children."*³³

23.44 The FRU handler commented on the CF, "*presumably this is the friendly approach?*" Again there is no corroboration for this report, though it is difficult to conceive of a reason why L/22 would invent such an elaborate account. I have been unable to find any record of the FRU passing this information to the RUC SB in a MISR. This omission would in itself have prevented any follow-up action to identify the officers allegedly responsible for making such comments to loyalists.

23.45 Whilst the reported comments in the CFs cannot be corroborated, when considered alongside my conclusions in Chapter 18 as to discussions between officers and loyalists in custody about Patrick Finucane, they are potentially part of a pattern. The CF in relation to the questioning of L/22 is particularly concerning because the interviews were carried out by members of the RUC CID murder investigation team.

The RUC SB and the murder investigation

23.46 Before considering the approach of the RUC SB to the investigation into the murder of Patrick Finucane, it is worth noting that there were long-standing strains in the relationship between the RUC SB and CID during the Troubles.

23.47 A number of other reports and inquiries have pointed to the lack of co-operation between the SB and the CID. The Billy Wright Inquiry Report noted in relation to the position in 1997:

*"... how little cooperation appeared to exist between SB and CID, reflecting a culture of secrecy and confidentiality which was endemic."*³⁴

³¹ CF 9 March 1989, Item 12 [see Volume II, pp. 22–24]

³² MISR 11 March 1989

³³ CF 29 November 1989, Item 18 [see Volume II, pp. 37–39]

³⁴ *Billy Wright Inquiry Report*, p. 649, para 16.37

- 23.48 The Police Ombudsman for Northern Ireland made similar findings in other reports. Sir John Stevens also examined the relationship between the RUC SB and CID during the course of the Stevens III Investigation. In his 2003 Report, he made a specific recommendation that the CID Senior Investigating Officer (SIO) should receive full co-operation and relevant intelligence from the SB.³⁵
- 23.49 Former SB officers, however, emphasised to my Review the rationale underpinning the SB's approach to these issues. They stressed that after 1976 security policy was driven by an intelligence-led approach aimed at preventing loss of life. The importance of protecting sources of intelligence also limited the SB's ability to provide all relevant information to the CID. One former senior officer stated that:
- “... the concern to save lives could on occasions clash with a desire to initiate a prosecution due to a particular source's capacity to continue delivering life-saving intelligence.”³⁶*
- 23.50 In considering this issue, I have, therefore, been conscious of the fact that concerns about source protection were a significant factor influencing the approach of the SB; and that the lack of co-operation between the RUC SB and CID was a feature of a number of cases.
- 23.51 I should also emphasise that I recognise that intelligence material does not represent admissible evidence that can be used for the purposes of a criminal prosecution. It may be the case that intelligence could be utilised for the purpose of gathering admissible evidence, though this could often prove a challenging task in Northern Ireland during the Troubles.
- 23.52 I consider in detail below the key issues relating to the investigation into the murder of Patrick Finucane.

Detective Superintendent Alan Simpson's statements with regard to the RUC SB withholding intelligence

- 23.53 D/Supt Simpson was the SIO on the Patrick Finucane murder case. He made a statement to the Stevens team on 13 February 2002. In this statement he described his relationship, as the CID SIO, with the RUC SB. He stated that:
- “It must be stressed that Special Branch controlled this relationship and that CID officers of whatever rank were unable to force their hand in any way.”³⁷*
- 23.54 D/Supt Simpson alleged that he was:
- “... never given a briefing by Special Branch or ever passed any relevant files.”³⁸*

³⁵ Stevens III Investigation, *Overview and Recommendations*, 17 April 2003, Recommendation 5

³⁶ Note of meeting with former RUC officers, 25 July 2012

³⁷ D/Supt Simpson, statement to Stevens III Investigation, 13 February 2002 [see Volume II, pp. 133–145]

³⁸ *Ibid.*

23.55 He went on to explain:

“The strategic direction of the Finucane murder investigation was therefore planned in the absence of any input from SB in relation to the victim, possible suspects or motives for the shooting.”³⁹

...

“All or any of the [key intelligence information] even in the most guarded of terms would have made an enormous difference to the direction of the Finucane investigation and its eventual outcome.”⁴⁰

23.56 D/Supt Simpson’s 2010 book, ‘Duplicity and Deception’, reinforced the account he provided to the Stevens III Investigation. In his book, he stated emphatically:

“I did not have a single contact from Special Branch offering me information or help of any kind.”⁴¹

Allegations made by D/Supt Simpson about the comments of the Assistant Chief Constable responsible for the RUC CID

23.57 The most serious allegation made by D/Supt Simpson was, however, only made in his book, and did not relate specifically to the RUC SB. In ‘Duplicity and Deception’, D/Supt Simpson gave the following account of comments allegedly made by Wilfred Monahan, the Assistant Chief Constable (ACC) responsible for the CID:

“Much to my surprise, on the morning of Tuesday, 14 February, two days after the killing of Finucane, I received a phone call from RUC Headquarters informing me that Assistant Chief Constable Wilfred Monahan, in overall charge of the CID in Northern Ireland, was to pay me a visit in the Antrim Road incident room. This was unusual ... I regarded this as something of a minor state visit ...

Altogether his visit lasted about twenty minutes, and then I saw him back down to his car. Before he opened the door of the vehicle, he paused briefly, turned to me and said, ‘Alan, if I were you I would not get too deeply involved in this one.’ [Emphasis added]⁴²

23.58 D/Supt Simpson withheld this aspect of his account from the Stevens III Investigation. In his book, he claimed that:

“I was so embarrassed and ashamed of what he had said that, other than confiding in one close friend and former outstanding detective, I have kept it to myself until now.”⁴³

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Alan Simpson, *Duplicity and Deception: Policing the Twilight Zone of the Troubles*, Brandon/Mount Eagle Publications, 2010, p. 35

⁴² Ibid., p. 31

⁴³ Ibid., p. 32

- 23.59 I am conscious that ACC Monahan is now deceased and therefore unable to respond to these allegations. In view of my remit, however, I must nevertheless seek to examine the allegation that D/Supt Simpson was being, effectively, 'warned off'.
- 23.60 It is difficult to conceive of a reason why D/Supt Simpson would, many years later, invent and publish such an account. The account provided by D/Supt Simpson is potentially consistent with the concealment of critical intelligence in a way that impeded proper investigation.
- 23.61 The timing of ACC Monahan's alleged comments is of particular interest. On the morning of ACC Monahan's visit, D/Supt Simpson had commissioned his team to produce intelligence briefs on 13 UDA personalities. The Action Sheet records show that these briefs were commissioned at 9.30am on 14 February 1989.⁴⁴
- 23.62 The list of personalities featured 13 names, including Kenneth Barrett and several others subsequently linked to the murder. One particular entry, however, stands out: Brian Nelson. This is the first and only time that the name of Brian Nelson featured in the CID investigation.
- 23.63 D/Supt Simpson noted that ACC Monahan was briefed on the 'morning' of 14 February. There is no record to indicate the detail of the briefing or to indicate whether Brian Nelson was ever specifically mentioned. ACC Monahan was certainly aware of Nelson's role by September 1989, though I cannot be sure that he was aware of Nelson in February of that year.
- 23.64 The most that this Review can do, therefore, is to point to the coincidence in timing. No explanation has been, or could be, offered to explain the comments to D/Supt Simpson and the exact meaning behind them can only be the subject of speculation.

The documentary evidence in relation to the withholding of intelligence

- 23.65 Although D/Supt Simpson has consistently stated that he was given virtually no assistance by the RUC SB, I have analysed the documentary evidence to establish whether this was in fact the case.
- 23.66 In his 2003 'Overview and Recommendations', Sir John Stevens concluded that "*crucial information was withheld*" from the SIO; that this withholding of intelligence was evidence of collusion; and that in future the SIO on murder investigations should receive "*full co-operation and relevant intelligence from Special Branch*".⁴⁵
- 23.67 The RUC conducted a CID-led 'C' Department Review in 1999 in relation to the passage of intelligence in this case. The Review document included a summary of various RUC SB50 documents produced after the murder of Patrick Finucane, which linked specific individuals with the crime. Six SB50 documents included observations to the effect that the CID had been informed of the intelligence contained on the document.

⁴⁴ CID Action Sheet, Number 41, 14 February 1989 [see Volume II, p. 100]

⁴⁵ Stevens III Investigation, *Overview and Recommendations*, 17 April 2003

- 23.68 However, in considering these documents it is essential to refer back to my conclusions in Chapter 22. The documentary evidence shows that the reference on the SB50 produced as a result of William Stobie's intelligence implying that the CID had been provided with information on or around 15 February 1989 may not necessarily have been correct. As I noted in Chapter 22, it is possible that the RUC CID team was only informed of this information on 16 November 1989. It is also important to note that three of the other SB50s were produced by an officer who appears to have failed to record or disseminate intelligence received in late February linking Brian Nelson to Mr Finucane's murder. In such circumstances, I believe that the typed comments in these documents claiming that the CID had been informed of the intelligence must be treated with a degree of caution.
- 23.69 I have recovered the original murder investigations files to seek to establish the extent of the intelligence passed by the SB to the CID. The original murder investigation files recorded only three messages being passed by the RUC SB to the CID during the entire course of the investigation.⁴⁶ The messages passed on by the SB were as follows:
- On 13 February 1989 an SB officer based at RUC Tennent Street told the investigation team that the Ulster Freedom Fighters (UFF) had claimed responsibility for the murder.
 - On 17 February 1989, one of Stobie's handlers, Detective Constable (DC) R/08, passed on intelligence from a different source that L/25, L/33 and L/20 had been seen together on the morning of 13 February.
 - As noted in Chapter 22, a summary of personalities seen by Stobie on 12 February 1989 was passed on to the investigation team on 16 November 1989, more than nine months after the murder.
- 23.70 These messages formed part of the broader intelligence gathered by the RUC CID, though much of this material was of little value and consisted of various anonymous calls which falsely linked a variety of individuals to the murder. The most potentially useful lead – the naming of L/20, L/33 and L/25 by the SB – was expressed only in the form of a sighting of the three together on 13 February. It is not difficult to understand why the CID team would not have felt this to be compelling information linking the men to the murder.
- 23.71 In view of the statement made by D/Supt Simpson, and the generally more detailed nature of the CID records on this issue, I am inclined to consider the contemporaneous investigation files to be an accurate record of the information actually passed by the RUC SB to the CID.
- 23.72 In order to assess the adequacy of the intelligence passed to the CID by the SB, it is necessary to summarise the RUC SB's state of knowledge at the time in relation to the individuals suspected of involvement in the attack.
- 23.73 By the end of February 1989, the RUC SB had received the following reliable and highly significant intelligence regarding the murder:

⁴⁶ RUC Murder Incident Room, record of intelligence from Special Branch [see Volume II, pp. 101–103]

- Intelligence provided by William Stobie both before and after the murder linking a number of key UDA figures to the attack (outlined in detail in Chapter 22).
- The seven names of those Brian Nelson believed had been involved in the murder which he provided to his handlers. The names were passed to the RUC SB in a MISR dated 16 February 1989 (noted in Chapter 21).
- Reliable intelligence received by the RUC SB on 16 February 1989 linking L/28, L/20 and Barrett to the attack, and indicating that Barrett may have been one of the gunmen.⁴⁷
- Further reliable intelligence received by the RUC SB on 15 February 1989, indicating that L/28 and L/20 were involved in the murder.⁴⁸
- Security Service intelligence received by the RUC SB in late February 1989, indicating that Brian Nelson had “*undoubtedly*” carried out the ‘recce’ of Patrick Finucane’s home (see Chapter 21).

23.74 The intelligence provided by each of these sources was judged to be reliable at the time. Each report corroborates the other to a significant extent. Taken together, the reports meant that the RUC SB had the names of the key UDA figures responsible for the attack within four days of the murder. It is worth also noting that this intelligence was disseminated to a number of figures within the RUC SB. The debrief forms relating to Stobie’s post-murder intelligence were received and signed for by several Detective Inspectors and Detective Sergeants in both the Source Unit and the Tasking and Co-ordinating Group (TCG) Belfast. The Detective Chief Inspector in charge of the RUC Source Unit at the time, R/10, would have received all of the intelligence outlined above. In considering this issue, I do, however, note the inconsistencies in the documentary evidence, which make it difficult to reach absolute conclusions as to whether or not the information in certain SB50 documents may have been passed to the RUC CID.

23.75 It is, however, undoubtedly true that D/Supt Simpson was not informed at any stage of the agent roles played by William Stobie and Brian Nelson. The effect of withholding this information was to prevent the proper investigation of the role of agents in the murder.

23.76 I have considered possible explanations as to why relevant intelligence may not have been shared with the RUC CID. I accept that constraints imposed by source protection may require some intelligence to be provided in a guarded form and exploited carefully. In my view the need to protect sources could not, however, justify the withholding of critical intelligence from the RUC CID. I am also satisfied that there were no ongoing SB operations at the time that could justify the withholding of intelligence on the grounds that CID action could cause disruption to a wider intelligence-led project.

⁴⁷ RUC SB50, 16 February 1989 [see Volume II, p. 98]

⁴⁸ RUC SB50, 15 February 1989 [see Volume II, p. 95]. NB This SB50 records “CID-aware”.

The failure by the Security Service and the RUC SB to pursue Nelson's potential involvement in the murder

23.77 It is important to highlight the intelligence received by the Security Service and the RUC SB linking Nelson to Mr Finucane's murder. As I noted above and in Chapter 21, the intelligence indicated that Nelson had "*undoubtedly*" conducted the 'recce' prior to the murder. This raises the question as to whether the Security Service and/or the RUC SB subsequently pursued this intelligence with the FRU to establish what Nelson's involvement in the murder had been.

23.78 There is no evidence to suggest that the information was ever pursued with the FRU or to indicate that the RUC SB shared this intelligence with the CID. Indeed, the RUC SB appear to have kept no record of this intelligence whatsoever. Both the RUC SB, given their primacy in intelligence matters, and the Security Service, given their monitoring role in relation to the FRU, should have been in a position to pursue this matter with the FRU.

23.79 I explored this issue with a senior Security Service officer, G/07:

"Chairman: If in fact [Nelson] had done the recce and hadn't reported it to the FRU ... and you at the [Security Service] had information, however you would describe that information, that he had or may have carried out a recce; wouldn't it have been of some significance for the [Security Service] to have taken up with FRU, 'Look, this is our information. Is there any truth in this?'

G/07: Absolutely, and there ought to have been a dynamic, if I can call it that, from the Loyalist desk in the assessments group ... and FRU's reporting from Nelson and other Loyalist sources, looking for points of cross-reference in this sort of space."⁴⁹

23.80 A proper investigation of a murder must be able to include the examination of the role of any and all State agents in the crime. The running of an agent must also involve a regular review of their activity and involvement in criminal activities.

Detective Constable R/22's handling of intelligence received in 1994

23.81 A further illustration of the withholding of intelligence is provided by the handling of information received by an RUC SB officer in 1994. In this instance, the officer receiving the intelligence withheld the information from everyone, including his superiors in the RUC SB.

23.82 In 1998, RUC Detective Constable (DC) R/22 approached the Superintendent with nominal responsibility for the Patrick Finucane murder investigation. R/22 admitted that several years previously he had received intelligence from an RUC agent implicating L/03 in Mr Finucane's murder.⁵⁰ This information had never previously been disclosed by R/22.

23.83 A subsequent RUC investigation established that R/22 had probably received the information some time in 1994. The RUC agent had been compromised and

⁴⁹ Transcript of meeting with G/07, 28 September 2012, p. 51

⁵⁰ There was some initial confusion as to the identity of the murder suspect, but later information made it clear that the intelligence referred to L/03

subsequently approached R/22. The agent ended up staying in R/22's home and was later driven by him to the airport to escape to England. The RUC agent was later interviewed and confirmed that he provided the intelligence to R/22 whilst staying at his home. He claimed that R/22 recorded the information on disk at his house.⁵¹

- 23.84 This arrangement had not been authorised by anyone in the RUC and clearly represented an unprofessionally close relationship, particularly when one considers that R/22 did not subsequently pass on intelligence he received relating to Patrick Finucane's murder until more than three years later. The RUC agent later claimed that he had also told an SB officer in 1989 that L/03 was linked to the murder, though no records are available to corroborate this claim.

The failure of the RUC CID to exploit its own intelligence

- 23.85 It is also clear that the RUC CID failed to exploit their own intelligence in order to arrest key suspects for the murder. The quality of the intelligence received by the CID was, in fairness, poorer than that received by the RUC SB and did not include any information approaching the value of the location of the potential murder weapon that was supplied by William Stobie to the SB on 15 February 1989.
- 23.86 The CID team did, however, know on 13 February that the 9mm Browning used in the murder of Patrick Finucane had previously been used in the attempted murder of T/16 on 20 September 1988. A message held on the murder investigation files showed that Detective Chief Inspector R/23 had reported at 5.00pm on 13 February that L/33 and L/20 were "*believed to have been involved in the shooting*" of T/16.⁵²
- 23.87 The CID would not have known that L/20 was storing the likely murder weapon in his home on 15 February because the SB never passed that information on. Nevertheless, the reality is that, had the CID acted on the potential link between L/20 and Mr Finucane's murder, they may conceivably have had the opportunity to recover the murder weapon.
- 23.88 It is also important to note that the CID subsequently received two less significant pieces of information pointing to L/20 as a potential suspect. On 17 February 1989 the SB provided the information outlined above noting that L/20 had been seen with other loyalists early in the morning on 13 February. Further intelligence received on 12 May 1989 from a CID source indicated that L/20 was amongst a loyalist group who had been in a particular club in a "*celebratory mood*" on 12 February 1989.⁵³ Despite the receipt of such information, L/20 was never arrested by the CID team investigating the murder.

⁵¹ Stevens III Investigation report into the case, 1998 interview, pp. 4–5

⁵² Message Number M28, Murder Investigation Files, 13 February 1989 [see Volume II, p. 104]. See also Chapter 17.

⁵³ RUC CID source report, 12 May 1989

Overview

- 23.89 There is no doubt that, as has been found by the European Court of Human Rights, the investigation into the murder of Patrick Finucane lacked the requisite independence and did not examine the question of collusion. The additional material available to me tends to reinforce the findings of the court in this regard.
- 23.90 It is clear that highly relevant intelligence was withheld from the murder investigation team, though it must also be acknowledged that the CID team did not exploit some of the intelligence that it had. This undoubtedly had a significant impact in preventing attempts to bring Patrick Finucane's murderers to justice. Key UDA suspects such as L/20, L/28 and Kenneth Barrett were not investigated or arrested until the Stevens III Investigation in 1999, more than ten years after the murder. The failure of the RUC to ensure an adequate investigation into the murder of Patrick Finucane is particularly significant when considered alongside the wider inadequacy of the action taken against the West Belfast UDA prior to the murder (see Chapter 17) and the decision by the RUC SB to recruit Kenneth Barrett in 1991 *after* he 'admitted' his involvement in the murder (see the next section of this chapter).

The recruitment of Kenneth Barrett in 1991

- 23.91 I outlined in Chapter 19 the background to the murder and the 'admission' made by Kenneth Barrett on 3 October 1991. In summary, Barrett 'admitted' on 3 October, when speaking to RUC officers, that he had been involved in the murder, though he qualified his admission by stating that this involvement was 'hypothetical'. I deal now with the reasons for the recruitment of Barrett as an agent and the question as to whether RUC SB officers were involved in the destruction of potential evidence that could have been used to prosecute Barrett for the murder of Patrick Finucane.

The SB and CID reactions to the October 1991 'admission'

- 23.92 The evidence suggests that there was a difference of opinion between the RUC SB and the CID over the significance of the 'admission' provided by Barrett on 3 October 1991. Detective Sergeant (DS) Johnston Brown felt that this 'admission' should have entirely altered the RUC's attitude towards Barrett and that, rather than being treated as a potential informant, Barrett should then have been pursued as a suspect in a murder investigation. In his 2005 book, 'Into the Dark', DS Brown stated that:

*"Barrett was now no longer in my sights as a potential informant. He was now a self-confessed murderer. Our rules governing the handling of informants meant that Barrett's confession ruled him out as far as ever becoming a Police informant or agent. It was one thing to suspect him of murder. It was a totally different matter to have evidence of his involvement in it. I fully intended to convict him of that brutal murder."*⁵⁴

⁵⁴ Johnston Brown, *Into the Dark*, Gill & Macmillan, 2005, p. 78

23.93 DS Brown's CID colleague, DC McIlwrath, appears to have shared his perspective on Barrett. DC McIlwrath stated that:

*"At this time I believed we could have been talking to one of the murderers of Mr Finucane. I believed that Barrett had the ability to be a cold blooded killer."*⁵⁵

23.94 In his accounts, DS Brown has acknowledged that Barrett's 'admission' did not represent an admission made under caution, stating that:

*"The problem we had now was that nothing that Barrett had said to us was admissible evidence against him. It could only be used to corroborate other evidence. It was not admissible against him in a court of law."*⁵⁶

23.95 DS Brown was, however, none the less confident that the 'admission' provided a lead which could help the RUC CID to build a case against Barrett leading to his prosecution and conviction. His belief was:

*"We had to move the enquiry up a level. That was going to be easy: all we had to do was lure an unsuspecting Barrett into an evidence gathering forum. We knew exactly how to do that."*⁵⁷

23.96 Even on the basis of DS Brown's own account, however, it was clear that Barrett was aware of some of the issues relating to the admissibility of evidence. DS Brown questioned Barrett on the 'lad from Rathcoole' who Barrett claimed had driven the getaway car, and recorded Barrett as having said that:

*"I'm sound, take me to Castlereagh and I'm admitting f**k all ... But that wee guy from Rathcoole will squeal the house down and you'll use him as Queen's Evidence against me. Nothing I've said in this car is evidence against me. But that wee lad could put me in jail for life."*⁵⁸

23.97 The documentary record suggests that the SB took a very different view to DS Brown with respect to the significance of Barrett's 'admission' on 3 October 1991. The SB report sent by DC R/06 to D/Supt R/20 noted that:

*"At no time did the source admit to any involvement in murders by the UDA or any other incidents. When talking about such incidents the word source used when placing himself in a scenario was 'hypothetically talking'."*⁵⁹

23.98 One of the senior retired RUC officers I met during this Review, R/15, highlighted the likely inadmissibility of Barrett's comments. He stated that:

*"Barrett's alleged admission had not been made under caution so the opportunity to act on it had been missed. [R/15] learned of it only when [DS Brown] later went to see him with his notes of the conversation."*⁶⁰

⁵⁵ DC McIlwrath, statement to Stevens III Investigation, 11 May 1999

⁵⁶ Johnston Brown, *Into the Dark*, 2005, p. 181

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p. 182

⁵⁹ DC R/06, note to R/20, 3 October 1991 [see Volume II, pp. 107–109]

⁶⁰ Note of meeting with former RUC officers, 25 July 2012, para 91

Discussions about further contact with Barrett

23.99 DS Brown alleged that he vigorously disagreed with the subsequent SB approach of seeking to recruit Barrett rather than allowing the CID to attempt to build an evidential case against him. DS Brown claimed that R/06 told him on 3 October 1991 that the SB already knew Barrett had murdered Patrick Finucane but that he should not seek to pursue this lead.

23.100 DS Brown gave the following account of his discussion with R/06:

“Move away from it,’ Sam [DC R/06] said ...

I brought it to his attention that we could clear the controversial murder of the solicitor Pat Finucane ... What he said next astounded me.

‘We (Special Branch) know he done it,’ he said.

‘Pardon?’ I replied.”⁶¹

23.101 It is certainly true that the SB had known for several years that Barrett was linked to the murder of Patrick Finucane. Brian Nelson, William Stobie and another RUC intelligence source had all provided intelligence within days of the murder naming Barrett as a potential culprit. DS Brown’s surprise at the SB’s state of knowledge in this regard further highlights the extent to which the SB had withheld intelligence from the RUC CID. Barrett had never been arrested by the RUC CID team investigating the murder.

23.102 DS Brown’s own notebook contained an important record of his dissatisfaction at the time with the SB approach to the case. The notebook included the following comment with respect to his meetings at 1.40pm on 4 October 1991:

“Attend D/Supt R/20’s office re transcript of audio tape

Discuss future handling of source [Barrett] with D/Supt [R/20] ... [Special Branch] Good idea? Discuss with D/Supt [R/18] [CID] re – own reasons for feeling time is much too soon for this.”⁶²

23.103 In his journal entry for 4 October 1991, DS Brown noted that: *“SB jealousy obvious and very dangerous.”⁶³*

23.104 DC R/06’s contemporaneous note submitted to D/Supt R/20 clearly showed that the SB did, indeed, wish to recruit Barrett as an agent. The note included no reference at all to the possibility of pursuing the potential prosecution of Barrett for the murder of Patrick Finucane.

Was DS Brown told not to raise the subject of Patrick Finucane’s murder on 10 October 1991?

23.105 A further meeting took place between Barrett and DS Brown, DC McIlwrath and DC R/06 on 10 October 1991. DS Brown recalled being surprised when R/06 apparently instructed him repeatedly that he was not, on this occasion, to bring

⁶¹ Johnston Brown, *Into the Dark*, 2005, pp.183–184

⁶² DS Brown’s notebook, 4 October 1991 [see Volume II, pp. 110–116]

⁶³ DS Brown, journal entry, 4 October 1991

up the subject of the murder of Patrick Finucane.⁶⁴ Given the prominence of the murder, this, he stated, seemed an odd instruction.

23.106 DS Brown noted that on 10 October the subject of Patrick Finucane's murder arose just once – when he asked Barrett whether L/05 had been involved. Barrett apparently replied, “No way Jonty [DS Brown] ... He hasn't got the balls for it.”⁶⁵

23.107 I have analysed the transcript of the recorded conversation of 10 October 1991. The transcript contains the following exchange:

McIlwrath: I was surprised to hear that he [L/05] wasn't involved in Finucane because I thought he was one of the trigger men?

Barrett: No.

...

[DS Brown]: Has he got no balls or what?

Barrett: I think he's got balls for talking about it, you know.

[DS Brown]: Aye

Barrett: But that's about as far as it goes. He's not a trigger man.

R/06: See those ... see those two IDs on the police you give us last week.

Barrett: Mmm hm.

R/06: Those two policemen, can you update that any further?”⁶⁶

23.108 This does not perfectly reflect DS Brown's recollection, but his account was written more than a decade after the event. Significantly, after the mention of Patrick Finucane, R/06 appears to have interjected with a question on an unrelated issue. This could lend credence to DS Brown's suggestion that the SB did not wish Mr Finucane's murder to be raised on 10 October 1991, although, as is evident from the transcript, the subject of the murder was in fact briefly discussed.

The subsequent dispute between DS Brown and the RUC SB

23.109 DS Brown's subsequent account of his dealings with the SB included allegations of personal threats being made against him and claims that the SB used Barrett as a way of removing him from his position. R/06's contemporaneous notes in turn accused DS Brown of having inappropriate dealings with Barrett, though these allegations cannot be substantiated.

23.110 DS Brown declined to pursue his allegations when questioned by the Stevens III Investigation and at this remove in time it is difficult to find sufficient substantiation to resolve these conflicting statements.

⁶⁴ Johnston Brown, *Into the Dark*, 2005, pp. 194 and 196

⁶⁵ *Ibid.*, p. 198

⁶⁶ Transcript of audio tape, 10 October 1991

23.111 What can be demonstrated, however, is that DS Brown did, as he claimed, continue to pursue the investigation of the murder of Patrick Finucane to the dismay of the SB. In his book, DS Brown claimed to have continued to consider the best way to build a case against Barrett. He believed that the ‘getaway driver’ could perhaps be persuaded to become a ‘converted terrorist’ (or ‘supergrass’, as they are commonly known). I should note that DS Brown’s prospects of success in this regard would have been limited given that, as I outlined in Chapter 12, I believe that Barrett was himself the ‘getaway driver’, contrary to his own reported comments to DS Brown about the ‘lad from Rathcoole’ being the driver.

23.112 RUC SB records confirm that DS Brown continued to pursue the investigation of Patrick Finucane’s murder. A further report by R/06 to a Detective Inspector in the RUC SB dated March 1992 outlined concerns that DS Brown continued to press Barrett and other UDA members for information in relation to the murder of Patrick Finucane. The note included the following relevant passage:

“Source [Barrett] also said that [L/20] had told him that D/Sergeant Brown and D/Constable McIlwrath while in his house had been dropping his [Barrett’s] name and that they knew who had done the Finucane murder, also anyone who came out of Castlereagh Holding Centre told him ... [Barrett] that his name had been discussed. Source [Barrett] said this was not right as he had always kept a low profile even when he was more actively involved with the UFF.

It would also seem that D/Sergeant Brown keeps asking source [Barrett] who the driver was on the Finucane murder and source says this is very close to him and refused to give his name to [DS Brown]. One aspect of this recent development is that the agent [Barrett] says he cannot continue to meet with CID and SB and would wish to meet only with ourselves [SB].”⁶⁷

23.113 The March 1992 SB note confirmed that the SB did at the time want to sideline DS Brown and take over the ‘sole handling’ of Barrett as an agent. The note stated that:

“Now is an opportune time for SB to take over as the sole agent handlers of the source.”⁶⁸

23.114 The SB note highlighted the effect that Barrett’s recruitment as an agent could have on the UDA, whilst acknowledging that Barrett was motivated by financial reward. The note included the following passage:

“... if the agent is able to supply all of this intelligence into the organisation it could have far reaching consequences for the UDA and the military wing of the UFF.

The agent made it quite clear during our conversation with him that he was in this business to make money, and money is the only motivation for his wanting to work for Special Branch.”⁶⁹

⁶⁷ DC R/06 to Detective Inspector Special Branch, March 1992

⁶⁸ Ibid.

⁶⁹ Ibid.

23.115 The SB note concluded with the comment that:

“Source instructed not to terminate relationship with D/Sergeant Brown at present but to keep him on the ‘Long Finger’.”⁷⁰

23.116 The SB attitude towards DS Brown’s pursuit of this case appears to have generally been a hostile one. When I met him during this Review, R/15, who had worked for both the SB and the CID, stated that he:

“... considered that there had been a failure on [DS] Brown’s part to ensure that the investigation of Barrett continued.”⁷¹

23.117 Having considered the relevant evidence, I do not believe that DS Brown can fairly be blamed for having failed to pursue the investigation of Barrett. The evidence suggests that, to the SB’s displeasure, DS Brown did continue to pursue the potential case against Barrett and others for at least a number of months following the October 1991 ‘admission’.

The tape of the 3 October 1991 meeting

23.118 According to DS Brown’s account, which is broadly corroborated by the SB documentary record, the following two tapes should have existed of conversations with Barrett in October 1991:

- (i) a recording of the meeting of 3 October 1991 in which Barrett ‘admitted’ to his involvement in the Patrick Finucane’s murder; and
- (ii) a recording of the meeting of 10 October 1991 in which no such ‘admission’ was made.

23.119 DC R/06 confirmed in his statement to the Stevens III Investigation that a tape recording had been made of Barrett’s ‘admission’ made on 3 October 1991. DS Brown’s journal also included contemporaneous notes confirming the existence of a tape recording of the 3 October 1991 meeting. His notebook included the following comment at the end of his account of the meeting:

“Meet ends. All on audio.”⁷²

23.120 DS Brown’s notebook included the following notes in relation to his activity on 4 October 1991:

“Dispatched to C’reagh to liaise with D/Supt R/20 and DC R/06 SB. Duties re tape transcript from [Barrett].”⁷³

23.121 The Stevens III Investigation sought to recover the tape and/or transcript of the meeting between the three RUC officers and Barrett on 3 October 1991. On 16 April 1999, an RUC Detective Superintendent provided the Stevens III Investigation with two tape recordings which had been handed to him by R/06.⁷⁴ The second tape was, however, only a copy of the first.

⁷⁰ Ibid.

⁷¹ Note of meeting with former RUC officers, 25 July 2012, para 91

⁷² DS Brown, notebook, 3 October 1991 [see Volume II, pp. 110–116]

⁷³ Ibid., 4 October 1991 [see Volume II, pp.110–116]

⁷⁴ Stevens III Investigation message form M6, 19 April 1999

- 23.122 As DS Brown subsequently outlined,⁷⁵ these tapes were, in fact, recordings of the conversation that took place on 10 October 1991 and thus did not include Barrett's 'admission'. The tape recording of the critical 3 October 1991 conversation had disappeared.
- 23.123 The Stevens III Investigation conducted a subsequent analysis to determine whether the 10 October conversation had been taped over the recording of the 3 October meeting. An analysis conducted at the Metropolitan Police's Forensic Audio Laboratory showed that the recording had not been tampered with and must, therefore, have been a separate tape to that recorded on 3 October.⁷⁶
- 23.124 DS Brown concluded that the 10 October 1991 meeting must have been conducted as part of the conspiracy to remove any trace of Barrett's 3 October 'admission'. During his interview on the Insight TV programme, DS Brown alleged that on 10 October Barrett was "... *complaining about going over the same ground that we went over on the 3rd ...*". DS Brown stated that, "*He's [Barrett's] keeping asking me why are we going over this and over this and over this.*"⁷⁷
- 23.125 If DS Brown was correct to say that the same questions were asked on both occasions, this would be a natural reaction in Barrett. The clearest frustration on Barrett's part to be found in the transcript of the 10 October meeting is contained in the following exchange:
- R/06: Who are your seven brigade the, are you, you mentioned last time [L/20], ... hypothetically yourself?*
- Barrett: Mmm hm.*
- R/06: Who else will sit on brigade then?*
- Barrett: As I said Company Commanders, right. See each company has a Commander. I went through this with you last week.*
- DS Brown: I know.*
- Barrett: Fuck.*"⁷⁸
- 23.126 It important to note here that it was R/06 himself who pointed out that Barrett had provided the same information "*last time*", which does not suggest any attempt on his part to hide this fact from the tape recording. DS Brown's contention that Barrett repeatedly showed his frustration at being asked duplicate questions is not otherwise evidenced by the rest of the transcript. Nor does DS Brown appear to have particularly taken a 'back seat' with regard to the questioning of Barrett on 10 October as he implied in his accounts. I am not, therefore, persuaded that the 10 October 1991 meeting was set up and conducted as part of a conspiracy at that time to erase any record of Barrett's 'admission' on 3 October.

⁷⁵ Insight TV programme transcript, p. 12

⁷⁶ Metropolitan Police Service Forensic Audio Laboratory, Interim Report Re Tape, No. D19

⁷⁷ Insight TV programme transcript, p. 7

⁷⁸ Transcript of audio tape, 10 October 1991

- 23.127 However, I do find force in DS Brown's general allegation that the disappearance of the tape recording of 3 October 1991 conversation resulted from an active decision taken by SB officers at some stage to get rid of the recording of Barrett's 'admission'.⁷⁹ It must have been apparent to the SB officers that the tape recording of 3 October 1991 was highly significant (and, indeed, much more significant than the recording of the 10 October meeting that was retained and later provided to the Stevens III Investigation). It included a *prima facie* 'admission' to a very high-profile murder and consequently was a source of considerable interest to their CID colleagues.
- 23.128 It is also important to note that, as I outlined in Chapter 19, the tape would also have recorded Barrett's significant comments that an RUC source had provided the UDA with intelligence on Patrick Finucane.
- 23.129 I am not able to identify exactly when the tape of the 3 October 'admission' disappeared. What is clear is that the potential significance of Barrett's 'admission' was recognised by both the SB and the CID at the material time.
- 23.130 Although the 'admission' on the tape recording may well have been excluded by a judge using his discretion in respect of the manner in which it had been obtained, subject to this the tape recording would have none the less represented strong *prima facie* evidence. The absence of the tape was a serious impediment for the Stevens III Investigation as it sought to build an evidential case against Barrett. A note produced by the DPP(NI)'s office on 16 June 2000 included the comment that, "*The non-appearance of the tape is a major difficulty.*"⁸⁰
- 23.131 Statements made by RUC officers with respect to the conversation of 3 October 1991 constituted part of the evidential case that led ultimately to charges being brought against Barrett for the murder of Patrick Finucane following the Stevens III Investigation. Although it was open to Barrett to challenge the admissibility of this 'admission' made in circumstances in which no caution had been administered, he did not do so and in fact pleaded guilty to the murder in 2004.

Overview

- 23.132 I am sure that the RUC SB took a conscious decision to recruit Kenneth Barrett as an agent rather than seek to bring him to justice for his role in the murder of Patrick Finucane. That decision was taken at RUC SB Superintendent level, though it is possible that knowledge of Barrett's *prima facie* 'admission' and recruitment extended further up the RUC hierarchy. I am also satisfied that the disappearance of the tape of Barrett's 3 October 1991 'admission' was a deliberate act designed to thwart the RUC CID in its efforts to investigate Barrett in connection with the murder of Patrick Finucane.

⁷⁹ Lawyers Committee for Human Rights, *Beyond Collusion*, 2003, p. 80

⁸⁰ DPP(NI) office internal note, 16 June 2000

Chapter 24: The Stevens I Investigation and the prosecution of Brian Nelson

The obstruction of the Stevens I Investigation

- 24.1 In examining the response of the State to the murder of Patrick Finucane, it is necessary to deal with the obstruction of the Stevens I Investigation established in September 1989. The Investigation did not specifically involve an examination of the murder of Patrick Finucane, though it did cover the crimes committed by Brian Nelson and the issue of security force 'leaks' to paramilitaries, both of which are central to my Review.
- 24.2 It should also be noted that, at the inquest into Patrick Finucane's death, Royal Ulster Constabulary (RUC) Detective Superintendent Alan Simpson stated that Sir John Stevens was responsible for examining an aspect of the murder, namely threats allegedly made by RUC officers to Mr Finucane's clients.¹ This was not accurate – these threats were not investigated until Stevens III – but the comments do highlight the fact that the RUC later implied that Stevens I had been an all-encompassing investigation into collusion.

The background to the Stevens I Investigation

- 24.3 On 25 August 1989, Loughlin Maginn was murdered by gunmen at his home in Rathfriland, County Down. Responsibility for the murder was subsequently claimed by the Ulster Freedom Fighters (UFF) who attempted to justify the killing by claiming that Maginn was a member of the Provisional Irish Republican Army (PIRA).
- 24.4 In response to public condemnation of the attack, the Ulster Defence Association (UDA) decided to give a BBC journalist access to intelligence material originating within the security forces which appeared to lend support to the claim that Maginn was indeed a suspected member of PIRA.
- 24.5 The resulting media coverage of the UDA's access to security force information attracted significant controversy. The UDA responded by embarking upon a strategy of publicly disclosing a mass of documentation that was clearly of security force origin. This was in support of their claim that the UDA only targeted known terrorist suspects.
- 24.6 As a result of this disclosure of loyalist access to security force information, on 14 September 1989 the then Chief Constable of the RUC, Sir Hugh Annesley, appointed Sir John Stevens, then Deputy Chief Constable for Cambridgeshire,

¹ Deposition of D/Supt Alan Simpson, Inquest into the death of Patrick Finucane, 6 September 1990

to investigate a number of specific issues linked to the murder of Loughlin Maginn. Stevens was provided with the following Terms of Reference on 20 September 1989:

- “(1) To investigate the alleged leak of information to Loyalist terrorist groups as disclosed by the television reporter, Mr. Chris Moore, and allegedly associated with the murder of Mr. John Anthony Loughlin Maginn.*
- (2) To investigate the alleged disappearance of confidential material from Ballykinler Army camp on or about 1st September, 1989.*
- (3) To investigate the disappearance of photographs of alleged PIRA terrorists from Dunmurry Police Station on or around 11th August.*
- (4) In consultation with me, to investigate any associated matters directly relevant to the above that come to light in the course of your enquiry.*
- (5) To make relevant recommendations regarding these aspects.”²*

24.7 It is apparent from a review of all the documentation that these Terms of Reference were tightly kept by the Chief Constable and not disclosed widely. However, it would have been apparent to all concerned that the Stevens I Investigation was examining the issue of leaks from members of the security forces to the UDA. In his public statement on 21 September 1989, the Chief Constable issued the following appeal:

“I appeal to anyone who has any information to offer in respect of ‘leaks’ or associated matters to report it now, either to my office or that of Mr Stevens.”³

Nelson’s relevance to the Stevens I Investigation

24.8 In considering the issue of obstruction it is important to first outline the relevance of Brian Nelson and the Force Research Unit (FRU) to the Stevens I Investigation. Nelson had possession of leaked security force material relating to Loughlin Maginn from November 1988 onwards.⁴ Both the FRU and the RUC Special Branch (SB) were aware of this fact, since the leaked material relating to Maginn had been passed by the FRU to the RUC SB as an attachment to a Military Intelligence Source Report (MISR) dated 6 December 1988.⁵ I dealt in Chapter 11 with the failure by the security forces to prevent such leaks of information in this case.

24.9 Nelson’s handlers had a copy of a video tape given to Nelson, which was a recording of a briefing on PIRA suspects that had taken place within an Ulster Defence Regiment (UDR) barracks. Nelson had also provided his handlers on 30 August 1989 with further leaked security force information relating specifically to Loughlin Maginn. He had received this information from L/45 on the evening of Maginn’s murder.⁶ L/45 alleged that he had received the information from an SB contact in Lisburn. The FRU passed this information to the RUC in a MISR

² Stevens I Investigation Terms of Reference, Chief Constable to Sir John Stevens, 20 September 1989

³ Chief Constable, public statement, 21 September 1989

⁴ CF 26 November 1988

⁵ MISR 6 December 1988

⁶ CF 30 August 1989

dated 6 September 1989, which included a copy of the RUC document featuring Loughlin Maginn.⁷

24.10 Following the murder, Nelson was also centrally involved in the disclosure by the UDA of leaked security force documents to the media. He provided Thomas ‘Tucker’ Lyttle with the material that was subsequently shown to the BBC journalist regarding Maginn.

24.11 The Contact Forms (CFs) dated 19 and 22 September 1989 explicitly recognised Nelson’s central relevance to the ongoing criminal investigations by outlining the advice his FRU handlers had given him regarding “*Resistance to Interrogation*” techniques. The CF dated 22 September 1989 recorded that:

“The latter part of the debrief concentrated on a further lesson in Resistance to Interrogation for the source in case he should be arrested within the next week. This was the third such brief ... [Nelson] has received and was very detailed ...

He was told to say absolutely nothing to any interrogators no matter what the threat and he was assured that if arrested his handler would be informed, if not before then soon afterwards and would be able to obtain a release.”⁸

24.12 A later CF confirmed that the FRU were aware that Nelson was central to the ongoing controversy over leaks. The CF dated 12 October 1989 noted that:

“... the whole basis of the present ‘montage fiasco’ is founded on UDA ‘intelligence’ and will, therefore, draw ... [Nelson] into any twist or turn it may take.”⁹

24.13 A later statement made by one of Nelson’s handlers, A/02, suggested that FRU personnel were concerned about the potential for the Stevens team to investigate the role of Nelson and the FRU. In his statement dated 5 December 1990, A/02 recalled that:

“I remember approaching my OC [Officer Commanding] ... to voice my personal concerns about the enquiry and was told that the FRU files would never be looked at and that in any event I would never be interviewed, if anyone was to be asked questions it would be the officers. My concern centred on the fact that I knew Nelson had been involved in targetting [sic] and that I had reported such activity to my superiors.”¹⁰

24.14 It is clear to me that both the RUC SB and the Security Service must also have been aware of the central relevance of Brian Nelson and his activities to the Stevens I Investigation. The RUC SB’s own intelligence, for example, was highlighting Nelson’s key role in storing leaked security force information. An entry recorded in the Daily Intelligence Book dated 20 September 1989 recorded that:

⁷ MISR 6 September 1989

⁸ CF 22 September 1989, Items 20–22

⁹ CF 12 October 1989, ‘Case Development’, para 12

¹⁰ A/02, statement to Stevens I Investigation, 5 December 1990

“... the UDA had ‘bags more’ security force information ... the UDA had detected cracks in the Anglo/Irish Agreement and ... the release of those documents would prolong the argument and cause damage to the agreement. Brian Nelson (UDA IO) has all intelligence on computer disc.”[Emphasis in original]¹¹

24.15 This handwritten entry was annotated with the note, “*E3 infd in part*”. The name of Brian Nelson had also been underlined twice.

24.16 A Security Service telegram sent by the Head of Assessments Group (HAG) to the Director and Co-ordinator of Intelligence (DCI) on 26 September 1989 regarding the Stevens Investigation noted that the “*Army source ... [Nelson] ... may become central to the investigation*”.¹²

24.17 The other important contextual point to note is that Brian Nelson was, at this time, the source of considerable discussion between the senior intelligence officers in Northern Ireland. A Security Service telegram dated 3 October 1989 recorded a conversation between the DCI and the Deputy Head of Special Branch (DHSB), Brian Fitzsimons. The telegram noted that A/05 had visited the DHSB to ask him why he reportedly believed that the Security Service should take over the Nelson case (the DHSB denied that he had proposed this course of action).

24.18 Although the DCI did not himself suggest that the Nelson case be transferred to the Security Service, he did highlight the need for careful handling of the case given its political nature. In the telegram, the DCI recorded that:

*“I had told [A/05] that I thought he ought to consider transferring the ... [Nelson] case up to his HQ team: it was currently probably too political in content to be run at Det level. [A/05], I think, accepted this although he said he was a bit wary of creating a morale problem in the Det.”*¹³

24.19 It was not, therefore, the case that senior intelligence officers were unaware at the time of Nelson’s significant role as an Intelligence Officer for the UDA. On the contrary, the future direction and handling of the Nelson case was being discussed at the highest levels of the intelligence community in Northern Ireland.

24.20 Whilst the precise Terms of Reference for the Stevens I Investigation were kept tightly by the Chief Constable, it must have been clearly apparent to all the intelligence agencies that Nelson was a critical figure to the investigation.

The co-operation given to the Stevens I Investigation

24.21 The obstruction of the Stevens Investigation was evident only in the contentious area of intelligence. Before dealing with this, it must also be acknowledged that the Stevens Investigation team did receive significant co-operation from the security forces on non-intelligence-related matters. The Chief Constable of the

¹¹RUC SB Daily Intelligence Book, 20 September 1989

¹²HAG to DCI, 26 September 1989, p. 10

¹³Security Service telegram, 3 October 1989, para 3

RUC himself commissioned a senior police officer from outside Northern Ireland to carry out the investigation.

- 24.22 In his published Stevens I Report in May 1990, Sir John recognised the co-operation received from the RUC, the regular British Army and the UDR. A significant number of difficult arrest operations were carried out with resource and logistical support from the RUC and the Army.
- 24.23 It should also be acknowledged that, shortly after Sir John's arrival in Northern Ireland, he was shown a copy of the video tape provided by Nelson to his FRU handlers and subsequently given to the RUC SB. The DHSB showed him the tape, whilst stressing its sensitivity.

The obstruction of the Investigation

- 24.24 I have identified six critical aspects of the obstruction of the Stevens Investigation, as follows:
- (i) the instructions allegedly given by the General Officer Commanding (GOC) Northern Ireland and the Chief Constable;
 - (ii) the briefing provided by the Army and the RUC SB to Sir John Stevens;
 - (iii) the seizure and withholding of Brian Nelson's intelligence dump;
 - (iv) the withholding of the 'file' of MISRs relevant to the Stevens Investigation;
 - (v) the withholding by the RUC SB of the Security Service compendium of leaks; and
 - (vi) the 'tip-offs' to UDA members regarding pending arrests by the Stevens I Investigation team.

The instructions allegedly given by the GOC and the Chief Constable

- 24.25 At the heart of the dispute over the obstruction of the Stevens I Investigation are the instructions given by the Chief Constable of the RUC, Sir Hugh Annesley, and the then GOC Northern Ireland, General Sir John Waters. There was a fundamental conflict between the two men as to the organisation responsible for denying the Stevens Investigation access to intelligence material.
- 24.26 The Army position was that they acted in accordance with instructions from the DHSB. In a letter to the Chief Constable dated 25 May 1990, the GOC stated that the DHSB:
- “... gave quite specific instructions that no intelligence documents or access to our intelligence gathering units should be made available to the Stevens Enquiry without reference to him. We abided by this ruling.”¹⁴*
- 24.27 In later briefing notes, the Army adopted a somewhat modified line and claimed that the Chief Constable had not wanted the Stevens Investigation to have access to intelligence. In a file note dated 20 September 1990, the Assistant

¹⁴ Letter from GOC to Chief Constable, 25 May 1990

Chief of Staff of the Army's Intelligence Section (ACOS G2), A/19, claimed that he had been told the following information by the DHSB, Brian Fitzsimons:

*"The Chief Constable did not wish the Stevens Inquiry to be given access to intelligence, or the specialist units involved in intelligence gathering. Such access was not part of their remit. If at any stage I was pressed by the inquiry team for access to intelligence I was to refer them to Special Branch for guidance."*¹⁵

24.28 Senior Army officers maintained this position when briefings were provided to the Chief of the General Staff (CGS) and the Secretary of State for Defence in a series of meetings on 26 September 1990. The notes of these meetings have been released in full alongside my Report. The notes record General Waters (the then ex-GOC) providing the following briefing to the CGS:

*"[General Waters] described how the Chief Constable and he discussed the terms of reference of the inquiry. The Chief Constable decided that the Stevens inquiry would have no access to intelligence documents or information nor the units supplying them. This was a line he kept to consistently until January 1990. The ex-GOC described how he had pointed out towards the latter half of 1989 that it was becoming increasingly difficult to keep the Stevens inquiry away from intelligence information."*¹⁶

24.29 A similar briefing was subsequently provided by General Waters to the then Secretary of State for Defence, Tom King MP. The minutes of the meeting recorded that:

*"Secretary of State took the point that at all times the Army had been operating under the specific instructions of the Chief Constable passed through his Deputy Head of Special Branch. These instructions were that the Stevens inquiry were to have no access to intelligence material or the units involved in gathering it without prior clearance through Special Branch."*¹⁷

24.30 In his submission to my Review, General Waters stated that:

*"... any actions in relation to intelligence material and its provision to Stephens [sic] would have been undertaken in accordance with the instructions of the RUC and in particular the Chief Constable."*¹⁸

24.31 The GOC's version of events is, however, vigorously disputed by the then Chief Constable, Sir Hugh Annesley. In his submission to my Review, Sir Hugh stated that he spoke privately with the GOC and the DCI after a Security Policy Meeting (SPM) with the Secretary of State for Northern Ireland. Northern Ireland Office (NIO) records show that this meeting took place on 26 September 1989.¹⁹ Sir Hugh gave the following account of the conversation in his submission to this Review:

¹⁵ MoD, file note, 20 September 1990

¹⁶ Ibid., 26 September 1990 [see Volume II, pp. 308–312]

¹⁷ Ibid.

¹⁸ General Waters, submission to the Review, p. 1

¹⁹ SPM minutes, 26 September 1989 [see Volume II, pp. 313–317]

“I expressed a concern that I did [not] want there to be any risk of a repeat of Stalker ... and sought their support to ensure that Stephens [sic] had access to the information/intelligence to do his job. This was readily accepted by both who also agreed that Brian Fitzsimons, Deputy Head of Special Branch would act as the conduit for such intelligence.” [Emphasis added]²⁰

- 24.32 Sir Hugh noted that the only qualification he added was that the Stevens team did not require access to irrelevant intelligence information. In his submission to my Review, Sir Hugh stated that:

“A question also arose as to whether Stephens [sic] needed access to all intelligence information. I expressed the view, and they agreed, that this was not necessary – for example in respect of PIRA activities in South Armagh or out of the Province, etc.”²¹

- 24.33 Sir Hugh emphatically denied the suggestion that he instructed the Army to deny Sir John Stevens access to any intelligence material.

- 24.34 The then DCI, John Deverell, is now deceased. I have, however, had access to internal Security Service telegrams recording the DCI’s perspective on events around this time. In a note dated 17 October 1990, the DCI stated that:

“Things really began to go off the rails when the Chief Constable, having directed that all dealings on classified matters should be handled through HSB [Head of Special Branch], did not fully explain what he meant to the Stevens team.”²²

- 24.35 The DCI’s telegram gave the impression that the Army did actually believe that they were obeying the Chief Constable’s instructions by not providing intelligence to the Stevens team. The DCI stated that:

“The real failure of communication lies in the fact that the Army quite genuinely thought they were obeying the Chief Constable’s instructions in not volunteering anything until it was specifically asked for – something which has undoubtedly given rise to the Stevens’ teams suspicions that the Army were seeking to impede the course of justice.”²³

- 24.36 It is not possible for me to completely resolve the conflict arising from differing statements made by the then GOC and the then Chief Constable. The issue hinges on an unminuted conversation that took place 23 years ago. The only other person present – the DCI – is deceased and his telegrams from the time do not completely resolve the position.

- 24.37 There are, however, a few conclusions that I can draw from the evidence. I do find force in Sir Hugh Annesley’s submission to my Review. He appointed Sir John Stevens and promised him full co-operation both in public and in private. In this context it would have been extraordinarily reckless for the Chief Constable

²⁰ Sir Hugh Annesley, submission to the Review, Appendix B

²¹ Ibid.

²² DCI, telegram to Security Service Legal Adviser, 17 October 1990

²³ Ibid.

to have issued orders unequivocally prohibiting Stevens from accessing any intelligence information.

24.38 In this context, it is also instructive to note that, when writing to the Chief Constable in May 1990, the GOC alleged that the DHSB (not Sir Hugh Annesley) stipulated that access to intelligence should only be given after reference to him. This allegation differed significantly from the later Army claim that the Chief Constable in effect personally issued a blanket prohibition on the Stevens team having access to intelligence information. If this had been the case, why then did the GOC's letter in May 1990 not mention the Chief Constable's personal 'instruction' to him not to release any intelligence?

24.39 I do not believe that I can rely on the Army's claim that the Chief Constable issued a personal instruction to deny the Stevens team access to all intelligence information. It seems to me likely that the Army interpreted the Chief Constable's instruction to deal with intelligence matters through the SB in a way that most conformed with their desire to protect their intelligence operations. It is, however, accepted by all involved that the Chief Constable had directed that the DHSB act as the point of reference for all intelligence matters. In considering the different aspects of obstruction below, I have, therefore, borne in mind the fact that the RUC SB had a significant role in determining what access the Stevens team would have to intelligence information.

The briefing provided by the Army and the RUC SB to Sir John Stevens

24.40 In parallel with the seizure of Brian Nelson's intelligence dump (see paragraphs 24.49–24.52), the Army and the RUC SB were providing Sir John Stevens with the normal background briefings given to external investigators.

24.41 During the evening of 24 September 1989, members of the Stevens I Investigation team attended a briefing at Army Headquarters (HQ) in Lisburn. One of the Stevens officers, Detective Constable Bynum, asked at the briefing whether the Army ran agents in Northern Ireland. In a statement dated 7 February 1990, DC Bynum noted that the Chief of G2 Intelligence Section gave the following answer:

*"His reply was to the effect that the role of the Army in Northern Ireland was primarily to assist and support the Royal Ulster Constabulary and that therefore the Army did not itself use informants."*²⁴

24.42 The Chief of G2 made a statement to the Stevens Investigation on 18 October 1990, in which he said:

*"I was ... not aware that the fact that the Army were running informants had any relevance to what the Stevens Team had come to the briefing for. I was under instructions from ACOS G2 not to cover any secret intelligence matters at the briefing."*²⁵

²⁴ Statement of Stevens officer, 7 February 1990

²⁵ Chief of G2, statement, 18 October 1990

24.43 At a later meeting between senior Army officers and Sir John Stevens, the then ACOS G2 gave the following explanation as to why the Stevens team had been told that the Army did not run agents:

“Chief G2 was under instructions based upon special branch advice that no reference should be made to any of the army’s covert intelligence gathering agencies in the brief to the Stevens inquiry.”²⁶

24.44 The briefing of the Stevens I Investigation that the Army did not run agents is extraordinary. Although this undoubtedly amounts to a conscious obstruction of a criminal investigation, I accept that the Chief of G2 was obeying the instructions of senior officers in participating in such a deception. The Army’s defence that they were acting under general SB instructions is no defence in this context: British Army officers were ultimately responsible to their chain of command, not the RUC, and had no basis on which they could justify lying to a criminal investigation. This deception becomes all the more serious when one comes to consider the full role of Brian Nelson.

24.45 The Army’s claim that the RUC SB instructed them not to include intelligence matters in the initial briefing of Sir John Stevens cannot be substantiated. However, I do also have grave reservations as to the briefing initially provided by the RUC SB to Sir John. I have released alongside my Report the SB briefing provided to Sir John on 27 September 1989 by the DHSB. The briefing paper was entitled ‘Involvement of UDR personnel with subversive/terrorist organisations’.²⁷

24.46 Despite the fact that an RUC officer had been allegedly implicated in providing information to loyalists on the murdered Loughlin Maginn,²⁸ no briefing was provided to Sir John Stevens regarding the involvement of RUC personnel with loyalist organisations. The failure to provide any information to Stevens on RUC leaks is even more surprising in view of the scale of links between RUC officers and loyalist paramilitaries which I have outlined in Chapter 11.

24.47 The failure of the SB to share any intelligence with Stevens regarding RUC leaks appears to have surprised Security Service officers. The HAG wrote to the DCI on 29 September 1989 attaching the document sent to Stevens on links between the UDR and loyalists. The HAG noted:

“It is not clear why there is no similar document relating to the RUC – perhaps Stevens only asked about the UDR. Certainly our researches suggest that RUC links are as extensive as the UDR’s; although it is probably fair to say that RUC officers would not have committed so many offences of murder, manslaughter, firearms offences etc.”²⁹

24.48 The HAG recorded his view that the DHSB was receiving “*patchy and incomplete advice*” from the E3 section of the RUC SB. The failure to provide any briefing to Stevens on the significant problem of RUC leaks to loyalist paramilitaries itself

²⁶ Record of the meeting between Sir John Stevens and Army officers, 20 September 1990

²⁷ DHSB, briefing paper to Sir John Stevens, 27 September 1989 [see Volume II, pp. 318–322]

²⁸ FRU MISR 6 September 1989

²⁹ HAG to DCI, 29 September 1989 [see Volume II, pp. 323–325]

raises the question, further explored below, as to whether the RUC SB were seeking to direct the Stevens I Investigation towards the UDR and away from evidence of collusion from within the ranks of the RUC.

The seizure and withholding of Brian Nelson's intelligence dump

24.49 On 22 September 1989 A/05 ordered the seizure of Nelson's intelligence dump by the FRU. The intelligence dump held a significant quantity of leaked security force information, including the montage photographs relating to Loughlin Maginn that Sir John Stevens had been asked to investigate.

24.50 The CF dated 22 September 1989 provided the following rationale for the seizure of the intelligence dump by the FRU:

*"... to present [sic] any further releases of ... [Nelson's] intelligence material and to enhance the source's personal security, should his house or intelligence store be raided, his entire stock was brought out and handed over to this office ... It is planned that the material will be held for an appropriate period which will be dictated first and foremost by ... [Nelson's] personal security and safety within the UDA and secondly by the political temperature regarding the controversy."*³⁰

24.51 A/05's submission to my Review made clear that the protection of Nelson was a key reason behind the seizure of the intelligence dump by the FRU. He stated that the dump:

*"... was removed by handlers in order to protect Nelson and he was given a cover story to deal with its loss for his UDA colleagues. The reason for this was clear. Nelson was an active agent and had he lost his intelligence material by means of it being handed to Stevens it would have immediately led to his compromise."*³¹

24.52 It should also be noted that there are conflicting statements between A/05 and the then Commander Land Forces (CLF) as to whether the CLF was aware that the FRU had taken possession of the intelligence dump. A/05 stated that he personally showed the CLF the intelligence dump. In his statement dated 3 December 1990, the CLF denied any knowledge of the intelligence dump.³²

Did the RUC SB know about the existence and seizure of the intelligence dump?

24.53 There is a fundamental conflict between the positions of the FRU and the RUC as to the SB's awareness of the existence and seizure of Brian Nelson's intelligence dump.

24.54 FRU officers have consistently maintained that the RUC SB were aware of the existence of the intelligence dump from October 1987 onwards and were aware that the FRU had seized possession of it on 22 September 1989. In his statement

³⁰ CF 22 September 1989

³¹ A/05, submission to the Review, p. 31

³² CLF, statement to Stevens I Investigation, 3 December 1990

to the Stevens III Investigation in 2002, A/05 alleged that the FRU had made the RUC SB aware of Nelson's intelligence dump. He stated that the RUC SB were in fact informed of the address at which the dump was held:

*"When Nelson took over as Intelligence officer he gained access (with others) to the material that made up the UDA Intelligence files. This has been referred to as the intelligence dump. Nelson had to find premises within which to store this material. Once the premises were found then the address was provided to the RUC SB in order that it would place it on its list of premises which should not be searched without its permission. This was MISR'd during February 1988 contrary to your [Stevens team's] assertion that the RUC knew nothing about it."*³³

24.55 The OC of the FRU's East Detachment (East Det FRU), A/01, reiterated to the Stevens II Investigation his belief that the RUC SB knew about the existence and location of Nelson's intelligence dump. In his statement on 9 December 1993 he said that:

*"I have said before and I repeat – RUC Special Branch, in particular the Source Unit, were aware of the address where the int. dump was contained, and to the best of my knowledge, this address was listed by them as a 'do not search property without reference to the FRU'."*³⁴

24.56 However, in their statements to the Stevens I and Stevens II Investigations, RUC SB officers uniformly denied all knowledge of Nelson's intelligence dump. Two successive heads of the RUC Source Unit during the period – D/CI R/10 and D/CI R/11 – denied any knowledge of the dump. Detective Sergeant (DS) R/07, who worked in the RUC Source Unit, also denied knowledge of the dump.³⁵ The then Head of Belfast SB, R/09, also categorically denied any knowledge of it.³⁶

24.57 The briefing paper sent to Sir John on 27 September by the DHSB included an Annex with what was described as:

*"... a list of names and addresses at which it is considered Security Forces' documents may be held by the Loyalist paramilitary organisation, the UDA."*³⁷

24.58 The name of Brian Nelson and the address of his intelligence dump was not included on the list. On the face of it, this could be construed as being consistent with denials by the SB that they had any knowledge of the existence of Nelson's intelligence dump.

24.59 However, in my view the documentary evidence clearly establishes that the RUC SB did, in fact, know about Nelson's intelligence dump from at least October 1987 onwards. I noted in Chapter 11 that the RUC SB were provided with a significant quantity of Nelson's intelligence dump in October 1987 "for evaluation".³⁸ In Chapter 7 I noted the MISR sent by the FRU to the RUC SB recording that

³³ A/05, statement to Stevens III Investigation, 2002, para 92

³⁴ OC East Det FRU, statement to Stevens II Investigation, 9 December 1993

³⁵ Extract from Stevens II Investigation Report

³⁶ R/09, statement, 23 November 1993

³⁷ DHSB briefing paper to Sir John Stevens, 27 September 1989 [see Volume II, pp. 318–322]

³⁸ FRU inventory of the intelligence dump, October 1987 [see Volume II, p. 1]

Nelson had copied and disseminated all his UDA targeting files to five named UDA members.

24.60 A/05 is also correct in stating that the RUC SB received a MISR in February 1988 recording the exact address at which the UDA's intelligence material was being stored. The MISR, dated 23 February 1988, recorded that:

*"The West Belfast Bde UDA Int Cell is located at [address]. The occupant ... is the only key holder but [L/27] will be one of three key holders."*³⁹

24.61 The MISR did not state explicitly that Nelson was in control of the Intelligence Cell. The MISR did, however, record that the information contained within it came from agent 6137. RUC Source Unit annotations in the Daily Intelligence Book suggest that Nelson was widely known within the Unit as agent 6137.

24.62 In addition to denying any knowledge of the intelligence dump, RUC SB officers also uniformly maintained that they were not aware that the FRU had seized control of this material in September 1989. Brian Fitzsimons stated on 25 November 1993 that:

*"I categorically deny that [A/05] ever made me aware of the existence of an intelligence dump as it has been described, or that I ever was aware of or approved a plan for the army to seize this."*⁴⁰

24.63 A/05, however, maintained that he had personally informed Brian Fitzsimons of the FRU's intention to retrieve the intelligence dump. A/05 stated that:

*"... on the 22 Sep I telephoned DHSB to seek his advice on how to deal with the matter of the intelligence dump in Nelson's possession."*⁴¹

24.64 The positions of A/05 and ACC Fitzsimons on this issue cannot be reconciled. The matter cannot be explored with Mr Fitzsimons as he is now deceased. It would not, therefore, be fair for me to seek to make a finding as to which of the two officers was telling the truth with regard to the alleged telephone call on 22 September 1989.

24.65 However, I have uncovered documentary evidence demonstrating that the RUC SB were informed of the FRU's seizure of Nelson's intelligence dump on 22 September 1989. A handwritten entry included in the RUC Daily Intelligence Book on 22 September 1989 reads as follows:

*"... [Nelson] – All material has been removed from UDA int. cell and is now in possession of FRU for research."*⁴²

24.66 There is, therefore, no doubt that the RUC Source Unit (which maintained the Daily Intelligence Book) were fully aware at the relevant time that the FRU had possession of the intelligence dump. There is no evidence to demonstrate that the Source Unit reported this information up the chain of command to the DHSB,

³⁹ MISR 23 February 1988, Item 1

⁴⁰ Brian Fitzsimons, statement to Stevens II Investigation, 25 November 1993

⁴¹ A/05, statement, 9 October 1990

⁴² RUC SB, Daily Intelligence Book, 22 September 1989, p. 242

nor that the SB would necessarily have been aware of the full extent of the intelligence dump seized by the FRU.

24.67 Nevertheless, this evidence undoubtedly undermines the claims made by all the SB officers to the Stevens Investigation team that they had no knowledge that the FRU had seized control of any of Nelson's intelligence material.

24.68 It is also of note that ACOS G2 subsequently claimed, even after Stevens had discovered the existence of the intelligence dump, that the advice of the DHSB was not to hand the material over. On 20 September 1990 ACOS G2 recorded:

"In response to my query [about handing the intelligence dump to Stevens] the advice from DHSB was not to hand over the material. However I received advice from SO1 Legal who advised me that ultimately the inquiry team could seek a court order enabling them to seize the dump."⁴³

24.69 Sir John Stevens was not aware of the existence of the intelligence dump until after the arrest of Brian Nelson. The arrest of Nelson had itself only come about as a result of the diligence of the investigating officers and not because his role was ever disclosed to Sir John. Stevens was subsequently provided with the intelligence dump by the Army on 16 January 1990. A period of nearly four months had therefore elapsed after the FRU, with the knowledge of the RUC SB, took possession of the intelligence dump. The dump contained vital evidence relevant to any criminal investigation into the issue of leaks.

The withholding of the 'file' of MISRs relevant to the Stevens Investigation

24.70 After having seized the intelligence dump, A/05 produced a file that consisted of a compilation of MISRs relating to Nelson's reporting of security force leaks. In his October 1990 statement to Stevens I, Brian Fitzsimons stated that he had personally asked A/05 to produce this file because it would have been difficult for the SB to collate all the MISRs they had previously received from the FRU.⁴⁴ A/05 stated that he was asked to produce this file by the GOC. In his submission to my Review, A/05 stated that:

"I recall that I went through reports and extracted CFs and MISRs at the request of GOC to prepare to give to Brian Fitzsimons to show how not only the Army but the RUC has been passing material to loyalists, in particular montages. Nelson's reporting was relevant to show security force collusion and highlight it."⁴⁵

24.71 The GOC also told the Stevens Investigation that he had requested the production of the file.⁴⁶ The file that A/05 produced did not reflect the full extent of Nelson's reporting on security force leaks and certainly not the extent of the intelligence dump. Nevertheless, the file did include a compilation of 42 MISRs outlining a series of RUC and UDR leaks during the period 1987–89. The file included the RUC Collators Bulletin (information collated on republican terrorist suspects)

⁴³ ACOS G2 file note, 20 September 1990

⁴⁴ Brian Fitzsimons, statement to Stevens I Investigation, 17 October 1990

⁴⁵ A/05, submission to the Review, p. 32

⁴⁶ GOC, statement, 25 August 1993, s. 653

featuring Loughlin Maginn. The Security Service described the file as a “*fairly formidable folio on ... [Nelson’s] reporting on collusion*”.⁴⁷

24.72 According to A/05 the ‘file’ was provided to Brian Fitzsimons around 29 September 1989. The GOC, the DCI and the Assistant Secretary Political (ASP) also received a copy of the Nelson ‘file’ on leaks.

24.73 Sir John Stevens did not receive a copy of the file nor any briefing on its contents until 17 October 1990, more than one year after it had been provided to the DHSB by the FRU. It was also only at this stage that Sir John gained access to the FRU CFs and MISRs.

24.74 Army records show that they subsequently sought to establish what action had been taken as a result of the ‘file’ of MISRs. The Army documents noted the following exchange in October 1990:

*“On Monday 15 October [1990] [A/24] asked me to find out from HSB whether or not the file that [A/05] had passed him concerning what had been termed ‘RUC leaks’ had been shown to either the Chief Constable or to Mr Stevens ... We came to the conclusion that it was best done face to face and that SMIO [Senior Military Intelligence Officer] would approach HSB. This he did and said that he got a very frosty response. HSB considered that the files were not to do with RUC leaks and they were more a folder with lots of separate pieces of paper rather than a file, and that he was not prepared to comment on whether or not he had passed or shown it to the Chief Constable or Mr Stevens.”*⁴⁸

24.75 The fact that the Army clearly did not know whether the ‘file’ had been provided to Sir John Stevens suggests that, at least at that stage, they had not sought to stipulate to the SB that the file should be withheld from the Investigation. When he provided a copy of the file to Stevens on 17 October 1990, Brian Fitzsimons gave the following explanation as to why he had not previously provided this material:

*“I received from [A/05] the purple coloured manilla folder which I have handed to you ... This contained a quantity of military intelligence source reports, some with copies of security force documents attached. I did not study these in detail, but I could quite clearly see the sensitivity of the information, and major grounds for concern, should any use be made of these in terms of source protection.”*⁴⁹

The withholding by the RUC SB of the Security Service compendium of leaks

24.76 My Review has established that the RUC SB were provided with a further ‘file’ on security force leaks to loyalist paramilitaries by the Security Service. As I noted

⁴⁷ Security Service telegram, DCI to Deputy Director General and others, 22 September 1989

⁴⁸ MoD loose document re conversations on 15 October 1990

⁴⁹ Brian Fitzsimons, statement to Stevens I Investigation, 17 October 1990

in Chapter 11, the Service had compiled a compendium of their intelligence reporting on security force leaks to loyalist paramilitaries.

24.77 The internal Security Service telegrams suggest that the DCI had initially intended to approach Sir John Stevens directly but was advised by the Chief Constable that contact should be made through the DHSB.⁵⁰ The files suggest that there was considerable discussion within the Service as to how to deal with the Stevens Investigation but that Service officers were anxious to discharge their responsibilities in relation to the Investigation whilst protecting their intelligence sources.

24.78 On 11 October 1989 the HAG wrote to the DHSB providing the Service's compendium of intelligence. The covering note included the comment that:

*"As you will appreciate, this material is highly sensitive. If there is any question of any of it being used for investigative purposes, I should be grateful if we could be consulted in advance."*⁵¹

24.79 A later note dated 12 October 1989 confirmed that the Security Service Legal Adviser had given clearance for the compendium of intelligence to be passed to Sir John Stevens.

24.80 However, despite being provided with this information, the RUC SB did not show Sir John Stevens any part of the Security Service compendium of leaks nor was he briefed about its contents. It appears, in fact, that my Review is the first such inquiry to have access to the Security Service compendium of leaks.

The 'tip-offs' to UDA members regarding pending arrests by the Stevens I Investigation team

24.81 I must also deal with the leaking of information to loyalist paramilitaries and the media regarding Sir John Stevens' plans to arrest loyalists in January 1990. This aspect of the case must be viewed in the light of my findings in Chapter 11 that it was not uncommon for loyalists to receive leaks regarding the impending arrest operations during this stage of the Troubles.

24.82 An RUC SB50 subsequently recorded the potential source of the leak regarding UDA arrests in January 1990 as follows:

*" ... [L/45] ... informed [the] U.D.A. ... on Saturday, 6.1.90, that arrests of U.D.A. members could be expected on 8.1.90, and that the arrests were connected with the STEVENS Enquiry. As a result several leading U.D.A. members in his area are lying low away from home."*⁵²

24.83 There have also been allegations that Nelson was told by his FRU handlers to flee Northern Ireland to escape arrest. The documentary evidence on this point is unclear (indeed, one CF suggests that Nelson's handlers were, at one stage, encouraging him not to leave Northern Ireland).⁵³ However, Sir John Stevens

⁵⁰ Security Service telegram, 3 October 1989

⁵¹ HAG, letter to DHSB, 11 October 1989

⁵²RUC SB50, January 1990

⁵³ CF 10 January 1990

told this Review that Nelson was tipped off about his impending arrest. Sir John received information about this tip-off from the BBC journalist John Ware.⁵⁴

24.84 I must also make mention of the fire that broke out in Sir John Stevens' office on 10 January 1990, shortly before the rescheduled arrest of Brian Nelson. In his 'Overview and Recommendations' Report published in April 2003, Sir John Stevens stated that:

*"This incident, in my opinion, has never been adequately investigated and I believe it was a deliberate act of arson."*⁵⁵

24.85 Given the timing of the fire, I have no reason to doubt Sir John Stevens' conclusion in this regard, though I note that the original CID investigation into the incident concluded that the fire was not caused by an act of arson. I should note that in his submission to my Review, A/05 strongly refuted the specific allegation that the FRU had been involved in the fire. He stated that this was:

*"... a quite astonishing accusation, made without evidence and done deliberately to create suspicion against us."*⁵⁶

24.86 There is no evidence whatsoever to connect the FRU, or indeed any individual or organisation, to the fire in Sir John Stevens' offices. It remains unexplained.

The concerns of the DPP(NI)

24.87 It is clear that the obstruction of the Stevens I Investigation was such that it caused serious concern to the Director of Public Prosecutions (Northern Ireland) (DPP(NI)). The conflicting evidence put forward by members of the Army and the RUC meant that the DPP(NI) did not consider there was sufficient evidence to warrant the prosecution of any specific individual for perverting the course of justice.

24.88 However, in a note that I have examined, the DPP(NI) made clear that he had serious reservations over the actions of the Army and the RUC SB in this case. In that note, the DPP(NI) stated as follows:

*"Generally, there can have been no misunderstanding as to the nature of the Stevens Inquiry or of the value of the Nelson documents [the dump] to that Inquiry. There is no doubt that the withholding of this information obstructed the Inquiry for some four months. It cannot be satisfactory that the Chief Constable of the Royal Ulster Constabulary having initiated an Inquiry to investigate collusion between Loyalist paramilitary organisations and the security forces, the Army and the RUC Special Branch withhold important evidence from that Inquiry."*⁵⁷

⁵⁴ Note of meeting with Sir John Stevens, 5 October 2012

⁵⁵ Stevens III Investigation, *Overview and Recommendations*, 17 April 2003, para 3.4

⁵⁶ A/05, submission to the Review, p. 35

⁵⁷ Stevens III Investigation Report, Appendix C, note by the DPP(NI), 21 March 2003, p. 103

Overview

- 24.89 There is no doubt whatsoever that the Stevens I Investigation was seriously obstructed by the failure of both RUC SB and Army intelligence to provide Sir John Stevens with highly relevant material. Within three weeks of Sir John Stevens' appointment, the RUC SB: knew that the FRU had possession of Nelson's intelligence dump; had a file of the FRU reporting on leaks; and had possession of a Security Service compendium on leaks in addition to their own intelligence reporting.
- 24.90 Despite this, the RUC SB provided Stevens with only a general briefing on UDR leaks and withheld all information about Nelson, the intelligence dump and leaks emanating from the RUC. SB officers subsequently denied all knowledge of Nelson's intelligence dump despite the fact that the SB had been aware of it since October 1987 and had been informed that the FRU had taken possession of the material on 22 September 1989. Although it is difficult to ascribe responsibility to specific individuals, there is no doubt that some RUC SB officers must have lied to the Stevens Investigation when making statements claiming that they had no knowledge whatsoever of the intelligence dump.
- 24.91 The approach of the Army is also a matter of serious concern. It is clear that the FRU's overriding priority was to protect Nelson's position, and that they even went to such lengths as to provide him with briefings on how to resist interrogation in the event of his arrest. The fact that highly relevant evidence was withheld in an Army office from a major criminal investigation for a period of nearly four months is inexcusable.
- 24.92 The briefing provided by senior Army officers to members of the Stevens team to the effect that the Army did not run agents in Northern Ireland can only be described as a deliberate deception of police officers conducting a criminal investigation. The claim that the RUC SB encouraged the Army to take such a stance is, to my mind, no defence whatsoever. In my view, this briefing was a clear attempt to deflect the Stevens Investigation from learning of the existence of Brian Nelson.
- 24.93 Sir John Stevens had been called upon to conduct a major criminal investigation into grave allegations of collusion. It is deplorable that senior public servants concealed from his Investigation the fact that a figure at the heart of this matter was an Army agent.

The prosecution of Brian Nelson

24.94 In this section I consider the representations that were made by UK Government Departments and the RUC to the Attorney General concerning the proposed prosecution of Brian Nelson for various offences following the conclusion of Sir John Stevens' first Investigation.

The process to consider whether to prosecute

24.95 Sir John Stevens submitted his file relating to Nelson to the DPP(NI) in July 1990. The file included evidence in relation to Nelson's alleged involvement in Patrick Finucane's murder.

24.96 The DPP(NI) had reached a preliminary conclusion on 22 February 1991, following which he consulted the Attorney General, Sir Patrick Mayhew QC, under the Shawcross Convention for his views on whether Nelson's prosecution would be in the public interest. The Attorney General in turn formally consulted Cabinet colleagues for their views. Cabinet Ministers had, in fact, been repeatedly raising concerns with the Attorney General over the proposed prosecution of Nelson before this process formally began.

The Shawcross Convention

24.97 A Shawcross exercise broadly refers to the established convention by which Government Ministers can raise public interest considerations with the Attorney General regarding a proposed prosecution. Its essential features were set out in a statement to the House of Commons by the then Attorney General, Sir Hartley Shawcross QC, on 29 January 1951 as follows:

"[I]t is the duty of an Attorney-General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy.

In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the Government; and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what that decision ought to be. The responsibility for the eventual decision rests with the Attorney-General, and he is not to be put, and is not put, under pressure by his colleagues in the matter." [Emphasis added]⁵⁸

24.98 Based, as it was, on long-standing convention I do not believe that there was an inherent impropriety in the Government undertaking a Shawcross exercise in relation to Nelson. However, there were clearly well-established limits to

⁵⁸ Hansard HC Deb 29 January 1951, Vol 483, col 683

the public interest considerations that Cabinet Ministers could raise with the Attorney General and the manner in which they should raise them. Specifically, the Attorney General must be made aware only of “*relevant facts*” relating to his decision, and must not be put “*under pressure*” by his Cabinet colleagues.⁵⁹

- 24.99 The analysis below considers the Government’s consideration of Nelson’s proposed prosecution at two stages: first, before the DPP(NI) had reached his decision on whether there was sufficient evidence to bring a prosecution and, second, after he had made that decision, when a Shawcross exercise was conducted to consider whether such a prosecution would be in the public interest.

Attempts to stop the prosecution of Brian Nelson

- 24.100 The documentary record shows that, in parallel with the DPP(NI) considering the evidence against Nelson, Government officials and Ministers were expressing their views as to whether he should be prosecuted.

- 24.101 This consideration within the Government was prompted by a letter from the Attorney General to the Secretary of State for Defence, Tom King, dated 21 September 1990. The Attorney General formally noted that the DPP(NI) was considering the evidence against Nelson “*in relation to murder, attempted murder, conspiracy to murder and intimidation*”.⁶⁰

- 24.102 Written advice to Tom King was submitted by a Ministry of Defence (MoD) official on 26 September 1990. The submission made clear that the MoD would not wish Nelson to be prosecuted “*on the information available*”. An Annex to the submission specifically covered “*the complicated public interest issues [that would] arise from disclosures that might arise if Nelson were to appear as a witness or to be prosecuted*”. Significantly, in my view, the Annex noted “*the strong political dimension*” to the issue. A prosecution would, it was claimed:

*“ ... challenge the integrity of the system ... by revealing that ... [Nelson] ... was not merely a paid informer but a long-term agent who was allowed to continue as an active member of a terrorist organisation which committed many murders while he was acting as its intelligence officer. It would feed the speculations of those who believe that the security forces are involved in a ‘dirty tricks campaign’ and are in collusion with loyalist paramilitary groups.”*⁶¹

- 24.103 Whilst the submission did briefly cover potential public interest arguments in favour of prosecuting Nelson, the focus on the political damage that Nelson could cause suggests to me that the MoD’s first instinct was to prioritise the protection of the Army’s reputation over the administration of justice in this case.

- 24.104 A meeting between officials and the Secretary of State for Defence took place on 26 September 1990. The meeting was attended by the CGS, General Sir John Chapple, the ex-GOC in Northern Ireland, General Sir John Waters, ACOS G2

⁵⁹ Ibid.

⁶⁰ Letter from Attorney General to Secretary of State for Defence, 21 September 1990

⁶¹ GS Sec 2 to Secretary of State for Defence, 26 September 1990, Annex A, para 7

and GS Sec 2. Discussion focused on the operational damage Nelson could cause when disclosing information as a witness. The minutes of the meeting do, however, record a particularly significant discussion of Nelson's potential involvement in criminal offences, as follows:

"[The Secretary of State] explored the point that Nelson may, unbeknown to the Army, have committed serious offences. What was our advice if it could be proved that Nelson say, for example, had murdered someone? It was explained to Secretary of State that any agent who committed crimes would be subject to due legal process. Agents were regularly briefed not to commit crimes. Indeed ACOS G2 pointed out that FRU records have shown Nelson to have been regularly reminded not to become involved in criminal acts. If Nelson had done so then it was a stark choice between prosecuting him or dismissing the charges because of the threat to the National Interest. Secretary of State agreed." [Emphasis added]⁶²

24.105 This exchange demonstrates to me that Tom King was, by September 1990, already contemplating his response in the event that evidence were to become available that proved that Nelson had committed murder.

24.106 The briefing given to Tom King by ACOS G2 at that meeting is also significant. As the Review's analysis has shown, it was manifestly not the case that Nelson was being "*regularly reminded*" not to commit criminal acts. He was in fact extensively targeting individuals for murder without any adverse comment from his FRU handlers (save for actions that could have threatened Nelson's own safety). Tom King was consequently being provided with a highly misleading impression of the FRU's handling of Nelson.

24.107 On 27 September 1990 the Home Secretary, David Waddington MP, chaired a meeting of relevant Ministers, including the Attorney General. The minute suggests that by this stage Tom King may have already reached a view on whether it was in the public interest to prosecute Nelson. The note of the meeting recorded his view that "*[o]verall, he regarded it as important that [Nelson] should not go near the courts*".

24.108 He is later recorded as having said that:

*"... he had had a detailed discussion with his officials about Nelson's activities ... [and that] ... it was clear that if Nelson had gone beyond the limit, he could not be protected from penalties."*⁶³

24.109 This appears to be confirmed in Tom King's follow-up letter of 3 October 1990 to the Attorney General in which he noted that he remained "*extremely concerned about [Nelson's] possible prosecution*".⁶⁴ His letter contained the following assessment of Nelson's value as an agent:

"We are dealing with terrorists, thugs and hooligans and our agents must be drawn from such people. Nelson is no exception but despite this he has

⁶² Note of meeting with Secretary of State for Defence, 26 September 1990, para 5 [see Volume II, pp. 308–312]

⁶³ Note of meeting held in Home Secretary's office, 27 September 1990

⁶⁴ Secretary of State for Defence to Attorney General, 3 October 1990 [see Volume II, pp. 229–232]

been one of the best, a most productive source who pushed himself hard, at great personal risk, to provide intelligence of high quality over a period of five years.”⁶⁵

24.110 An Annex was attached to this letter outlining the “*significant*” intelligence that Nelson had provided. This had been supplied to Tom King in a submission from GS Sec 2 dated 28 September 1990. The MoD civil servants had in turn received this information from the FRU.

24.111 In my view, the briefing presents once again a highly misleading and factually inaccurate outline of Nelson’s supposed role in saving the lives of those he targeted for murder. Whilst it legitimately records the intelligence passed by Nelson on the attempt to murder Gerry Adams, it then goes on to provide a list of 15 names of individuals whom Nelson had targeted, noting that:

“... in the great majority of cases, no harm came to the intended targets, either because they were warned of the impending attack (if time and circumstances permitted) or because the security forces flooded the target area to prevent the attack taking place.”⁶⁶

24.112 This claim was thoroughly misleading. The life of one of those included in the list (T/02) was indeed saved, but in all of the other 14 cases I have been able to discover no evidence of the supposed life-saving action outlined in the submission. In particular, T/28, Brian Gillen and T/10 were extensively targeted by Nelson and were ultimately fortunate to have survived UDA conspiracies to murder them.

24.113 Tom King’s letter was copied to the Prime Minister, the Home Secretary, the Northern Ireland Secretary, the Director General of the Security Service and the Cabinet Secretary. It concluded with a suggestion that appears extraordinary in the light of the actual impact of Nelson’s activities:

“... the Irish Government should be made to understand that by not prosecuting in certain cases we may sustain our capability to identify Loyalist threats to the Catholic community and take action to prevent terrorism of that kind.”⁶⁷

24.114 On 12 October 1990 the Secretary of State for Northern Ireland, Peter Brooke MP, wrote to the Attorney General, acknowledging that the decision on Nelson would be a “*very difficult one*”. However, he clearly stated his position that, “*in his case I do believe the consequences for our intelligence operations of a decision to prosecute will be grave*”.⁶⁸

Representations made by the RUC

24.115 The RUC also made a series of representations to the DPP(NI) prior to his decision on the evidential test. These representations can only be described as contradictory and misleading.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Secretary of State for Northern Ireland to Attorney General, 12 October 1991

24.116 The ACC responsible for the RUC Criminal Investigation Department (CID), Wilfred Monahan, wrote to the DPP(NI) on 30 May 1990 supporting the prosecution of Brian Nelson. ACC Monahan's first submission did reasonably reflect many of Nelson's criminal acts. ACC Monahan reported the following view to the DPP(NI):

*"There is no doubt that Nelson had become an agent provocateur for he recommended targets to other members of the UDA/UFF gang and passed on highly sensitive information which was to be used to target and kill members of the public."*⁶⁹

24.117 ACC Monahan noted that "*these are serious matters which in my view should be proceeded with*". He argued against the advisability of using Nelson as a 'supergrass' witness.

24.118 The ACC responsible for the RUC SB, however, subsequently provided a further submission to the DPP(NI). ACC Fitzsimons' note of 11 July 1990 outlined Nelson's supposed value as an agent. His submission included the following assessment:

*"Nelson provided a mass of intelligence about matters as diverse as UDA surveillance capabilities, targeting of prominent Republicans and innocent Roman Catholics for assassination, threats to members of the Security Forces arising from their use of Loyalist taxi firms and details of protection/extortion rackets being run by Protestant paramilitaries. All of this information was suitably actioned to frustrate the terrorists' intentions both North and South of the border."*⁷⁰

24.119 The submission also included the claim that "*due to Nelson's dedication the Security Forces were able to foil many intended criminal actions by Protestant paramilitaries*". ACC Fitzsimons' submission provides another clear example of highly misleading advice being provided to the DPP(NI). In Chapter 8 I noted that ACC Fitzsimons had privately expressed concerns that Nelson's intelligence was being "*poorly exploited*", which makes his claims regarding the security forces' action on this intelligence even more suspect.

24.120 ACC Fitzsimons was critical of the role of the FRU, saying that "*clearly major mistakes in his handling have been made by the Army*". As a result of this submission, the ACC Crime (Wilfred Monahan) wrote again to the DPP(NI) on 23 July 1990 stating that the Chief Constable supported the views of ACC Fitzsimons and that the prosecution of Nelson should *not* go ahead.⁷¹

24.121 The RUC's attitude towards the prosecutorial process was further illustrated by yet another change in their representations to the DPP(NI). ACC Fitzsimons provided further advice to the DPP(NI) on 29 January 1991, retracting earlier comments he had made about the activities of Nelson. ACC Fitzsimons now stated that:

⁶⁹ ACC Monahan to DPP(NI), 30 May 1990 [see Volume II, pp. 219–223]

⁷⁰ RUC report regarding Brian Nelson, 11 July 1990, p. 3 [see Volume II, pp. 224–228]

⁷¹ DPP(NI) paper on the public interest, para 3.3, quoting RUC note dated 23 July 1990

“Nelson’s personal participation in the affairs of the UDA could not be ascribed wholly to an altruistic desire on his part to assist the authorities. That some of his intelligence was useful to the authorities cannot be disputed but there is also some evidence of a possible ulterior motive.”⁷²

- 24.122 ACC Fitzsimons noted that his earlier comments were “*entirely based*” on the information supplied to him by the military but that he had now seen additional information prepared by Sir John Stevens. Mr Fitzsimons, however, stood by the misleading claims made in his July 1990 submission regarding the action taken by the security forces on Nelson’s intelligence, stating that “*where dissemination and specific action was possible on the information provided [by Nelson] this was taken*”.
- 24.123 The ACC emphasised his opposition to the prosecution of Nelson, citing operational risks but also a number of quasi-political points. In a clear recognition of the serious questions that would be asked about the RUC, the ACC noted that a trial could expose the “*ineffectiveness of the security forces in countering terrorism*” and that “*unscrupulous propagandists ... would give credence to claims of police collusion with terrorists*”.
- 24.124 Wilfred Monahan forwarded ACC Fitzsimons’ letter to the DPP(NI) on 30 January 1991. He noted that the Chief Constable felt that Nelson should not be prosecuted on public interest grounds.

The DPP(NI)’s preliminary decision on the evidential test

- 24.125 The DPP(NI) made his preliminary conclusions on the evidential test with respect to Brian Nelson on 22 February 1991. A note of the DPP(NI)’s conclusions held by the Attorney General’s Office reveals that the DPP(NI) felt there was sufficient evidence to prosecute Nelson for the murders of Terence McDaid and Gerard Slane.⁷³
- 24.126 Significantly, the DPP(NI)’s note also shows that he concluded at that stage that there was sufficient evidence to prosecute Nelson for the offence of aiding and abetting the possession of a document likely to be of use to terrorists in connection with Patrick Finucane’s murder. The document concerned was the photograph of Mr Finucane with Patrick McGeown, which Nelson, by his own admission, gave to L/28 and Barrett five days before the murder (see Chapter 21).

The Cabinet’s consideration of the public interest

- 24.127 The Attorney General’s further letter to Tom King of 11 March 1991⁷⁴ informed him that the DPP(NI) had reached a preliminary conclusion that there was sufficient evidence to prosecute Nelson on two murder charges, four charges of conspiracy to murder, one charge of attempted murder and various lesser charges.

⁷²ACC Fitzsimons to ACC Crime, 29 January 1991 [see Volume II, pp. 233–235]

⁷³DPP(NI) note, ‘Preliminary Conclusions’, 22 February 1991

⁷⁴Letter from Attorney General to the Secretary of State for Defence, 11 March 1991 [see Volume II, pp. 236–244]

24.128 It should be noted that the Attorney General's letter did not specify that the 'lesser charges' he referred to included the offence connected to the murder of Patrick Finucane. The Annex he provided to Ministerial colleagues summarised Nelson's involvement in the murders of Terence McDaid and Gerard Slane and the conspiracies to murder Alex Maskey and Brian Gillen. It also included the generalised comment that Nelson had provided documents to UDA members that were likely to be useful to terrorists.

24.129 The Attorney General's letter cogently outlined his concerns, both in relation to the extent of Nelson's criminality and the Army's handling of him as an agent. He noted that Nelson:

*"... will say that he kept the Army very fully informed about his activities and assert that they encouraged the conduct which is now alleged to be criminal or, at the least, acquiesced in it."*⁷⁵

24.130 Critically, the Attorney General also outlined that he was "*much troubled by the relationship between the Army and Nelson*". Indeed, his letter highlights the core issues in the Nelson case as follows:

*"The action taken [by the security forces] seems to have been far from adequate to meet the objective of frustrating crime by the use of Nelson. There will no doubt be accusations that the Army itself shared Nelson's motivation, reported by Army handlers at the time, namely a desire to make the UDA a professional organisation which attacked only 'legitimate' targets, as distinct from one containing 'criminal' and 'racketeering' elements who attacked targets for private gain; and thus to avoid attacks being made on innocent Catholics."*⁷⁶

24.131 A loose minute dated 15 March 1991 from GS Sec to Tom King exemplifies, in my view, the misleading nature of the advice that the Defence Secretary was receiving from his officials. The submission acknowledged the "*incomplete information*" in the hands of the MoD and stated that the Attorney General's comments were a "*matter for some concern*". However, it went on to accuse the Stevens Investigation of having "*found it difficult to come to grips with either the role of the FRU or the terrorist environment in which it works*". The submission also attached an extract from a CF dated 13 June 1989 in order to "*illustrate how we believe the relationship worked*".⁷⁷

24.132 This extract related to A/10's admonishment of Nelson when he asked for help in identifying republican targets. As outlined in Chapter 7 of this Report, the handling regime in place for Nelson changed significantly once A/10 took over as his main handler. Chapter 7 also details the occasions on which, prior to April 1989, Nelson was provided with information on republicans by his FRU handlers. It was, therefore, in my view, highly selective to present the CF dated

⁷⁵ Ibid.

⁷⁶ Ibid., para 15

⁷⁷ Loose minute from GS Sec 2 to Secretary of State for Defence, 15 March 1991 [see Volume II, pp. 245–248]

13 June 1989 as a demonstration of how the relationship between Nelson and his handlers worked during his time as an agent.

24.133 On 18 March 1991, prior to Tom King responding, the Secretary of State for Northern Ireland submitted his representations on the public interest. Whilst acknowledging the risk of undermining public confidence by not prosecuting, he nevertheless came to the conclusion that “*the balance of the public interest, in terms of my responsibilities, is against prosecution*”.⁷⁸ Sir Patrick Walker, the Director General of the Security Service, wrote to the Home Office on the same date outlining his concerns in relation to a prosecution and copying his letter to the Attorney General’s Office.⁷⁹

24.134 Tom King wrote to the Attorney General on 19 March 1991 detailing his representations on the public interest. Again, he mounted a strong defence of Brian Nelson’s work as an army agent, noting that “*there is no doubt that this man did warn us of many threats to life in accordance with his instructions*”. The letter made little attempt to distance the Army from Nelson’s UDA activity, describing how he:

*“... regarded himself as a ‘crusader’ against terrorism and as part of our team in the fight.”*⁸⁰

24.135 The letter also noted that:

“... we [MoD] do not believe that he would have become involved again [following his re-recruitment as an agent] with terrorist activity on his own account.”

24.136 Crucially, Tom King’s letter again stressed the supposed action taken by the security forces to protect individuals as a result of the intelligence provided by Nelson. He stated that:

“... during ... [Nelson’s] time as a UDA intelligence officer he provided his handlers with more than 700 threat warnings against a total of some 217 individuals ... All these warnings were passed to the RUC Special Branch’s Source Unit to prevent any harm coming to the intended victims, either by warning them if time and circumstances permitted, or by flooding the target area with forces to prevent the attack taking place.” [Emphasis added]⁸¹

24.137 The inclusion of these statistics formed part of the justification for Tom King’s conclusion that “*many people in Northern Ireland owe their lives to Brian Nelson*” and that “*the public interest justifies a decision not to prosecute*”.⁸² Once again the Attorney General and the DPP(NI) were being presented with inaccurate information.

⁷⁸ Letter from Secretary of State for Northern Ireland to Attorney General, 18 March 1991 [see Volume II, pp. 252–253]

⁷⁹ Letter from Director General Security Service to Permanent Secretary, Home Office, 18 March 1991

⁸⁰ Letter from Secretary of State for Defence to Attorney General, 19 March 1991 [see Volume II, pp. 257–265]

⁸¹ Ibid.

⁸² Ibid.

The briefing provided to the Prime Minister

- 24.138 It was at this stage that the Prime Minister, the Rt Hon John Major MP, became involved in considering the Nelson case. The Cabinet Secretary, Sir Robin Butler, minuted him on 15 March 1991 outlining the “*damage*” that could be caused by proceeding with the proposed murder charges against Nelson.
- 24.139 Sir Robin cited both the danger that would arise from the public disclosure of sensitive information and the likelihood that republicans would use Nelson’s prosecution “*as further evidence of a ‘shoot to kill’ policy*”, whilst noting that the case was very difficult and that not prosecuting Nelson would carry “*grave political risks*”. However, from the overall tenor of the Cabinet Secretary’s note, it is clear to me that he did not think Nelson should be prosecuted and consequently sought to suggest the “*best way of persuading the Attorney not to authorise prosecution*”.⁸³
- 24.140 Charles Powell, the Prime Minister’s Private Secretary, provided a briefing to the Prime Minister on the case prior to a proposed meeting of relevant Cabinet Ministers.⁸⁴ The briefing noted that the decision whether or not to prosecute Nelson was a “*dilemma*” and “*exceptionally difficult*”. It also properly stated that the Attorney General “*listens to the arguments and reaches his own view*” without being directed by Cabinet colleagues. However, the briefing referred to some of the facts that the Defence Secretary had “*ferociously*” deployed in arguing against a prosecution. These included the claim that the Army had infiltrated Nelson into the UDA “*with the purpose of saving the lives of those targeted by the UDA. This he appears to have done with considerable success*”, and the suggestion that “*he [Nelson] has saved a large number of lives by his activities*”.⁸⁵
- 24.141 The briefing provided to the Prime Minister thus perpetuated the MoD’s account of Nelson’s activities which I have found to be gravely inaccurate. Attached to the briefing was the Attorney General’s minute of 11 March 1991, which had, by this stage, already cast serious doubt on the MoD’s claim that Brian Nelson had saved many lives. Charles Powell concluded his briefing by noting that the Prime Minister would reach his “*own judgment*” but cautioning him that intelligence-gathering was a “*very murky world*” and that “*you have to use the material to hand: the old adage that it takes a thief to catch a thief*”.

The exposure of the accountability gap

- 24.142 The suggestion in Tom King’s letter of 19 March 1991 that Nelson had saved many lives was quickly followed up by the Attorney General’s office. The Legal Secretary to the Law Officers wrote to Tom King’s office on 25 March noting that the Stevens team had told the DPP(NI) that the “*RUC took action only in 1 or possibly 2 cases to prevent an attack*”.⁸⁶

⁸³ Cabinet Secretary to the Prime Minister, 15 March 1991 [see Volume II, pp. 249–251]

⁸⁴ Charles Powell to the Prime Minister, 19 March 1991. NB the records suggest that the planned meeting may have been postponed until 1 May 1991 [see Volume II, pp. 254–256].

⁸⁵ *Ibid.*

⁸⁶ Letter from AG’s Office to Private Secretary of the Secretary of State for Defence, 25 March 1991 [see Volume II, pp. 266–267]

24.143 In my view, the revelation that the Stevens team had identified only one or two cases in which Nelson’s information prevented an attack should have prompted a wholesale re-evaluation of the MoD’s position. Their response to the Attorney General’s Office dated 28 March 1991⁸⁷ did acknowledge that what “*the Stevens team has told the DPP(NI) lies uncomfortably alongside the ... threat warnings made by Nelson and passed to the RUC by the FRU*”. However, the letter went on to note that the MoD considered it “*inconceivable that ... [the RUC’s Special Branch] took no action at all on [that information]*” and that it was not for them to:

“... answer for Special Branch because they are responsible for initiating action to exploit intelligence and they have not chosen to share that responsibility with the Army.”⁸⁸

24.144 The MoD’s letter specifically cited the cases of Gerry Adams and T/02 as examples where preventative action had taken place (the same cases already acknowledged by Sir John Stevens). More convincingly, the MoD cited Nelson’s reporting of “*leaks to the UDA from the security forces*” and attached a summary of Nelson’s reporting of leaks. In a sign that the MoD were beginning to be more openly critical of the RUC, the letter made the legitimate point that:

“... if it is true that Special Branch were not acting on Nelson’s information, one could expect the trial to ventilate the questions of why they ignored threat warnings and reports of leaks.”⁸⁹

24.145 Whilst Ministers certainly needed to be aware of the fundamental questions that the case raised about the RUC’s failure to take action on Nelson’s intelligence, the MoD’s response was directed principally at deflecting criticism rather than making the necessary acknowledgement that Nelson’s actions as an Army agent were of grave concern.

24.146 Internal Army correspondence reinforces my view that the MoD were in denial about the implications of the Nelson case. For example, the FRU Operations Officer noted on 18 April 1991 his belief that:

“... we have very little in the way of positive lessons to learn from the Nelson case. The case was well and honestly handled ... the lessons learnt can be simply summarised: never place too much trust in ‘other agencies’.”⁹⁰

24.147 Tom King’s further letter to the Attorney General of 19 April 1991⁹¹ did acknowledge the “*gravity*” of the issues raised and suggested an independent review of agent-handling in Northern Ireland. However, Tom King remained steadfast in his belief that Nelson should not be prosecuted, noting that he was “*convinced the overall national security interest is that Nelson should not be prosecuted*”.

⁸⁷ Letter from Private Secretary of the Secretary of State for Defence to Attorney General’s Office, 28 March 1991 [see Volume II, pp. 268–274]

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Operations Officer FRU to Major A/03, 18 April 1991

⁹¹ Secretary of State for Defence to Attorney General, 19 April 1991

Further representations made by the RUC

- 24.148 Documents held by the Attorney General's Office demonstrate that the RUC continued to make representations arguing against the prosecution of Brian Nelson. At a meeting between the Attorney General, the DPP(NI) and the Chief Constable on 24 April 1991, Sir Hugh Annesley agreed that Nelson's information had not generally assisted the security forces in saving lives. The Chief Constable was clear that "*Mr Stevens' assessment of Nelson's effectiveness in saving lives was the correct one*". However, the Chief Constable went on to outline a diverse array of largely political reasons why Nelson should not be prosecuted. The Chief Constable cited "*criticism from the RoI [Republic of Ireland]*" in the event of a prosecution.
- 24.149 The Attorney General rightly cited the likely criticism from the Irish in the event that charges were dropped but was informed by the Chief Constable that "*this would not be a bigger stick than the stick they [the Irish] would have if Nelson were not prosecuted*". The Chief Constable even stated that a prosecution "*would adversely affect the current agenda of consultation with opinion formers in NI*".⁹²

Meetings between the Attorney General and the DPP(NI)

- 24.150 Prior to reaching his decision as to where the public interest lay, the Attorney General and Solicitor General also held meetings with the DPP(NI). It is clear from the minutes of those meetings that the Attorney General was seeking both to test the evidence relating to Nelson and to resolve the discrepancy between the views of Stevens, the RUC and the MoD over the number of lives Nelson had actually saved.
- 24.151 At a meeting with the DPP(NI) on 23 April 1991, the Attorney General was clear in his view that Sir John Stevens' conclusions on the value of Nelson's information "*must be accepted as reliable because he had access to all [the] material*" and that a "*searching inquiry was needed of the use to which the Army had put the information supplied to them*".⁹³
- 24.152 Sir John Stevens and Detective Chief Superintendent Vincent McFadden joined the meeting later when the Attorney General probed why more use had apparently not been made of information provided by Nelson. Sir John Stevens noted that "*friction between the RUC and the head of the Army operation*" could have been a contributory factor. When asked for his views about Nelson's relationship with his handlers, Sir John commented that "*Nelson's relationship with his handlers had been more as a member of a team ... The handlers had given very limited criticism and guidance*" and that his impression was that "*Nelson was running FRU, rather than vice versa*".⁹⁴
- 24.153 The Attorney General also held a meeting with the Director General of the Security Service, Sir Patrick Walker, on 24 April 1991. Sir Patrick made clear that he felt a prosecution would damage the morale of agents and even cited the risk

⁹² Minutes of meeting between Attorney General, DPP(NI) and Chief Constable, 24 April 1991

⁹³ Note of Attorney General's meeting, 23 April 1991

⁹⁴ Ibid.

of kidnap that might face Security Service officials who gave evidence, though he noted that he “*did not wish to exaggerate the concern*”.⁹⁵

The Attorney General’s decision on the public interest

- 24.154 Notwithstanding the strong representations he had received militating against a prosecution, the Attorney General wrote to Tom King on 25 April 1991 eloquently setting out the reasons for his view that it would be in the public interest to prosecute Nelson.⁹⁶ The letter reiterated the Attorney General’s view that “*the inference that Nelson had been instrumental in saving many lives did not tally with the information given to the DPP(NI)*”. Sir Patrick Mayhew cited Sir John Stevens’ conclusion – with which the Chief Constable of the RUC apparently agreed – that there was “*no doubt*” that “*action was taken in only two cases to protect the potential victims of Protestant Loyalist assassination*”.
- 24.155 The Attorney General noted that “*no case which I have seen as a Law Officer has caused me more concern*”. The evidence was clear “*that Nelson furthered to the point of fruition the murderous criminality which the Army are in the Province to forestall*”. Sir Patrick Mayhew quoted Lord Lowry’s reference in 1983 to the vital legal principle set out by Lord Atkin in 1942:

“In this country amid the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace.” [Emphasis in original]⁹⁷

- 24.156 Notwithstanding his conclusion that the public interest required prosecution, the Attorney General provided a final opportunity for Cabinet colleagues to raise with him any additional points.

Continued divisions in Cabinet

- 24.157 The MoD’s response to the Attorney General’s letter of 25 April 1991 was again indicative of an unwillingness to reconsider the Department’s assessment of Nelson’s work as an agent. The submission from the Head of GS Sec on 26 April expressed “*disquiet*” about the “*one sided*” nature of the comments from Brian Fitzsimons and Sir John Stevens.
- 24.158 The draft letter provided for Tom King’s approval had been amended and cleared by the Permanent Secretary, Sir Michael Quinlan. The draft letter suggested that Tom King should state that he was “*greatly disconcerted*” by the police comments. The draft did, however, make clear that, despite the differing conclusions of Sir John Stevens and the MoD, the proposed review of agent-handling should not involve “*a detailed inquiry into differing interpretations of particular past incidents*”.⁹⁸ There appears to have been no appetite within the MoD for any critical examination of either their analysis of Nelson’s value as an

⁹⁵ Note of Attorney General’s meeting with Director General of the Security Service, 24 April 1991

⁹⁶ Letter from Attorney General to Secretary of State for Defence, 25 April 1991 [see Volume II, pp. 279–283]

⁹⁷ Ibid.

⁹⁸ Private Secretary of the Permanent Secretary, MoD to Assistant Private Secretary of the Secretary of State, 26 April 1991

agent, or of the role of the RUC in failing to take any action on most of Nelson's intelligence.

24.159 Tom King does not, however, appear to have shared the views of his officials on the issue and did, to his credit, issue a significantly amended response to the Attorney General. The Defence Secretary was clearly willing to investigate further why the Attorney General had grave doubts about the MoD's assessment of Nelson. His response on 29 April 1991 included the following passage, which had not been included in the draft letter cleared by the Permanent Secretary:

"I am very concerned that you believe that the information coming to me has not been accurate. I am very struck by the assertion now that little of the intelligence on possible loyalist attacks provided by Nelson was of any value, since at no time was this made clear and the Army believed he was considered a very valuable loyalist source. I do not have access to much of the evidence on which you formed your views, and moreover the indications critical of the Army in your minute ... are too generally expressed for me to be able to set immediate enquiries in hand. But I cannot leave the matter there. I have to ask that I be given much fuller particulars as quickly as possible so that I can consider immediately whether action is needed ..." [Emphasis added]⁹⁹

24.160 However, Tom King's readiness to re-examine Nelson's value as an agent did not alter his position on whether it was in the public interest to prosecute. He stated clearly that:

*"I am bound to stress that my own judgment, in the light of the public-interest considerations as I see them, remains where it was."*¹⁰⁰

24.161 Tom King's view differed from that of the Foreign Secretary, Douglas Hurd MP, who wrote to the Attorney General noting that he shared Sir Patrick Mayhew's view that Nelson should be prosecuted.¹⁰¹

24.162 The Cabinet Secretary, Sir Robin Butler, minuted the Prime Minister on 26 April 1991 noting the Attorney General's evidence that Nelson saved only two lives but emphasising the Cabinet Secretary's belief that:

*"... the real argument against prosecution is that it will do far greater and more lasting harm to the intelligence operations in Northern Ireland on which the struggle against terrorism so crucially depends than the good that could possibly be done by prosecution."*¹⁰²

24.163 The Cabinet Secretary's minute went on to acknowledge, however, that it would be:

⁹⁹Letter from Secretary of State for Defence to Attorney General, 29 April 1991 [see Volume II, pp. 286–287]

¹⁰⁰Ibid.

¹⁰¹Loose minute, Foreign Secretary to Attorney General, 1 May 1991 [see Volume II, p. 288]

¹⁰²Loose minute, Cabinet Secretary to the Prime Minister, 26 April 1991 [see Volume II, pp. 284–285]

*“... a worry if people employed in intelligence operations could, by virtue of the knowledge they acquire and the potential damage which they can do in court ... become immune from prosecution and effectively above the law.”*¹⁰³

24.164 Sir Robin attached a draft letter for the Prime Minister to send to the Attorney General, *“lest the Attorney take silence for acquiescence”*, noting that whilst the decision was for the Attorney General to take, the Prime Minister was personally against a prosecution.¹⁰⁴ In the event the letter was never sent because the Secretary of State for Northern Ireland proposed that there should be a further meeting with the Attorney General.

24.165 The files also include an undated handwritten note apparently drafted by Sir Robin Butler. The note read as follows:

*“The balance is not dependent on whether a prosecution would be successful. It is the damage to intelligence on the one hand and the damage to public confidence in our attachment to the rule of law. That’s a very grave balance. But I think that the damage to intelligence is the worse risk. Whatever the hubbub, people would understand why we could not bring the prosecution.”*¹⁰⁵

24.166 The Prime Minister subsequently chaired a meeting of Ministers on 1 May 1991. The minute of the meeting records the extensive discussion of the Nelson case.

24.167 It is clear that by this stage Nelson’s supposed role in saving lives had been dropped as an argument but in its place came a reinforced attempt to outline the dangers that would arise from the public disclosure of sensitive information. The Secretary of State for Northern Ireland led the discussion, citing the *“view of the DCI, and senior officers in the RUC and Army”* who felt that prosecution would be a setback and that *“lives would be lost as a result”*.¹⁰⁶

24.168 The Secretary of State for Northern Ireland, Peter Brooke, explicitly raised the prospect of *“kidnap attempts”* against Security Service officers (even though the Director General had emphasised in his prior discussions with the Attorney General that he did not wish to exaggerate such threats). This is all indicative, in my view, of a rather frantic effort to avoid the prosecution of Brian Nelson.

24.169 The record shows that both Peter Brooke and Tom King remained opposed to a prosecution, with David Waddington, the Home Secretary, also expressing some concern on behalf of the Security Service.

24.170 The Prime Minister himself appears to have taken the middle course. The records suggest that the Prime Minister did not offer a firm view either for or against the prosecution. The minute of the meeting recorded that:

“The Prime Minister said he was very torn. His instinct was that where a charge could be brought with a reasonable prospect of success, it should

¹⁰³ Ibid.

¹⁰⁴ Draft letter included in Cabinet Secretary’s loose minute to the Prime Minister, 26 April 1991 [see Volume II, pp. 284–285]

¹⁰⁵ Undated handwritten note apparently from Cabinet Secretary to the Prime Minister [see Volume II, p. 292]

¹⁰⁶ Minute of Ministerial meeting re Nelson, 1 May 1991 [see Volume II, pp. 293–297]

be brought. But he felt that some of the considerations put forward by the Northern Ireland Secretary were impressive and were a considerable advance on what had been heard before.”¹⁰⁷

- 24.171 The meeting concluded with the Attorney General saying that he had taken “*careful note*” of the points that had been made. The following day, however, he minuted his Cabinet colleagues informing them that he agreed with the DPP(NI)’s decision to prosecute Nelson.
- 24.172 In his letter dated 2 May 1991, Patrick Mayhew suggested that Tom King seek further information from the Chief Constable on the discrepancy between Sir John Stevens and the MoD about Nelson’s value as an agent, stating that: “*I agree that matters should not be left as they are until the conclusion of the prosecution.*”¹⁰⁸
- 24.173 Following apparent concerns over whether the discrepancy should be investigated prior to Brian Nelson’s trial, the issue appears to have largely been left until after Nelson’s trial and the Blelloch Review process. In the event, Sir John Blelloch did not examine the contradiction between the MoD and the Sir John Stevens/RUC assessment of Nelson and, following the General Election taking place in April 1992 shortly after Brian Nelson’s trial, Tom King was no longer in position as Defence Secretary to follow up the issue.¹⁰⁹
- 24.174 MoD documentation suggests that the Army may have sought to drop any further investigation of this issue because it could further damage the strained relationships within the intelligence community in Northern Ireland. In a note to the Head of GS Sec in June 1992, the then Commanding Officer of the Joint Support Group (JSG), A/16, stated that:

“It is possible to prove what information had been passed to the RUC but we have always decided not to attempt this proving operation as it would do nothing for relationships.”¹¹⁰

Subsequent developments

- 24.175 The Prime Minister continued to take an interest in the Nelson case up to the point of the trial. Soon after the Attorney General’s letter of 2 May 1991, the Prime Minister was provided with a copy of a letter from Peter Brooke about the independent review of agent-handling. The Prime Minister’s Principal Private Secretary included the following handwritten comment on the letter:

“One possibility is that when it becomes apparent that the prosecution case is relying on Nelson’s debriefing to his handlers and treating it like a confession, the defence will object on grounds that this is not a proper statement taken under Police and Criminal Evidence Act. If the objection is sustained the case could collapse at the start – a very good outcome. [Attorney General]

¹⁰⁷ Ibid.

¹⁰⁸ Letter from Attorney General to Secretary of State for Defence, 2 May 1991 [see Volume II, pp. 289–290]

¹⁰⁹ Malcolm Rifkind MP was appointed as Secretary of State for Defence after the General Election in April 1992

¹¹⁰ A/16 to Head of GS Sec, 9 June 1992

and DPP (NI) consciences are salvaged and case comes to an end before too much damage is done.” [Emphasis added]¹¹¹

- 24.176 The note again demonstrates the prevalent view at the highest echelons of Government that Nelson should not be prosecuted for the crimes he had committed.

The DPP(NI)’s decision to drop some charges against Nelson

- 24.177 I should note that, at some stage between the DPP(NI)’s note on his provisional conclusions dated 22 February 1991 and the date of Brian Nelson’s committal hearing on 25 June, the DPP(NI) had decided not to proceed with some charges against Nelson. Specifically, the offence connected to the murder of Patrick Finucane outlined above was not proceeded with and consequently Nelson was never convicted of any offence relating to Mr Finucane’s murder. I am, however, satisfied that the DPP(NI) must have made this decision on evidential grounds because both he and the Attorney General had decided that the public interest required prosecution in the Nelson case.

Was the Government involved in a ‘deal’ with Nelson?

- 24.178 There have been a number of suggestions that the Government approved a plea bargain deal, in which the two murder charges against Nelson would be dropped in the event that Nelson pleaded guilty to the other offences.¹¹²
- 24.179 After the decision to prosecute Nelson, Government officials did consider how sensitive information could be protected during the trial process. A meeting was held on 6 January 1992, including the MoD, the Security Service, the RUC, Stevens Investigation team officers and the DPP(NI), to discuss arrangements for the court to hear evidence in closed session if required.¹¹³ There is, however, no evidence that Government officials discussed whether Nelson should be offered a plea bargain.
- 24.180 A submission sent to the Defence Secretary on 23 January 1992 suggested that the MoD were essentially unsighted on whether any plea bargaining was taking place. The submission noted that Nelson had pleaded guilty to five charges of conspiracy to murder, but that the two murder charges against him had been dropped. The submission stated that the MoD had “*heard rumours*” that plea bargaining was taking place but that as recently as Monday 20 January they had been informed that Nelson was contesting all the charges. Nelson’s solicitor apparently told his wife that the deal had been done “*in order to get the minimum sentence*”.¹¹⁴
- 24.181 The submission explicitly noted that the MoD did not know:

“... the extent to which the prosecuting authorities were moved by the need to limit the amount of sensitive information which was made public in court:

¹¹¹ Handwritten annotation dated 15 May 1991 on letter from Secretary of State for Northern Ireland to Attorney General dated 13 May 1991 [see Volume II, p. 291]

¹¹² See documents such as An Fhirinne, *Collusion Fact File*, 30 March 2004

¹¹³ GS Sec 2 to Secretary of State for Defence, 7 January 1992

¹¹⁴ GS Sec 2 to Secretary of State for Defence, 23 January 1992

they were aware of the strength of our views on the matter. There certainly were evidential difficulties in the case as the defence could have challenged the admissibility of Nelson's statements to the police. We do not know whether the DPP(NI) consulted the Attorney-General about the 'deal'."¹¹⁵

24.182 At Brian Nelson's trial, prosecuting Counsel emphasised that the decision to accept the pleas of guilty that Nelson had offered, and not to proceed on the counts to which he pleaded not guilty, had been based:

*"... solely on an evaluation of the factors likely to affect the outcome of the case and the demands of justice ... after a scrupulous assessment of possible evidential difficulties for the prosecution and a rigorous examination of the requirements of justice."*¹¹⁶

24.183 I have examined documents held by the Attorney General's Office which outline the Attorney General's discussions with the DPP(NI) and prosecuting Counsel on this issue. A note of that meeting records that the DPP(NI) emphasised that his approach had been to avoid any suggestion of plea bargaining on his part. He was, however, bound to consider any approach from the defence, and such an approach had been made.¹¹⁷

24.184 It was agreed at the meeting that, on the basis of prosecuting Counsel's analysis of the evidence, any decision to accept a plea could be taken purely on evidential grounds. The explanation given to the court by prosecuting Counsel would, however, indicate that the Crown had considered that the public interest also justified the acceptance of the plea on the basis that it represented the best chance that justice would be done.

24.185 I am satisfied from the evidence I have seen that the Attorney General did not instigate a plea bargain with Nelson and did not argue that such an arrangement would be in the public interest. The only public interest consideration taken into account by the DPP(NI) was the evidential difficulties relating to some aspects of the charges against Nelson and the desirability of ensuring he was convicted for those offences to which he was prepared to plead guilty.

Overview

24.186 I am satisfied that the rule of law prevailed with respect to the decision of the DPP(NI) and the Attorney General that Brian Nelson should be prosecuted for his crimes. The DPP(NI) and the Attorney General both deserve significant credit for pursuing the prosecution of Nelson despite the significant political pressure that they faced.

24.187 However, the Government's consideration of the prosecution of Nelson does illustrate the attitudes and culture within Whitehall with regard to the crimes committed by an agent of the State in Northern Ireland. The Secretary of State for Defence, the Secretary of State for Northern Ireland and senior Government

¹¹⁵ GS Sec 2 to Secretary of State for Defence, 23 January 1992

¹¹⁶ Trial transcript, *R v Brian Nelson*, 22 January 1992, Belfast Crown Court

¹¹⁷ Attorney General's Office, note of a meeting with DPP(NI), 17 January 1992

officials all argued against the prosecution of Nelson. Had their views prevailed, an individual who actively promoted and facilitated terrorist attacks would have escaped justice.

- 24.188 The process by which the Government conducted the Shawcross exercise is also a matter of grave concern. The Army and the MoD provided the Secretary of State for Defence with highly misleading advice with respect to the FRU's handling of Brian Nelson. As a direct result of this advice, submissions were sent by the Defence Secretary to the Attorney General, and by extension the DPP(NI), that were both misleading and, in parts, factually inaccurate. This was a clear breach of the Shawcross Convention which permitted only 'relevant facts' to be brought to the attention of the Attorney General by Cabinet colleagues.
- 24.189 When the falsehoods perpetuated by the MoD were exposed by the Attorney General, the Department nevertheless seemed averse to reconsidering the basis for their mistaken views with respect to Nelson and the FRU. The Secretary of State for Defence did, in fairness, recognise the need for a full examination of the Attorney General's concern but this issue was stalled and appears to have been dropped entirely after the 1992 General Election.
- 24.190 The actions of the RUC with respect to this process are also a matter of serious concern. It was, and remains, of the utmost importance that the police make full and accurate disclosures to the DPP. In this case, despite the gravity of the issue being considered, the RUC made contradictory and, at times, wholly misleading submissions to the DPP(NI).

The evidence given by the former Commanding Officer of the FRU at Brian Nelson's trial

- 24.191 At Nelson's trial, A/05, the Commanding Officer (CO) of the FRU from December 1986 to March 1990, was called by the defence as a witness on behalf of Nelson in the plea in mitigation. A/05¹¹⁸ was questioned first by Counsel for the defence representing Nelson and was then subject to cross-examination by Counsel for the prosecution.
- 24.192 During questioning by Desmond Boal QC, Counsel for the defence, A/05 stated:
- "We produced on Brian Nelson's information something like 730 reports concerning threats to 217 separate individuals ... threats to the life of individuals. In all cases these were passed on for action. Of the 217 of interest, that of the 217 personalities that were named in his reports or our reports, five of them died. One at the hands of the security forces in Gibraltar, one from natural causes and three at the hands of Protestant paramilitaries."*¹¹⁹
- 24.193 Lord Justice Kelly, in sentencing Nelson on 3 February 1992, was clearly influenced by the mitigation given on his behalf:

¹¹⁸ Referred to in the trial as Colonel or Soldier J

¹¹⁹ Trial transcript, *R v Brian Nelson*, 29 January 1992

“In passing sentence I remind the accused again that the maximum penalty for conspiracy to murder is imprisonment for life. However, the sentences I am about to impose will show that much of the mitigating material given forcefully before me by Colonel ‘J’ and submitted most eloquently by Mr Boal has been taken into account ... And give of course considerable weight to the fact that he passed on what was possibly life saving information in respect of 217 threatened individuals.”¹²⁰

The conclusions of Justice Cory

24.194 When Justice Cory considered the accuracy of A/05’s evidence in mitigation for the purposes of his Report, he concluded that the evidence given at the trial was flawed and indicative of collusion. Justice Cory stated that:

“The evidence given by the CO FRU, [Soldier ‘J’], at Nelson’s trial could only be described as misleading. The statement that Nelson’s actions were responsible for saving close to 217 lives was based on a highly dubious numerical analysis that cannot be supported on any basis.”¹²¹

24.195 Justice Cory’s analysis of A/05’s testimony as misleading requires close scrutiny. Having reviewed the transcripts from the trial, I am mindful of the fact that A/05 did not explicitly state that Nelson’s actions were responsible for saving close to 217 lives. When questioned on the figure of 217, A/05 was clear to speak in terms of Nelson as “*a prolific provider of information*” and to refer to this information as having “*life saving potential*”. In this regard, A/05’s evidence differed subtly but importantly from the initial representations made by the MoD to the Attorney General in 1990–91 which wrongly suggested that in most cases Nelson’s threat warnings were acted upon to save lives.

24.196 A/05 did, however, agree with the point made Counsel for the defence that there are “*a number of people who owe their lives to him [Brian Nelson] at the present time*”, and when cross-examined said that:

“... there was a lot of potentially life saving information that he gave and lives were saved.”¹²²

24.197 Justice Cory was also critical of what he referred to as “*highly dubious numerical analysis*” forming the basis for the evidence given by A/05. Having reviewed all of the background material, I am satisfied that Justice Cory must have believed that the figures used by A/05 were compiled on the basis of a report produced by A/01, the OC of East Det FRU, in 1990. An analysis produced for the Stevens II Investigation by DS Benwell in 1992, which was shown to Justice Cory, also put forward the argument that the 217 figure had been based on A/01’s report.

24.198 Justice Cory made the following provisional findings in relation to the compilation of the 217 figure:

¹²⁰ Ibid., sentencing remarks, 3 February 1992

¹²¹ *Cory Collusion Inquiry Report: Patrick Finucane*, 1 April 2004, p. 103, para 1.288

¹²² Trial transcript, *R v Brian Nelson*, 29 January 1992

“When the report is reviewed, it can be seen that it is a very frail structure that can give little or no support to the testimony of the CO of FRU. For example, the soldier who compiled the report said that he took every name that was mentioned in MISRs arising out of information provided by Nelson, whether or not a specific threat was mentioned and whether or not that person had been subject to a planned attack. This was not a sound approach. The report goes so far as to set out the names of high ranking UDA officials, such as Loyalist H and Loyalist J, amongst those whose lives were supposedly saved by Nelson.”¹²³

24.199 A/01’s report did indeed include the names of high-ranking loyalists as Justice Cory suggests. However, I am satisfied that A/01’s report was not the basis on which the FRU compiled the ‘217 threats’ statistic. A/01’s 1990 report recorded the following method being used to compile his report:

“An initial trawl of the computer has been carried out using the titling parameters “UDA TARGETTING [sic]” and “UDA INTIMIDATION” and this has resulted in the information contained ... being received.”¹²⁴

24.200 A/01 went on to state in his report that:

“It must be stressed that this is by no means a complete record of MISRs produced on the subject but does give an indication of the scope and timeliness of our reporting.”¹²⁵

24.201 A/01’s 1990 report summarised the MISRs held in electronic form dating from July 1988 to November 1989. It was not intended to provide an assessment of the number of threat warnings provided by the FRU to the RUC during the period 1985–89 (the period quoted by A/05 at the trial).

24.202 The statement from A/25, who in fact briefed A/05 on the 217 figure, serves to clarify the position. Although the notes of A/25 were destroyed when he left the Army in March 1992, he was nevertheless able to provide a statement to the Stevens II Investigation in August 1993 as to how he arrived at the 217 figure. A/25 explained his task as follows:

“Following the arrest of Brian Nelson in January of 1990 I was asked by Soldier ‘J’ to conduct research on Brian Nelson’s reporting with particular emphasis on threat warnings produced to the Royal Ulster Constabulary. This research, which was carried out solely by me without any assistance, took me somewhere in the region of two weeks.”¹²⁶

24.203 A/25 explained that he read all of the CFs and MISRs which were in existence up until the time of Nelson’s arrest. He gave the following description of the exercise he undertook:

¹²³ Cory Collusion Inquiry Report, p. 57, para 1.165

¹²⁴ A/01 Report, 29 January 1990

¹²⁵ Ibid.

¹²⁶ A/25 statement, 27 August 1993

"I firstly read all the contact forms and made notes of the names, addresses and dates of birth of all persons Brian Nelson identified and I perceived to have been under threat by the UDA. Where the word target or targeting was used was straightforward but I had to use my judgement where other names were concerned.

To clarify this point I would say that where, for instance, a Republican was named with no mention of a specific threat at that time I would still consider that this was a person under threat and include his or her name.

As far as vehicle numbers were concerned if it was revealed that the owner or driver was a Republican then again this person would be listed as under threat.

*I then compared the contact forms to the MISR's and checked the names I had extracted from the contact forms against the relevant MISR's."*¹²⁷

24.204 A/25 explained that he created a list of those individuals mentioned, including the date when the information was passed to the RUC in the MISR. He stated that he counted up all of the names in his index book and that the figure he arrived at must have been 217. He recalled that the number of MISR reports in total was 730. He explained:

*"I then went to see Soldier J and gave him my figure. He did not require the details but only the numbers."*¹²⁸

24.205 I am satisfied that A/25's research must have been the basis for the 217 figure used by the MoD and A/05. The exercise as described by A/25 seems to me to have been, in principle, a valid one. Any republican named by UDA members to Nelson could have been potentially under threat, whether or not the UDA had devised a detailed plan to murder them. If such information was passed to the RUC in the form of a MISR then it could reasonably be taken to represent a 'threat warning' with respect to that individual.

24.206 However, the question remains as to whether the exercise undertaken by A/25 should have produced the figure of 217 individuals reported as being under threat by the UDA, or whether this figure was deliberately exaggerated to enhance the value of Nelson's intelligence. In order to determine this question, my Review has undertaken the same exercise described by A/25 using the FRU's CFs and MISRs.

24.207 My exercise involved the analysis of all FRU CFs and MISRs during Nelson's second spell as an agent in the period 1987–89 (though it should be noted that A/25 included threat warnings reported by Nelson in 1985 as well). I excluded from consideration the names of loyalist paramilitaries (with the exception of James Pratt Craig) and other civilians not being targeted by the UDA. To ensure that the list only contained the names of those for whom the UDA had sufficient information to begin targeting, I removed from the list those for whom the UDA had acquired no information other than their name.

¹²⁷ Ibid.

¹²⁸ Ibid.

- 24.208 This left a list of individuals whom the UDA had considered as potential targets during the period. The UDA held the target's name and at least some other details on them, such as their address and/or vehicle details and movements. The fact that they had been recorded in a MISR also indicates that the target must have been actively considered by UDA members during this period (as opposed to individuals whose details lay in an intelligence dump without being actively considered as targets).
- 24.209 The list of targeted individuals I have produced contains 419 names. In all cases, the fact that the UDA considered the individual to be a target had been passed on by the FRU to the RUC in a MISR. These names were recorded in a total of 916 MISRs. It therefore appears to me that A/25 in fact took a relatively narrow view with regard to those individuals he considered to be potentially 'under threat' from the UDA.
- 24.210 From my research I can see that, of the 419 individuals who were reported as being under threat, four were murdered by loyalist paramilitaries, two died for unrelated reasons, as A/05 testified, and 12 were subject to attempts to kill them by loyalist paramilitaries. This list would include an additional two individuals subject to attempted murders if Nelson's 1985 reporting is included in the analysis (as A/25 appears to have done).
- 24.211 Another murder must also be taken into account as part of this analysis: the murder of Terence McDaid, though not directly forecast by Nelson, was inextricably linked with the targeting of his brother Declan McDaid. Whilst A/05 did not refer to the murder of Terence McDaid when providing his statistics, nor indeed to the number of attempted murders, the court would have been aware of a number of these incidents because Nelson had pleaded guilty to criminal offences relating to the attacks. I have considered in Chapter 7 the detailed evidence in relation to each UDA attack and the information provided by the FRU to the RUC.
- 24.212 My analysis therefore points me in a different direction to that taken by Justice Cory. I believe that the figure produced by A/25 was a conservative estimate of the number of threat warnings passed by the FRU to the RUC as a result of Nelson's intelligence.
- 24.213 It follows that the broad thrust of this aspect of A/05's evidence in mitigation at Nelson's trial – that Nelson provided an extensive amount of intelligence on UDA targeting that was passed to the RUC for potential exploitation – was accurate. Further, and contrary to Justice Cory's view, A/05's evidence does find support in numerical analysis. Accordingly, A/05 was correct in saying that:
- “... he [Nelson] did produce a tremendous amount of information referring to their plans and their targets for assassination and this was of course of life saving potential.”* [Emphasis added]¹²⁹
- 24.214 However, the emphasis here must be on the *potential* benefits of Nelson's intelligence. The information could only be said to have saved lives if it was

¹²⁹ Trial transcript, *R v Brian Nelson*, 29 January 1992, A/05 evidence in mitigation

actually exploited by the RUC to protect individuals and avert attacks. The phrasing of A/05's evidence suggests to me that he was very much alert to this distinction. A/05's evidence in mitigation did not deal with the issue of the extent to which the RUC took action to save lives as a result of Nelson's intelligence, nor did he express his views on the role or efficacy of the RUC in exploiting the intelligence provided by Nelson.

24.215 The value of the intelligence provided by Nelson and the actual use to which it was put is a major area of controversy, which I have considered in detail in Chapter 8. It is important, however, to view the evidence of A/05 in the correct context, namely that he was a witness for the defence in a plea in mitigation. A/05 was not asked to comment on the extent to which the security forces acted on Nelson's information. Nelson could not, in my view, fairly be held criminally culpable for the failure of the security forces to act on his information.

24.216 This distinction was noted by the Attorney General in relation to the decision as to whether to prosecute Nelson:

*"The decision of the DPP (NI) whether to prosecute Nelson does not turn on the use to which his information was put once he had given it to his handlers. That was a matter for the Army and the RUC and not for him."*¹³⁰

24.217 As A/05 was a witness for the defence, he was open to and indeed was subjected to cross-examination by the prosecution. Had there been any suggestion that the evidence of A/05 on this issue was misleading, this was the point at which the prosecution could have dealt with it in cross-examination.

Was the trial Judge misled by the evidence in mitigation?

24.218 Although the trial Judge was only examining the criminal culpability of Brian Nelson and not the culpability of the Army or the RUC, he does appear to have turned his mind to the actual benefits of Nelson's intelligence. In an exchange with defence Counsel, Lord Justice Kelly at one point observed that:

*"I have been asking myself that question really all morning, what did he [Nelson] really achieve at the end of the day?"*¹³¹

24.219 In the light of the serious criminal offences to which Nelson pleaded guilty, it is not surprising that the Judge would be concerned at Nelson's worth as a FRU agent. Although Lord Justice Kelly was clearly influenced by A/05's evidence in mitigation, with regard to the 217 figure the Judge only referred to Nelson as having:

"... passed on what was possibly life saving information." [Emphasis added]¹³²

24.220 This suggests to me that Lord Justice Kelly was alert to the distinction between the life-saving potential of information provided by Nelson (an issue relevant to mitigation) and the exploitation of the information (an issue that went principally

¹³⁰ Letter from Attorney General to Secretary of State for Defence, 25 April 1991 [see Volume II, pp. 279–283]

¹³¹ Trial transcript, *R v Brian Nelson*, 29 January 1992

¹³² *Ibid.*, sentencing remarks, 3 February 1992

to the efficacy of the security forces and fell largely outside his remit as trial Judge in this case).

24.221 Whilst it will be clear from my findings in this Review that Nelson's criminal motivation is self-evident, any trial Judge sentencing Nelson is likely to have been influenced by the enormous volume of intelligence he passed to the security forces prior to UDA attacks. Equally, I am sure that any defence team in an adversarial system would have highlighted this line of mitigation as vigorously as Nelson's Counsel indeed did. In the absence of proceedings being taken against Army or RUC officers, this mitigation would, inevitably, have been given due weight by any Judge when sentencing.

24.222 I should note that in this chapter I have focused on the accuracy of A/05's evidence and the question as to whether the trial Judge was misled by the mitigation. It is not material to my remit to consider whether the sentence was unduly lenient, save to say that a total of ten years' imprisonment for five conspiracies to murder, as well as numerous other offences, does seem to suggest that the learned Judge was influenced by the mitigation.

Overview

24.223 Justice Cory's conclusion that A/05's evidence, given in mitigation at the trial of Brian Nelson, was misleading and based on "*highly dubious numerical analysis that cannot be supported on any basis*" was an extremely serious allegation to make. For that reason I have considered this issue carefully.

24.224 Justice Cory undertook a preliminary investigation and necessarily had limits on the material available to him. Having now investigated this issue in more detail, I am satisfied that the numerical basis for the figure relating to the threat intelligence provided by Nelson was a reasonable one. Although A/05 did not acknowledge that the RUC had generally disregarded these threat warnings – a point that had essentially been established by the DPP(NI) and the Attorney General by March 1991 – I do not believe that such evidence would necessarily have been material to the question of Nelson's criminal culpability.

24.225 It will be apparent from my Report that I take a markedly different view of Nelson's motivation and actions to the evidence given by A/05. However, in examining the specific criticisms made of his evidence at the trial, I have been conscious of the fact that A/05's evidence was being given during the course of the plea in mitigation at a criminal trial and that he chose his words with care, referring only to the "*potential*" value of Nelson's intelligence. In view of that context, I do not believe that the criticisms made by Justice Cory are sustainable. As the learned trial Judge referred only to the possibility that Nelson's information was "*life saving*", I am not satisfied that he was misled by those aspects of A/05's evidence criticised by Justice Cory.

24.226 However, the careful terms in which A/05 couched his evidence in mitigation does, in my view, highlight the fact that the Army were fully aware of the fact

that Nelson's intelligence had not generally saved lives and that the initial claims made by the MoD to the Attorney General were utterly wrong. I have dealt with the central issue of accountability in Chapter 8 and the representations made during the Shawcross exercise earlier in this chapter.

Chapter 25: Allegations that Government Ministers sanctioned collusive activity

- 25.1 There have been suggestions in a number of media reports that Government Ministers may have been involved in directing or sanctioning collusive activity during the Troubles in Northern Ireland. No evidence to support these allegations arose in the course of the Stevens Investigations or Justice Cory's Report. In order to discharge my mandate it was, however, necessary for me to conduct a full examination of the UK Government's documents relating to security policy in order to address these allegations.
- 25.2 I consider below the UK Government's approach to loyalist terrorism, before considering the more specific issue of Ministerial knowledge of the targeting activities of Brian Nelson and the question as to what advance knowledge Ministers may have had of the murder of Patrick Finucane.

The UK Government's approach to loyalist paramilitaries

- 25.3 I have been provided with several thousand pages of documents relating to security policy in Northern Ireland during the period 1985–89. These documents include memos between civil servants at the Northern Ireland Office (NIO), briefings provided in preparation for regular meetings on security policy led by the Secretary of State, Security Service intelligence assessments provided to Ministers, reports from the Joint Intelligence Committee in London, and communications between the Prime Minister and Cabinet Ministers. This material provides a significant pool of evidence from which conclusions can be drawn as to the approach of the UK Government to security policy in Northern Ireland and, in particular, its attitude towards loyalist terrorists.
- 25.4 There is no evidence whatsoever in any of the files that I have examined to suggest that Government Ministers either sought to direct any of the intelligence agencies to assist the Ulster Defence Association (UDA) in any way, or to collude in a policy of using loyalist paramilitaries to carry out extra-judicial killings of republicans. Any such plan would have entailed preparation and would certainly be evidenced somewhere in the highly classified internal documents that I have seen.
- 25.5 It is the case that the UK Government's security policy during the late 1980s was driven by the need to tackle the Provisional Irish Republican Army (PIRA), and that Government Ministers tended to view loyalist paramilitary violence as a largely reactive phenomenon to republican atrocities. This is, indeed, reflected

in the memoirs of the former Prime Minister, the Rt Hon Margaret Thatcher MP, who noted that:

“... the IRA are the core of the terrorist problem; their counterparts on the Protestant side would probably disappear if the IRA could be beaten.”¹

- 25.6 Security meetings during the late 1980s were certainly dominated by discussions as to how to tackle PIRA and republican violence. There were Ministerial-level discussions about loyalist terrorism during this period but they were much less substantial than the high-level consideration of the republican terrorist threat.
- 25.7 However, it must also be acknowledged that, at this stage of the Troubles, republicans were responsible for the majority of murders and bombings in Northern Ireland. During the years 1986–89, republicans were responsible for 241 murders, whilst loyalists were responsible for 79.² So, although PIRA were discussed disproportionately at such meetings, this must be expected given that they were responsible for a disproportionate degree of the violence at the time and did represent the greatest terrorist threat.
- 25.8 Government documents do, however, suggest that when Ministers considered the terrorist activities of the UDA, their policy was dictated by a desire to tackle and reduce the threat from loyalists in the same manner in which the Government sought to disrupt the activities of PIRA. Minutes of meetings and memos frequently refer, for example, to the need to disrupt loyalist arms supplies.
- 25.9 There was also an active desire within the UK Government during this period to provide examples of the security forces tackling loyalist terrorism effectively in order to increase the confidence of the minority community and to provide reassurance to the Irish Government. During the course of 1989, for example, the NIO began to provide Irish Government officials with summaries of security force action against loyalist terrorists.³
- 25.10 The one aspect of the UK Government’s security policy relating to loyalist terrorists which does strike me as potentially seriously concerning is the fact that the UDA were not proscribed as a terrorist group until August 1992. As I noted in Chapter 1 and throughout this Report, the supposed distinction between the UDA and the Ulster Freedom Fighters (UFF) was, in fact, a fiction. The UDA in the late 1980s were to all intents and purposes a terrorist group, though that is not to say that all of the members were actively engaged in acts of terrorism. It is worth noting that the Secretary of State who proscribed the UDA, Sir Patrick Mayhew, had previously been the Attorney General who viewed the Nelson case papers when considering the question of prosecution (see Chapter 24).
- 25.11 UK Government documents show that Ministers did consider the question of whether to proscribe the UDA in the late 1980s. At a Security Policy Meeting in January 1988, following the discussion of the seizure of loyalist arms in Portadown, the minutes of the meeting noted that:

¹Margaret Thatcher, *The Downing Street Years*, HarperCollins, 1993, p. 384

²David McKittrick et al., *Lost Lives*, Mainstream Publishing, 2004, p. 1554, Table 3

³NIO note, Law and Order Branch, 3 March 1989

“The Secretary of State [for Northern Ireland] said that he would wish to give further thought to the position of the UDA and asked for details of demonstrable links between individuals and the Association.”⁴

25.12 By September 1988, it was clear that the Prime Minister, the Rt Hon Margaret Thatcher MP, was instinctively in favour of proscribing both the UDA and Sinn Féin. A note from No.10 to the NIO on 24 August 1988 recorded that:

“The Prime Minister finds intolerable the spectacle of those responsible for initiating the recent savage terrorist attacks openly giving press conferences. She believes that the moment has come to proscribe Sinn Féin (and the UDA), and that this would have a very considerable, disruptive effect on both organisations.”⁵

25.13 Despite the Prime Minister’s views as recorded in this minute, the UDA were only proscribed in 1992 and Sinn Féin were never proscribed.

25.14 In considering the issue of proscription, I have been mindful of the fact that many of the same policy considerations applied to both the UDA and Sinn Féin. Sinn Féin had very close links to PIRA and many individuals were involved in both the political and military wings of the republican movement.

25.15 In view of the fact that Sinn Féin were never proscribed, it would be difficult to seek to criticise the Government for taking a biased approach in failing to proscribe the UDA until 1992. I am mindful of the fact that, in the context of the Government taking tentative steps towards engaging with the representatives of paramilitary groups, the idea of proscription may have been treated with caution because it could have served to strengthen the militaristic elements within both loyalism and republicanism.

Were UK Government Ministers briefed on the role of Brian Nelson during the period 1987–89?

25.16 When considering this subject, it is important to understand the nature of the briefings provided to Government Ministers by the intelligence agencies during this period.

25.17 Ministers were briefed on intelligence matters through receipt of Northern Ireland Intelligence Reports (NIIRs) from the Security Service Assessments Group; through monthly Security Policy Meetings involving the Director and Co-ordinator of Intelligence (DCI), Chief Constable and General Officer Commanding (GOC) Northern Ireland; and via more informal and ad hoc advice provided by their senior security advisers. Ministers were also briefed in connection with the approval of warrants under the statutory framework in place at the time.

25.18 Most of the briefings provided to Ministers tended to be at a strategic level and related to the intelligence ‘product’ supplied by the intelligence agencies. I have

⁴ Minutes of Security Policy Meeting held on 18 January 1988, 22 January 1988

⁵ Note, No.10 to Private Secretary to the Secretary of State for Northern Ireland, 24 August 1988

not seen any material to suggest that Ministers became involved in decisions as to the extent to which specific agents should become involved in criminal conspiracies, or whether threat intelligence against a particular individual should be acted on (both of which have been key themes of this Review).

25.19 A number of submissions to my Review highlighted the distinction between strategic-level briefing provided to Ministers and operational decisions regarding the handling of agents and the exploitation of intelligence. R/16, a former senior Royal Ulster Constabulary Special Branch (RUC SB) officer, described the briefing to Ministers as follows:

“These briefing papers would not deal with the identity of particular agents because such operational details were not considered to be the domain of the political leadership; indeed, [R/16] considered that if they were wise the political leadership would steer clear of such details.”⁶

25.20 As I set out in Chapter 4, Government Ministers were certainly aware of the major problems inherent in the agent-handling framework in Northern Ireland and the chronic need for new guidelines. That did not, however, mean that Ministerial approval was either sought or given for the handling of an agent such as Brian Nelson and the extent to which he was allowed to engage in targeting activity.

25.21 Despite having had extensive access to all the relevant Ministry of Defence, NIO and Security Service documents, I have found no evidence to suggest that Government Ministers were briefed on Nelson’s activities as a FRU agent. It is possible that the general intelligence briefing provided to Ministers on the loyalist paramilitary threat drew on intelligence provided by Nelson, though this form of briefing would be very different from Ministers being made aware of the extent to which Nelson was targeting republicans, or the fact that his information was not generally being acted on by the RUC.

25.22 As the Security Service’s Assessments Group and the DCI had primary responsibility for briefing Ministers on intelligence matters, I sought to establish whether briefing had been provided in relation to Nelson’s activities. In his written statement dated 27 September 2012, G/07 confirmed to me that:

“No records have been identified which indicate whether or not Ministers were briefed by the Security Service on Brian Nelson’s reporting.”⁷

25.23 The briefing of Tom King, the Secretary of State for Defence, in September 1990 is, in my view, illustrative of the state of knowledge of Government Ministers in relation to Brian Nelson.⁸ The minute of the meeting suggests that the Secretary of State had no background knowledge of Nelson’s activities. This is significant because Tom King was the Secretary of State for Northern Ireland during most of Nelson’s time as a FRU agent and was briefed regularly on Northern Ireland intelligence matters.

⁶ Note of meeting with former RUC officers, 25 July 2012, para 52

⁷ G/07, written statement to the Review, 27 September 2012, p. 7

⁸ Note of briefing to Defence Secretary, 26 September 1990 [see Volume II, pp. 308–312]

- 25.24 As part of the briefing he received when Secretary of State for Defence, Tom King was provided with inaccurate and misleading information by his advisers. Had Tom King already been aware of the FRU's tasking of Nelson to target "*PIRA activists*" and Nelson's evident desire to see such individuals killed, there would have been no requirement for such briefing and even less reason to allude to the fact that Nelson was being "*regularly reminded*" not to commit criminal acts (see Chapter 24).
- 25.25 The problem evident from the material on this issue is not that Government Ministers were directing Nelson's activities but rather the opposite – it seems Ministers had very little awareness of, or influence over, the nature of FRU operations in relation to agents such as Nelson. The system appears to have facilitated political deniability in relation to such operations, rather than creating mechanisms for an appropriate level of political oversight. A note sent by the Director of the T Branch of the Security Service to the Director General (DG) on 14 March 1991 referred to this very problem. Looking ahead to a potential trial of Nelson, the Director of T Branch forecast that the proceedings could lead to:

*"Exposure of FRU behaviour and procedures which demonstrate a lack of legal and political responsibility, and management control."*⁹

Allegations that Government Ministers knew about the targeting of Patrick Finucane

- 25.26 Chapter 14 dealt with the statement made by Douglas Hogg MP on 17 January 1989. In this section, I have sought to establish whether or not UK Government Ministers either knew about, or sanctioned, the targeting of Patrick Finucane prior to his murder.
- 25.27 I have seen the classified briefing sent to Government Ministers in the aftermath of the murder of Patrick Finucane. In March 1989 a brief provided to the Secretary of State before a Security Policy Meeting noted that "*There have been worrying signs of a return to blatant sectarian murder (especially on the 'loyalist' side)*".¹⁰ The incident list attached to the GOC's briefing for the meeting included a brief reference to the fact that Patrick Finucane had been killed but no further details.
- 25.28 I have also examined the monthly intelligence assessment covering the period during which Patrick Finucane was murdered. This assessment was produced by the Security Service's Assessments Group and disseminated within the UK Government, including to the Secretary of State for Northern Ireland. The assessment included the following information in relation to the murder of Patrick Finucane:

"On 12 February the solicitor Patrick Finucane was shot dead when gunmen burst into his home. His wife was wounded in the leg but his children escaped uninjured. The attack was claimed by the UFF and was probably carried out

⁹ Security Service, Director T Branch to Director General, 14 March 1991

¹⁰ Security Policy Meeting, 6 March 1989

by men from Protestant West Belfast not far from where Finucane lived. He had defended republicans in some emotive court cases, was related to active republicans and the UFF concluded he was a PIRA officer.”¹¹

- 25.29 The one other form of intelligence briefing that Ministers often received was a NIIR. In Chapter 16 I outlined the NIIR distributed by the Security Service on 17 February 1989 in relation to the murder of Patrick Finucane. Any recipient receiving this NIIR might have been able to ascertain that the Security Service had received intelligence indicating a threat to the life of Patrick Finucane in December 1988. The NIIR itself might, therefore, have raised important questions as to whether action had been taken to protect Mr Finucane prior to his death. However, it is clear from the distribution list for the NIIR that it was not sent to Government Ministers. The NIIR was sent only to Security Service officers and the RUC SB.
- 25.30 In summary, there is no evidence to suggest that UK Government Ministers had any foreknowledge of a plan to kill Patrick Finucane. The intelligence briefing that they received on the murder in fact added little to what was already in the public domain.

Overview

- 25.31 With regard to the culpability of the UK Government, the picture that emerges from this Report is a mixed one. As I noted in Chapter 4, I believe that the Government was fully aware of the entirely unacceptable fact that there was no adequate framework in place for agent-handling in Northern Ireland in the late 1980s. In Chapter 24 I outlined the representations made by some Government Ministers to attempt to prevent the prosecution of Brian Nelson. Had such representations been accepted by the Attorney General and the Director of Public Prosecutions (Northern Ireland) (DPP(NI)), Brian Nelson would have escaped the consequences of his crimes.
- 25.32 However, I have also made clear in parts of this Report that Ministers were not briefed on intelligence-related matters that should, in my view, have been brought to the attention of the Government. This is particularly the case in relation to the Security Service’s propaganda initiatives (see Chapter 15) and the security force ‘leaks’ to loyalist paramilitaries during this period (Chapter 11). It should also be noted that, when the Secretary of State for Defence was briefed on the Nelson case in September 1990, he was provided with wholly misleading information which was later corrected by the Attorney General.
- 25.33 In relation to the specific issues I have considered in this chapter, there is no evidence that Ministers sought to direct the security forces to take a relaxed or permissive approach to loyalist paramilitaries; Ministers do not appear to have been aware of Brian Nelson’s targeting activities prior to September 1990; and there is no evidence that Ministers had any foreknowledge of the murder of Patrick Finucane, nor that Ministers were subsequently provided with any intelligence briefing suggesting that the intelligence agencies had foreknowledge of a threat to Mr Finucane’s life.

¹¹ Northern Ireland Monthly Intelligence Assessment, 9 February–7 March 1989, para 61



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