

THE RUC RESPONSE TO THE TIP-OFF ALLEGATION

- 1 The Panel may wish to consider the steps taken by the RUC in relation to both the alleged tip-off and the apparent cover-up that occurred in late 1997.

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

We do not accept that there was any "cover-up" in late 1997.

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

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

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

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

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

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

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

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

As a result of the limited representation granted to Sir Ronnie Flanagan it is clear that not every core issue will be relevant to him. As his representatives were not afforded access to for example all of the investigation files his evidence as regards the due diligence of the investigation is limited. The question of his due diligence must be addressed against what would be a reasonable response from a Chief Constable within a similar police force in similar circumstances.

Submissions by the Police Service of Northern Ireland

See sections 4-11 below.

- 2 The materials show this:
 - 2.1 9/5/97 23.50 Policy Decision Five was made to obtain the telephone records of Elizabeth Hanvey and Robert Atkinson, to establish the authenticity of the intelligence (913 at 918).
 - 2.2 9/5/97 Res Con Robert Atkinson's telephone billing was requested (24696).

- 2.3 9/5/97 Tracey Clarke spoke to DC John McAteer and commenced a statement, which was finished the following day. Tracey Clarke was interviewed in the presence of Andrea McKee. She said that Allister Hanvey had told her that Res Con Robert Atkinson had telephoned him and told him to get rid of his clothes and that Atkinson was ringing every day to keep him up to date with the investigation (262).
- 2.4 10/5/97 07.21 A search for clothing at Allister Hanvey's home address was conducted. Sgt Michael Bingham, who led the search team, says he has no recollection of the search being extended to look for a silver jacket, or to cover adjoining lands for evidence of recently burnt clothing (73989).
- 2.5 10/5/97 Con Michael Porter made a statement saying he was briefed by DI Michael Irwin on 10 May 1997 and on information received, a search was carried out at the home of Allister Hanvey. He searched bedroom 1 (9292).
- 2.6 11/5/97 DC Paul McCrumlish and DC Albert McIntosh were briefed by DCI **P39** to search the home of Thomas Hanvey. They were told that Allister Hanvey had gone to that address after the fight. The purpose of the search was to locate any clothing that might have been worn. The briefing specifically covered a jacket with grey sleeves and evidence of burnt material (4577).
- 2.7 12/5/97 DCI **P39** made an application for itemised telephone billing for four numbers (44915).
- 2.8 12/5/97 A meeting was held with Mr Roy Junkin (Deputy Director DPP), DCS Maynard McBurney and Superintendent [REDACTED] at which they discussed the incident, the cause of death and the allegation of inactivity at the scene (NB There is no mention made of the allegation by Tracey Clarke that Res Con Robert Atkinson had assisted an offender) (31613).
- 2.9 19/5/97 At about 19.00, a meeting was held at Portadown Police Station with the ICPC at which DCS Maynard McBurney, [REDACTED], Greg Mullan, Superintendent Robert Anderson, DCI **P39** and DI Michael Irwin were present to agree the strategy for handling of the complaint. Greg Mullan outlined that his role was primarily to investigate the complaint and that persons interviewed should be made aware that the investigation was in relation to the complaint about the police, not the murder investigation and an allegation made by witness A (935). In Greg Mullan's minutes of the meeting it was recorded that DCS Maynard McBurney was dealing with the issue of Res Con Robert Atkinson allegedly telephoning Mr Hanvey, and that telephone records were in the process of being seized (14803).
- 2.10 21/7/97 Due to implications which made reference to a serving police officer, namely Res Con Robert Atkinson, who had many contacts within Portadown Station, but who served in Craigavon RUC Station, it was felt appropriate to refrain from identifying the witness at that stage. In addition, a separate DPP file was being submitted which would include this allegation (6080 and 15952).

- 2.11 9/9/97 20.34 Res Con Robert Atkinson attended voluntarily and was interviewed by DI Michael Irwin and DCS Maynard McBurney in relation to criminal neglect of duty, assisting offenders and withholding information about an arrestable offence. Res Con Robert Atkinson admitted that he saw Allister Hanvey to his right on the night of 27 April 1997. He was asked specifically whether he contacted Allister Hanvey and told him to dispose of his clothing; he was also asked whether he had telephoned him on 27 April 1997. He denied all knowledge of a call from his home. The interview was terminated and Res Con Robert Atkinson was asked to produce his telephone account (NB. This is despite the fact that the police had already received it slightly after 16 May 1997 44931) (9476).
- 2.12 20/10/97 DI Michael Irwin telephoned Sean Hagan's offices (4466).
- 2.13 25/11/97 DI Michael Irwin contacted Kenneth Hanvey and Elizabeth Hanvey and spoke to them for the first time in relation to the telephone calls to their home on 27 April 1997 and 2 May 1997. No statements were recorded, but Kenneth Hanvey acknowledged he had received a call from Michael McKee enquiring about Tracey Clarke (9093).
- 2.14 25/11/97 DCS Maynard McBurney referred to and relied upon DI Michael Irwin's visit to Kenneth and Elizabeth Hanvey's home in his report (17445).
- 2.15 15/12/97 A report by DI Michael Irwin was sent to DS [REDACTED] of the Crime Admin Unit which indicated that a DPP file was being submitted relating to an allegation of a link between one of the accused and a police officer (16499).
- 2.16 22/12/97 DCS Maynard McBurney submitted his neglect report to the DPP. In his report, DCS Maynard McBurney highlighted Res Con Paul Warnock's statement, which had identified Allister Hanvey as having been wearing a baseball jacket with greyish sleeves on 26 / 27 April 1997. The report dealt with the search of Allister Hanvey's home and the denial by Allister Hanvey of wearing clothing of the type described by Jonathan Wright. It ignored Res Con Warnock's statement and the failure to investigate [REDACTED], Jim Murray and Paranoid Clothing. DCS Maynard McBurney contended that every effort had been made to prove or disprove the contention of the contact between Res Con Robert Atkinson and Allister Hanvey. DCS Maynard McBurney adopted uncritically Thomas Hanvey's alibi for Allister Hanvey that he was staying at Thomas Hanvey's home from about 03.30 onwards. The report failed to mention that Andrea McKee had been the source of information about Tracey Clarke's evidence, had sat in on her interview and had then given a contradictory alibi. DCS Maynard McBurney's report stated that the interview of Res Con Robert Atkinson was terminated in order to allow the interviewee to produce his telephone records, which he did on 9 October 1997. DCS Maynard McBurney said that it was the October 1997 interview with Res Con Robert Atkinson, which revealed contact between the Atkinson and Hanvey homes (9028).

- 2.17 22/1/98 A report was sent from Greg Mullan to [REDACTED] which recommended that the ICPC should approve DCS Maynard McBurney's report. Greg Mullan said that he was satisfied that the four officers in the Land Rover had been questioned in depth and all relevant lines of inquiry had been exhausted (14757).
- 2.18 19/2/99 [REDACTED] briefed the Secretary of State about the Hamill case. The current position of the Hobson trial was noted, as is the file reporting on the alleged inaction of the police officers. The Secretary of State was told to note that the Chief Constable and the Attorney General were very sensitive to what they saw as any interference (39453).
- 2.19 24/2/99 [REDACTED] wrote a note for the Attorney General to brief him on the Hobson trial, in particular stating that no action in respect of the complaints by the Hamill family would be taken against Res Con Atkinson, one of the prosecution's main witnesses, until the outcome of Hobson's trial. DPP (NI)'s office told him confidentially that it was unlikely that they would decide to prosecute any officer, but would keep an open mind about the evidence at the trial, and did not want the family to accuse them of pre-judging the issue (40312).
- 2.20 11/3/99 [REDACTED] briefed the Secretary of State in relation to the high profile cases and how they fitted with the date of the Patten report (39463).
- 2.21 1/7/99 Further advice was received from Gordon Kerr QC in relation to the allegations against the police. The first Advice (19334, undated) stated that so far as the complaint against Res Con Atkinson alone was concerned, it arose from the statement of witness A and that her refusal to give evidence would be likely to extend to a prosecution of Atkinson. Gordon Kerr thought it remarkable that the McKees could recall the telephone calls, but whatever the truth of the calls, they did not themselves prove anything (19334).
- 2.22 6/10/99 The Coroner wrote to DI Michael Irwin requesting a meeting with Tracey Clarke and Timothy Jameson to ascertain for himself the extent of their fears of giving evidence and suggesting the possibility of simply reading their statements at the inquest (367).
- 2.23 19/10/99 DI Irwin wrote a message noting that Andrea and Michael McKee had separated, and that further details would be submitted in due course, at an appropriate time, regarding the coroner's request (2395).
- 2.24 9/11/99 Tracey Clarke called the Coroner to advise that she was no longer willing to be a witness (270).
- 2.25 1/6/00 The Coroner informed DI Michael Irwin that he was not proposing to hold an inquest (453).
- 2.26 2/6/00 The decision to re-interview Andrea McKee was recorded by DI Irwin in message form (2416).

- 2.27 14/6/00 DI Michael Irwin liaised with DCS Maynard McBurney in relation to enquiries in Wrexham. DI Michael Irwin and DCS Maynard McBurney spoke to Michael McKee who confirmed the evidence contained in his first statement (17427).
- 2.28 20/6/00 Andrea McKee was re-interviewed by DI Michael Irwin and DCS Maynard McBurney in Wrexham. She said that the evidence in her first statement, the alibi, was false. She also said that she believed that Res Con Robert Atkinson paid for her legal representation (22143).
- 2.29 21/6/00 ICPC met with the Chief Constable. The ICPC were appointed to supervise the investigation into Res Con Robert Atkinson (26873).
- 2.30 22/6/00 Sir Ronnie Flanagan telephoned Sir Alasdair Fraser, DPP, to ask for a point of contact (18977).
- 2.31 22/6/00 Greg Mullan ICPC wrote a memo showing that he was alert to the possibility of prosecuting Res Con Atkinson for the original conspiracy, using Michael McKee as a witness (14702).
- 2.32 26/6/00 A meeting was held at the DPP offices with attendance by the ICPC and DCS Maynard McBurney at which DCS Maynard McBurney said he had briefed fully on the outcome of the actions that he had taken in relation to the McKees. It was decided to commence reinvestigation into Res Con Atkinson by DCI K under DCS Maynard McBurney. This investigation would include all issues in relation to the actions of Res Con Atkinson and the false alibi offered in his support. Raymond Kitson noted that at the time of the original complaint investigation an allegation from Tracey Clarke was that Res Con Atkinson had told a suspect to get rid of his clothes and kept the suspect informed of the murder investigation. The police investigated the allegation and found that there were two phone calls, one at 08.37 on 27 April 1997 and a further telephone call on 2 May 1997. The witness statements that had been recorded from Michael McKee, Andrea McKee and Eleanor Atkinson, Res Con Robert Atkinson's wife indicated that there was an innocent explanation for these calls. Andrea McKee made a statement on 20 June 2000 which said that part of the evidence which she gave in her original statement of 29 October 1997 was untrue. DCS Maynard McBurney explained to Raymond Kitson the circumstances which gave rise to Andrea McKee making this statement of 20 June 2000. He said that during the course of assisting the Coroner in setting up an inquest into the death of Robert Hamill he learnt that Andrea McKee had separated from her husband. He went to see the separated parties individually and Andrea McKee indicated that part of what she had said was untrue. DCS Maynard McBurney stated to Raymond Kitson that he decided to take a witness statement from Andrea McKee rather than a caution statement. DCS Maynard McBurney discussed two items with Raymond Kitson. First, he queried whether he was right to have taken a witness statement. Secondly, he sought advice as to how to proceed with the investigation with respect to Michael McKee. Raymond Kitson noted that he indicated to DCS Maynard McBurney that it was not for him to say whether it was right or wrong to take a witness statement from Andrea McKee, but it

did on the face of it appear that she had committed an offence of doing an act intended to pervert the course of justice. The matter would be reported to the Director and further consideration given to the issues which arose from the decision not to take a caution statement. With regard to Michael McKee, it was noted that Raymond Kitson told DCS Maynard McBurney that it was not for him to advise the police at this stage that they should investigate the matter regarding Michael McKee as central to the conspiracy. Again, the matter should be reported to the Director's office. There was no question of Raymond Kitson being able to give Michael McKee or any of the others some sort of immunity from prosecution at this stage. DCS Maynard McBurney indicated that further inquiries would take time, and that Andrea McKee was in a different position to Michael McKee who should be interviewed under caution. [REDACTED] of ICPC indicated concern over the amount of time indicated by DCS Maynard McBurney as being needed for further inquiries, but it was agreed by all in principle that it should be left for the police to make further inquiries before any other decisions were made (17625).

- 2.33 30/6/00 10.00 Policy File Decision Four is made. The investigation was to be managed and actioned on the HOLMES murder account. This was because the allegations of conspiracy regarding Res Con Robert Atkinson were inextricably linked with the murder of Robert Hamill, and any new evidence may have benefited the murder investigation (32353).
- 2.34 9/8/00 10.00 Decision 11, part (vi) was made to liaise with the DPP regarding the evidence of Andrea McKee and her minor role in the conspiracy (32348 at 32365).
- 2.35 18/9/00 Andrea McKee wrote to Michael McKee advising that she had changed her story to the police in relation to the stolen CD players (21441)
- 2.36 25/9/00 Michael McKee contacted DI Michael Irwin (2453).
- 2.37 25/10/00 DI Michael Irwin and DCI K travelled to see Andrea McKee and take a further detailed statement. Andrea McKee stated that Tracey Clark told Michael McKee about Res Con Robert Atkinson ringing Allister Hanvey and she heard Michael McKee ringing Res Con Robert Atkinson about that. She said that Andrea McKee accompanied Tracey Clarke to the police station and stayed with her throughout the interview. Not long after this, Res Con Robert Atkinson told her that he knew that Tracey Clarke had been to the police station and had made a statement (NB if this is true, the SIO was tipping him off and he could have kept Allister Hanvey updated on the progress of the investigation. Tracey Clarke told Andrea McKee that Res Con Robert Atkinson had rung Allister Hanvey's father. Res Con Robert Atkinson and Kenneth Hanvey had been friends for a long time. The conspiracy was Res Con Robert Atkinson's idea and Andrea McKee and Michael McKee went to the Atkinson's house to sort out the story to cover the telephone call. Res Con Robert Atkinson had arranged the visit to Sean Hagan (Res Con Robert Atkinson's Solicitor) and agreed to pay the bill himself. The McKees did not receive a bill. Andrea McKee stated that Res

Con Robert Atkinson told Andrea McKee that he had spoken to Kenneth Hanvey and Elizabeth Hanvey when the cover story was planned. Tracey Clarke had never told Andrea McKee that any part of Tracey Clarke's statement was untrue. Having thought about it, she stated that the friends who were at Andrea McKee's house on the night of 26 to 27 April 1997 may have been Rodney Smyth and Joy Kitchen (14908).

- 2.38 30/10/00 A meeting was held between the Attorney General, Sir Alasdair Fraser, Kevin McGinty and another. The Director said that he had read the Langdon report, and found it excellent and the Attorney agreed. The outstanding investigation was discussed. The Director said that the investigation into Res Con Atkinson gave rise to two areas of concern: first, the possibility of serious charges against him, and secondly the effect that such a prosecution would have on Atkinson's evidence in support of the account given as to police behaviour on the night of the murder (NB This shows that the DPP and the Attorney General accept that the Hobson conviction may have been unsafe, and goes to the reason for the failure of the Atkinson prosecution).
- 2.39 3/11/00 DCI **K** interviewed DC John McAteer to discuss the request for telephone analysis made on 9 May 1997 (53298 at 53306).
- 2.40 4/11/00 DS **H** interviewed Rodney Smyth about his duty patterns at work over the weekend of 27/4/97. Rodney Smyth stated that he cannot be positive if he went to the McKee's house that weekend; he stated it could be possible and he did use a taxi on occasions when he had been drinking at their house (4325).
- 2.41 6/11/00 DCI **K** collected documents in relation to the anonymous call to Father Dooley. He produced a progress report in relation to the re-investigation of Res Con Robert Atkinson (22636).
- 2.42 6/11/00 An action is raised to interview and take a statement from Sean Hagan, solicitor, regarding the arrangements made for Andrea McKee to attend his office on 29 October 1997 (4466).
- 2.43 8/11/00 Sean Hagan, solicitor, is contacted by DS **H** and DCI **K** in relation to the payment of Andrea McKee's legal bill. He said that as far as he could recall, there was no bill issued in respect of Andrea McKee's interview, but he would need to confirm that. He could not recall how the appointment was arranged and needed to consult his files, although he said might not have records about that. Sean Hagan said that as he had acted for Res Con Atkinson, as his legal representative he felt obliged to inform him that: (i) he had had an interview with police; (ii) that Mrs McKee had been interviewed by police, and (iii) that the police had specifically sought information from Hagan about the payment of Andrea McKee's bill (2595).
- 2.44 13/11/00 Joy Kitchen made a statement in which she confirmed that she started going out with Rodney Smyth on 9 April 1997 and visited the

McKees house two to four weeks later. She could not recall the weekend of the 26/27 April 1997 (17382).

- 2.45 16/11/00 DCS Maynard McBurney makes a statement in relation to the interview of Andrea McKee in June 2000 (17428).
- 2.46 16/11/00 PONI seek a suspension of Michael McKee's arrest to allow it to familiarize itself with all aspects of the investigation (32320 at 32335).
- 2.47 23/11/00 A meeting is held at the PONI offices. The police are represented by DCI **K**, DS **H** and DCS Maynard McBurney. Representing PONI were Chris Mahaffey, [REDACTED] and [REDACTED]. David Wood was there at the start, but left the main meeting. DCS Maynard McBurney presented the arrest and search strategy (2871).
- 2.48 23/11/00 PONI and the DPP met to discuss the ongoing RUC investigation. The meeting covered the strategy of DCS Maynard McBurney handling the alibi witnesses and conducting non-PACE interviews. The DPP were of the view that the impact of this strategy could only be assessed upon receipt of the Crime File. The Ombudsman, [REDACTED], advised that she would direct and supervise the investigation into Res Con Robert Atkinson. She would not take over the investigation, she required full access to HOLMES and all other materials gathered in the RUC investigation. DCS Maynard McBurney explained that Andrea McKee had written a threatening letter to her husband which would probably preclude her from being put forward as a credible witness. DCS Maynard McBurney explained his arrest and search strategy as being to search the homes of Michael McKee, the Atkinsons and the Hanveys because they needed to gather as much evidence against Res Con Atkinson as they could before consideration could be given to his arrest and interview. Chris Mahaffey pointed out that there was sufficient suspicion to arrest all individuals, including the Atkinsons, and the investigation should focus on the joint conspiracy (14867).
- 2.49 27/11/00 DI Michael Irwin made a statement in which he stated that on 14 June 2000, as a result of an enquiry, he travelled to the home of Michael McKee who indicated that he had nothing further to add and everything he had related in his statement earlier remained unchanged. DI Michael Irwin stated that on 20 June 2000 that he travelled with DCS Maynard McBurney to Wrexham police station where he took a statement from Andrea McKee. On 25 October 2000, he travelled to Wrexham again with DCI **K** and spoke to Andrea McKee and introduced her to DCI **K** who recorded a statement from her. He recalled Andrea McKee telling him about Res Con Robert Atkinson ringing Allister Hanvey and telling him to burn his clothes (17427).
- 2.50 27/11/00 DC **P28** established that the McKees could not have been watching boxing on the night of 26/27 April 1997 (4360).
- 2.51 5/12/00 A directional meeting with PONI and the RUC took place: the revised strategy for simultaneous arrest of all parties to the conspiracy, search and covert surveillance was put forward by PONI and is accepted.

DCS Maynard McBurney said there was no specific intelligence about a clash. The decision was made to contact Raymond Kitson at the DPP about Andrea McKee's position (he later attended the meeting). DCS Maynard McBurney informed PONI that Res Con Robert Atkinson had not been suspended because he could have claimed compensation if there was not enough evidence to prosecute or charge him (2884).

- 2.52 5/12/00 Chris Mahaffey met DCS Maynard McBurney, DCI **K**, [REDACTED] and [REDACTED] at Gough Barracks to discuss the Res Con Robert Atkinson matter. Chris Mahaffey put forward a revised strategy involving the simultaneous arrest of Michael McKee, the Atkinsons and the Hanveys. It was agreed to implement that strategy in the latter half of January 2001 (14871 and 32338).
- 2.53 14/12/00 The action log shows that DCS Colville Stewart was appointed as SIO for the ongoing RUC investigation (14868 at 14879).
- 2.54 18/12/00 The action log indicates that DCS Colville Stewart sought clarification from the Ombudsman as to whether he was SIO for both the murder and the Atkinson investigation. Chris Mahaffey told him that it was a decision for the Chief Constables, but the Ombudsman thought he should take over as SIO for both linked investigations (14880).
- 2.55 18/12/00 A letter was sent from David Wood, PONI, to the Chief Constable confirming the appointment of DCS Colville Stewart as SIO on the alleged police misconduct and the murder investigation. It confirmed also that the Ombudsman will investigate [NB not supervise] all the circumstances surrounding the passing and handling of information regarding Timothy Jameson and Andrea McKee. Chris Mahaffey was to supervise this aspect and the wider enquiry by PONI (14881).
- 2.56 5/1/01 DS **H** made a statement in which he stated that on 8 November 2000 at 14.45, he accompanied DCI **K** and spoke to Sean Hagan at his offices (17439).
- 2.57 2/2/01 DCS Maynard McBurney retired. He was not therefore susceptible to any C&D investigative processes. However, the PONI crime investigation could continue (26873 at 26880).
- 2.58 13/2/01 Chris Mahaffey, PONI, writes to Raymond Kitson DPP. He said that the matter currently being investigated by the Ombudsman regarding DCS Maynard McBurney and DI Michael Irwin became apparent during the investigation by the RUC into the murder of Robert Hamill and the actions of Res Con Robert Atkinson. The concerns of PONI related to how Timothy Jameson became a witness rather than a defendant and later retracted evidence. There were also concerns in respect of Andrea McKee and the information she gave to the investigating team and how an alibi statement came to have been taken from her (14662).

- 2.59 22/2/01 A confidential meeting was held by David Wood, PONI, with [REDACTED], solicitor, where he updates [REDACTED] on the strategy to be adopted and its progress. Real progress was expected in the following three weeks. Further, note was made of the meeting between David Wood and the Chief Constable. Concerns were noted about the commitment of investigators who appeared to be delaying the arrests with a desire to 'cleanse' Andrea McKee by prosecuting her, taking a further statement, securing her support for the prosecution and then arresting and prosecuting the further defendants. The weaknesses of this strategy were highlighted and included that it would delay; that there was a risk of Andrea McKee not cooperating, as she would be likely to go to prison; that it would eliminate a technical attack and leave the prosecution to rest alone on Andrea McKee's evidence, and that she was a tainted witness who may not be reliable. The Chief Constable agreed that there were weaknesses in the strategy and said that he would speak to the SIO (14632).
- 2.60 22/2/01 DCI **P39** was interviewed by DCI **K** in the presence of Chris Mahaffey and [REDACTED]. DCI **P39** stated that she met Andrea McKee when Andrea McKee accompanied Tracey Clarke to the station on 9 May 1997. The next morning she was told about the Res Con Robert Atkinson allegation and the allegation was dealt with extremely restrictively – only she, DCI Maynard McBurney, DI Michael Irwin and DC John McAteer were told of it (22692).
- 2.61 28/2/01 11.00 – 13.15 A meeting was held with Chris Mahaffey, PONI, Raymond Kitson, DPP and DCS Colville Stewart. They considered (i) Using Tracy Clarke as a hostile witness; and (ii) The legal implications of using Andrea McKee as a credible witness (32308).
- 2.62 6/3/01 A meeting was held between PONI and the police, represented by DCS Colville Stewart and DCI **K**, after meeting with the DPP. First, it was decided that all suspects in Atkinson conspiracy were to be arrested together. Secondly, it was decided that intrusive surveillance was to be made at the time of the arrests to provide further evidence. Thirdly, it was decided that Andrea McKee would be re-interviewed at the time of the other arrests to determine her ability and willingness to give evidence. This was because if the intrusive surveillance was not successful, her evidence might be necessary for a conviction (2927).
- 2.63 13/3/01 DI Michael Irwin was re-interviewed by [REDACTED] and Chris Mahaffey, and specific questions were put to him regarding the handling of Andrea McKee. DI Michael Irwin denied that he had any responsibility for the conduct of enquiries as he was merely the officer manager and working to DCS Maynard McBurney under the supervision of [REDACTED]. DI Michael Irwin also described the meeting with Andrea McKee at Kernan. He stated that DCS Maynard McBurney directed that there be no notes and no entry onto HOLMES in order to prevent information getting back to Res Con Atkinson. Further, he said that DCS Maynard McBurney advised him not to put the fact that Andrea McKee had been present when Tracey Clarke made her statement to Res Con Atkinson. One reason for not putting it to him was

the presence of Res Con Atkinson's solicitor. DI Michael Irwin added that it was DCS Maynard McBurney's decision to treat Andrea McKee as a witness. DI Michael Irwin stated that DCS Maynard McBurney told him to tell him if he became aware of a change in the circumstances of the McKees. He did so around September 1999, but DCS Maynard McBurney took no action because the inquest was due. Following the decision not to hold an inquest in May 2000, he decided to pursue for the McKees (22760 at 22780).

- 2.64 27/3/01 DCS Maynard McBurney was interviewed by PONI. He was interviewed as a witness because he had retired. He was briefed on 8 May 1997 as to the meeting with Andrea McKee both as to the involvement in the murder and the allegations against Res Con Robert Atkinson. DCS Maynard McBurney said that he had discussed the handling of the telephone enquiries: they were to be done surreptitiously and he and DI Michael Irwin, rather than DCI **P39**, made the decision in relation to the arrests. As for the interview of Res Con Robert Atkinson on 9 September 1997, DCS Maynard McBurney said this was concerned with his membership of the Land Rover crew, but he was asked to identify the relevant telephone billing for his home address. He accepted that no questions were put to Res Con Robert Atkinson about the call because DCS Maynard McBurney wanted to provoke a response. DCS Maynard McBurney said he hoped that, following the statement from Andrea McKee, an opportunity to exhibit the statement would materialise either through the trial of Marc Hobson, or at an inquest, but this did not happen. DCS Maynard McBurney denied that he had instructed Res Con McCaw not to make a note of the information first provided by Andrea McKee in May 1997 (22811).
- 2.65 3/4/01 DCI **K** signed the operational order 'Clutch' (21586).
- 2.66 11/4/01 Res Con Robert Atkinson was suspended from duty (46706).
- 2.67 8/5/01 Res Con Robert Atkinson, Eleanor Atkinson, Kenneth Hanvey, Thomas Hanvey and Allister Hanvey all appear at the police station as per the conditions of their bail and are released (22225 and 22226).
- 2.68 23/5/01 Following an admission by Andrea McKee, a crime file was submitted to the DPP recommending prosecution of Andrea McKee. (NB Michael McKee was apparently not included on this file) (22034).
- 2.69 7/6/01 DC **P5** sends the PACE production order in relation to itemised billing for public telephone boxes (1591).
- 2.70 12/6/01 Form 17/3 was served on Res Con Robert Atkinson (10705).
- 2.71 12/6/01 Res Con Robert Atkinson was interviewed. He made no comment (21277).
- 2.72 12/6/01 The DPP received the crime file (20021).

- 2.73 11/9/01 DCS Maynard McBurney made a statement in which he explained why it was his view that the conspiracy investigation could not be advanced further in 1997. He decided to keep the situation under review, hoping for an opportunity later on to make an inroad. He said the opportunity arose when Andrea McKee separated from Michael McKee. When DCS Maynard McBurney interviewed Andrea McKee on 14 June 2000, she co-operated (17445).
- 2.74 21/9/01 A meeting was held between DCI **K**, DCS Colville Stewart, Chris Mahaffey, PONI and another PONI employee. There was a general discussion which reviewed the progress on the preparation of the crime file in respect of Res Con Atkinson and others, the arrangements for the committal hearing of Andrea and Michael McKee, and DCS Colville Stewart's intention to revisit some aspects of the murder investigation, such as Timothy Jameson (16698).
- 2.75 23/10/01 Catherine Jagger suggested issues to be covered in DCS Colville Stewart's letter to the judge (73017).
- 2.76 13/11/01 DS Dereck Bradley made a statement in which he recorded that on a day before 10 May 1997, he was approached by Res Con McCaw who wanted to speak to a CID officer about a possible witness to Robert Hamill's murder. DS Dereck Bradley took Res Con McCaw straight to DI Michael Irwin and left him there. Later that evening, DS Dereck Bradley and DC John McAteer interviewed Tracey Clarke. DS Dereck Bradley said he had no knowledge at the time of any allegation against a police officer (17570).
- 2.77 26/11/01 DCI **K** issued a crime file which concluded that the evidence indicated that the suspects collectively embarked on a course of conduct which had a tendency to pervert the course of justice (17135 at 17202). The file was submitted on 28/11/01.
- 2.78 3/1/02 A letter was sent from DCS Colville Stewart to the Presiding Judge in support of Andrea McKee in relation to the assistance which she gave the police by bringing forward an important witness, and in her willingness to give Queen's evidence in the current prosecution (14463).
- 2.79 31/1/02 A consultation took place in the case of R v McKee and McKee. Carl Simpson QC, Mike Matthews DPP, Raymond Kitson DPP, DCS Colville Stewart, DCI **K** and DS **H** attended to discuss possible pleas to be entered by the McKees. They discussed the issue of deferring Andrea McKee's sentence until after she had given evidence against Res Con Robert Atkinson. Counsel advised that it was not appropriate to defer her sentence and the matter should proceed in the normal way (2875).
- 2.80 5/2/02 A further meeting took place to decide whether sentence should be deferred for Andrea McKee. DCI **K**, DCS Colville Stewart and DS **H** are present (1767).
- 2.81 11/2/02 DCS Colville Stewart wrote urging the DPP to defer sentence on Andrea McKee (22870).

- 2.82 7/4/02 Res Con Robert Atkinson's employment contract is terminated (26873 at 26882).
- 2.83 7/5/02 Andrea McKee recorded a further statement in which she stated that she was convicted that day of perjury. She noted that some time after 27 April 1997, Michael McKee informed her that Res Con Atkinson had visited and told Michael McKee that Atkinson had made a telephone call that he needed to cover. She stated that Michael McKee had told her that Res Con Robert Atkinson had informed him that he had made the call on the morning of 27 April 1997 when he arrived home from work. Andrea McKee stated that some time later she went with Michael McKee to the Atkinson's house to get a cover story together for the telephone call, when Res Con Robert Atkinson and his wife were present. Res Con Atkinson suggested that the best way to cover it would be for Michael McKee to say that he had enquired about Tracey Clarke, since she was his niece who was having a relationship with Allister Hanvey. Res Con Atkinson had said that he had been pulled in at work and questioned about the call. Andrea McKee stated that on that evening they all agreed to use the cover story which Res Con Atkinson had made up. After Michael McKee had made his statement, Res Con Atkinson arranged for her to go to his solicitor Sean Hagan and make a statement. Part of the cover story was that Andrea McKee and Michael McKee had stayed over at the Atkinson's house that night, but Andrea McKee stated that she was at home that night. Andrea McKee indicated that at first she had been unsure as to which friends were with her at her house that night, but she could remember clearly that it was Rodney Smyth and Joy Kitchen. She recalled that she cooked a meal and Rodney Smith played the guitar. There was something on the TV about boxing. She stated that she could remember telephoning a taxi in the early hours of the morning on Sunday 27 April from Call-a-cab. The taxi collected Rodney Smyth and Joy Kitchen to take them to Portadown; Andrea McKee stated that she can recall waving them off (19988).
- 2.84 8/5/02 DCI K discusses the use of Andrea McKee's statement of 7 May 2002 with Mike Matthews of the DPP (34139).
- 2.85 14/5/02 A letter is sent from PONI to the Chief Constable in which they requested assistance with an investigation into DCS Maynard McBurney and DI Michael Irwin in relation to their handling of Timothy Jameson and Andrea McKee. In particular, questions are asked as to why one of the alibi witnesses put forward by Res Con Atkinson was interviewed in June 2000 by DI Michael Irwin long after the decision had been made not to prosecute Res Con Atkinson. It was suggested that this might be a deliberate attempt to revive the Robert Hamill investigation and stave off the risk of a public inquiry. It was noted that by the time the original alibi statements were taken, both DCS Maynard McBurney and DI Michael Irwin must have known that they could not be true (14379).
- 2.86 16/5/02 Gerald Simpson QC was instructed, by Mr Matthews, DPP, to advise on the prosecution of the Atkinsons and the Hanveys (20052).

- 2.87 30/8/02 Gerald Simpson QC for the DPP gave an opinion in which he examined the corroborating evidence in the Res Con Robert Atkinson conspiracy case, including the evidence of Andrea and Michael McKee. He noted that Tracey Clarke had never denied the truth of her statement, but was in a relationship with Allister Hanvey (20044).
- 2.88 8/9/02 Gerald Simpson QC wrote to Michael Matthews DPP about the prosecution of Res Con Atkinson. He said he was not satisfied that the evidence was such as to provide a reasonable prospect of conviction in respect of the clothing worn by Allister Hanvey. He noted that the evidence was intrinsically weak. Gerald Simpson QC considered that a conviction was unlikely against Thomas Hanvey and Allister Hanvey, notwithstanding the efforts of the investigating officers to prove the existence in Northern Ireland of the relevant type of coat (NB This failed to consider that the evidence showed that Allister Hanvey did own another coat, contrary to his statement that the only coat he had was a black CAT jacket) (22042).
- 2.89 17/10/02 DCI **K** issued a report for consideration by Mr. Justice Cory. The report referred to a direction to reinvestigate the allegations concerning Res Con Robert Atkinson previously investigated in June 2000. It notes that PONI supervised the reinvestigation into Res Con Atkinson, that Andrea McKee and Michael McKee had been convicted of conspiracy, but that a DPP direction was still awaited in relation to the arrest of the Atkinsons and the Hanveys (2981).
- 2.90 5/12/02 Ivor Morrison, Assistant Director for the DPP, advised Superintendent Karen Kennedy of his intention to prosecute Res Con Robert Atkinson and Eleanor Atkinson jointly on indictment for conspiracy to pervert the course of justice by lying about the identity of the person making a phone call at 08.37 on 27 April 1997. Kenneth Hanvey was also to be prosecuted. It was recorded that it was not intended to prosecute any other person in connection with that investigation (34161).
- 2.91 28/3/03 A DPP direction was given to prosecute Res Con Robert Atkinson and Eleanor Atkinson for conspiracy to pervert the course of justice, and Kenneth Hanvey for doing an act which had a tendency to pervert the course of justice (68319).
- 2.92 21/10/03 Andrea McKee was seen by Christine Smith, counsel, DCI **K** and Ivor Morrison, DPP (33909).
- 2.93 27/10/03 Andrea McKee attended Craigavon Court for committal Proceedings in R v Atkinson and others. The defence objected to the Deputy Resident Magistrate handling proceedings. The proceedings were adjourned until 22, 23, 29 and 30 December 2003 (33909).
- 2.94 26/11/03 Andrea McKee made two calls from her mobile to Pendine Surgery (33909 at 33913).

- 2.95 1/12/03 DC Patricia Murphy called Andrea McKee to make arrangements for travel. Andrea McKee's son was taken to Strathmore Surgery, where an ear infection and the possibility of mumps were diagnosed. (NB this is mistakenly recorded in GP records, 72794, as a home visit) (58454).
- 2.96 11/12/03 Andrea McKee's son was visited at home by Dr [REDACTED], who diagnosed an ear infection and the possibility of mumps. He was prescribed antibiotics. (NB this visit was not recorded on the GP records, 72794, but was recorded in the statement of 30 December 2003, 59853).
- 2.97 19/12/03 DC Patricia Murphy called Andrea McKee to make final arrangements for her attendance at the Committal hearing (59790).
- 2.98 19/12/03 Andrea McKee visited Pendine out of hours surgery (34044).
- 2.99 21/12/03 Andrea McKee called Armagh Comms. She stated that her son had mumps and orchitis (swollen testicles), and she feared he would die because of his high temperature. She explained that it had started with an ear infection two weeks ago; he had seen the doctor on two occasions at the surgery and once at home (58454).
- 2.100 22/12/03 Andrea McKee's son was taken to Strathmore surgery and diagnosed with an ear infection (59852).
- 2.101 22/12/03 Andrea McKee did not attend committal proceedings for R v Atkinson and others, saying her child was ill. The Resident Magistrate directed that enquiries be made to establish whether her reason for non-attendance was genuine 59860
- 2.102 23/12/03 Andrea McKee received a threatening letter (59856 at 59876).
- 2.103 24/12/03 Dr [REDACTED] made a statement in which he mistakenly missed a visit to the surgery by Andrea McKee and her son, and mistakenly referred to the visit of 1 December 2003 as a surgery visit rather than a home visit. On 1 December 2003, Andrea McKee's son was brought to him and diagnosed with an ear infection and the possibility of mumps. His partner Dr [REDACTED] was further consulted on 22 December 2003 when an ear infection in both ears was diagnosed (34042).
- 2.104 30/12/03 09.00 DS H contacted Andrea McKee in relation to the medical treatment of her son. She stated that Dr [REDACTED] had called at her home on the evening of 11 December 2003. She also stated that on Friday 19 December 2003 she telephoned Pendine out of hours surgery (59897).
- 2.105 30/12/03 Dr [REDACTED] made a further statement confirming that Andrea McKee's son was seen at home on 11 December 2003. The child was suffering from ear infection and a possibility of mumps and he was prescribed antibiotics (34043).

- 2.106 30/12/03 A fax is sent from DC Kevin Whitehead in Wrexham to DS **H** enclosing the statement from Dr [REDACTED] and apologising for the delay, giving reason that Dr [REDACTED] is not as keen on keeping records as he thought (34055).
- 2.107 31/12/03 DC Kevin Whitehead sent a fax requesting that Dr [REDACTED] at the Pendine Surgery be asked to make a statement (34052).
- 2.108 31/12/03 Dr [REDACTED] made a statement in which he stated that he had checked the records for 19 December 2003 for Pen Y Maes surgery and no calls were received from Andrea McKee on behalf of her son. The records were from 18.00 to 08.00 on 20 December 2003. DS **H** contacted Andrea McKee again. She was adamant that she went to Pendine. Wrexham CID checked the records (34044).
- 2.109 31/12/03 DC [REDACTED] sent a fax to Ivor Morrison stating that he had attended the Pendine surgery and recorded a statement from Dr [REDACTED]. He stated that Dr [REDACTED] could find no record, but if the date is wrong, that would be a different matter; in addition, he wrote that the caller may have phoned NHS direct (58454).
- 2.110 1/1/04 Kevin Whitehead faxed DS **H** stating that the records from the Pendine surgery had been checked. There were no records of any calls made by Andrea and no records of a doctor visiting her address over that period of time (34041).
- 2.111 9/1/04 DCI **K**, Christine Smith, Ivor Morrison and DS **H** met with Andrea McKee to discuss her reasons for non attendance at court on 22 December 2003. Andrea McKee gave her account of telephoning and visiting Pendine Park out of hours surgery (59862 and 33989).
- 2.112 21/1/04 DS **H** spoke to Andrea McKee who stated that she had had time to think about giving evidence in light of the threatening letter that she has received. She stated that she was still happy to do so, providing that she had a change of address (59856 at 59900).
- 2.113 27/1/4 DS J and DS John Munn, Crime Department, spoke to Andrea McKee and her partner in their home in relation to the threatening letter and the witness protection scheme (58382).
- 2.114 9/2/04 [REDACTED], Doctor's receptionist at Pendine out of hours surgery, made a statement in which she described the procedure for logging patients and the search of the records that she has undertaken in relation to the surname of Andrea McKee's son (59835).
- 2.115 9/2/01 The Doctors at Pendine Surgery made statements about whether Andrea McKee could have or did attend the surgery as she had asserted (59845, 59846 and 59847).

- 2.116 17/2/04 16.00 A meeting took place with Ivor Morrison, DCI **K**, Gerald Simpson QC and Christine Smith, BL. The reasons for Andrea McKee's non attendance at court were discussed (33913).
- 2.117 19/2/04 DS H briefed DCI **K** about the analysis of the further telephone briefings (59856 at 59878).
- 2.118 25/2/04 Meetings took place with Ivor Morrison DPP, DCI **K**, Gerry Simpson QC and Christine Smith BL (33909 at 33913).
- 2.119 26/2/04 A meeting was held between [REDACTED] DPP, Ivor Morrison DPP, Gerry Simpson QC about Andrea McKee (33979).
- 2.120 26/2/04 Ivor Morrison DPP called [REDACTED], solicitor for Kenneth Hanvey. He told him about the enquiries into Andrea McKee's reason for non attendance and made a note of the call (33974).
- 2.121 26/2/04 Following the meeting with Sir Alasdair Fraser DPP, Jonathan Scholes and Gerald Simpson, Ivor Morrison conferred with DCI **K**, DS **H** and DC **J**. He informed them that the Directors had requested Mr Simpson to confer with Andrea McKee for the purposes of assessing her credibility (33975).
- 2.122 27/2/04 R v Atkinson and others was mentioned. [REDACTED], counsel for Atkinson said that Andrea McKee's statements that her son was seriously ill with testicular mumps were "simply not true", as the only proof presented so far was that the child had an ear infection. [REDACTED], says that "it was even worse [in that] Mr Morrison and Ms Smith had been told ... a blatant and utter lie"
- 2.123 2/3/04 A consultation with Gerald Simpson QC was attended by DC Patricia Murphy, DC [REDACTED], Ivor Morrison DPP and Andrea McKee. Andrea McKee told Gerald Simpson QC that there were no phone records relating to her at Pendine Park surgery might be because she used a mobile phone that she had since given to her niece. Gerald Simpson QC said that might account for a telephone call, but not the fact that there is no record of Andrea McKee being at Pendine; that the Police had carried out investigations, and that these would show that she had not been there (33965).
- 2.124 15/3/04 Gerald Simpson QC gave an opinion in which he concluded that Andrea McKee had concocted the story about taking her child to the surgery; that there was not a shred of corroboration for her story and, the effect of her maintaining it was to contaminate any evidence she may give and completely undermine her general credibility (33915).
- 2.125 16/3/04 Ivor Morrison, DPP, made a file note in which he stated that he had attended three consultations with Andrea McKee. In his view she had been untruthful and the Pendine Park issue provided a basis upon which the defence would attack her credibility which, without doubt, would be

critically damaged; he concluded that there would no longer be a reasonable prospect of conviction (33919).

- 2.126 18/3/04 Sir Alasdair Fraser QC, Director, DPP wrote to [REDACTED] informing the Attorney General that the DPP was minded to offer no evidence in the prosecution of Res Con Atkinson and others in the light of the opinion of Gerald Simpson QC of 15 March 2004 (33908).
- 2.127 18/3/04 The Attorney General wrote to the Prime Minister's chief of staff explaining the DPP's reasoning for withdrawing the proceedings (33878).
- 2.128 19/3/04 The proceedings against Res Con Robert Atkinson, Eleanor Atkinson and Kenneth Hanvey were withdrawn following the advice from counsel that as Andrea McKee's reason for not attending the committal hearing could not be corroborated or confirmed, her credibility had been undermined to such an extent that the prosecutions could not proceed (33874).
- 2.129 18/12/04 Kevin McGinty wrote to the Attorney General, stating that it was clear that the reasons for Andrea McKee's non-attendance on 22/12/03 could not be explained. It was accepted that since she had pleaded guilty for her part in the conspiracy, one untruth did not mean a jury may not believe her; but as she was an accomplice, the Attorney was asked to see the decision by the Director that he cannot call Mrs McKee as a witness of truth in the context of the collapse of the Supergrass trials. Mr McGinty also stated he would expect Mr Simpson QC to decline to appear if case proceeded. While the Attorney may have concerns about dropping case because of Mrs McKee's excuse, Mr McGinty considered that there were justifying factors for that course of action. The Attorney General was warned his involvement in Hamill and Cory would be liable to be seen as an attempt to put off an Inquiry. Dropping the case would allow the Cory report on Hamill to be published and an Inquiry held sooner, assisting the PM to keep his Weston Park commitments and reduce criticism about the Finucane Inquiry decision delay (40221).

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

DCS McBurney also accepted uncritically the alibi that Thomas Hanvey provided for Allister Hanvey that he stayed at his house from 3:30 onwards on 27.04.97 (please see 2.16 above). This was despite several individuals giving evidence that they saw Allister Hanvey at Tracey McAlpines's house and did not leave until 05:00 (please see 26.1; 26.15; 26.16; 26.23; 26.25; 26.27 of Chapter 12).

Submissions by Gus Campbell Solicitors (Marc Hobson)

39453, Document dated 19th February 1999 Secretary of State briefing note, as to the sensitivities the AG & Chief Con had to the unwinding of the

Hobson Pros were Con Atkinson to be successfully prosecuted, yet 33915 document being the opinion of G. Simpson QC (3rd September 2009 Day 56) was sufficient to withdraw charges against a police officer accused of tipping of a murder suspect from a witness whose assertion that her attendance or lack of at a PI was based on her child's illness which could not be corroborated, which would contaminate her evidence completely and undermine her general credibility .This opinion of a suspicion as to a allegation of lying was sufficient to negate the credibility of a civilian witness to wholly contaminate her evidence and thus resulted in offering no evidence at the stage of trial process when credibility was not an issue which still could have been left to jury as to decide what weight to attach to her evidence as a whole in regards allegation of police tip off which she had recounted on numerous occasions and attending a medical centre for her sick child so as to avoid travelling to N. Ireland in the week of Christmas.

In comparison, the allegation of police collusion with a suspect and that police witness therefore being an accessory to murder, in a murder trial investigation was not sufficient to either withdraw that officer or indeed merit a prosecution file note as to the possible difficulties that that particular witness and their credibility may present so as to fully inform the prosecuting QC. Further to that no further inquiry was made of the police to ascertain the strength of that evidence and whether it amounted to prima facie evidence so as to ascertain if the credibility of that witness will become an issue at trial and therefore to be fully disclosed to the defence team at the trial of Hobson . (Roger Davidson Day 64 16th September 2009).

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

The Panel is referred to submissions outlined in Part 8

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

The Chief Constable was at all times concerned to protect his independence and that of his organisation from inappropriate political interference.

Sir Ronnie Flanagan's appointment of Colville Stewart was as a result of reservations expressed by the PONI (paragraph 15 Statement of Sir Ronnie Flanagan dated 31st July 2006). He did so without hesitation despite the negative consequences in terms of any perception that this could engender in relation to the investigation and senior officer. His clear aim was to ensure a thorough transparent investigation in which the public and PONI could have confidence

Submissions by the Police Service of Northern Ireland

See sections 4-11 below.

3 A number of witnesses gave evidence on this issue:

Diane Hamill

Oral Evidence

3.1 She understood the DPP considered McKee to be an unreliable witness (81743) (p. 35).

Archibald Hays

Statement

3.2 Para 37: the DCC had the ultimate say on suspension.

Oral Evidence

3.3 Complaints & Discipline had limited authority to suspend an officer. Above that was the DCC (p. 46).

P40

Statement

3.4 Para 35: became aware of the enquiry into Res Con Atkinson through conversations with officers at work.

3.5 Para 36: He did not recall making a comment to Alan Neill at a retirement function about Atkinson, but anything he learnt would have been from the station.

Oral Evidence

3.6 He did not know who he heard the accusations about Atkinson from, but it was known about in the station; he did not hear it from DCI K (p. 122).

Linda Wilson

Statement

3.7 Para 11: She was never asked to give evidence at trial.

Rodney Smyth

Statement

- 3.8 Para 2: She was asked to make a statement (at 17380). Police called on 28/10/00 to speak about his movements on 26/27 April 1997.
- 3.9 Para 3: The police returned and he was asked to write down what was said and sign it. It was not made clear to him that the document was a statement.
- 3.10 Para 12: some time after he gave the statement, he heard a story in the pub saying that he had given a 10 page statement which incriminated people. He did not remember who told him the story, which pub or the persons involved in the conversation. He spoke to a solicitor who contacted the police. The police came round (11959).
- 3.11 Para 13: 11959 shows he did not want to name those who had talked about him. Document states that he “did not want to go to court as was afraid”, but he was not afraid as there was nothing to be afraid of.
- 3.12 Para 14: he has not been approached or threatened by the Atkinson family or anyone in relation to the Inquiry.
- 3.13 Para 15: he was not asked to give evidence at trial. He did have any contact with the DPP. He did not hear anything further about the matter until the Inquiry started.

Oral Evidence

- 3.14 He was not asked in 1997 if they had spent the night at the McKees (p. 10).

P39

Statement

- 3.15 Para 23: she made the application for Atkinson’s telephone records.

John McAteer

Statement

- 3.16 Para 19: on 8/5/97 McCaw gave him information about the alleged Atkinson tip-off which Res Con McCaw had received from Andrea McKee.
- 3.17 Para 32: he recalled that Tracey Clarke gave a description of what Mr Hanvey had been wearing on 26/27 April 1997.
- 3.18 Para 39: on 9/5/97 he applied for telephone billings in manuscript so as not to go through the typing pool.
- 3.19 Para 40: he thinks that the police received the result in about a week. He had to stand by the fax machine because this was particularly sensitive.

Oral Evidence

- 3.20 Per 80780 “On 8/5/97 Res Con McCaw came to me and gave me information about Res Con Atkinson...who in turn was said to have heard it from Tracey Clarke. Andrea McKee had told him [McCaw] that Res Con Atkinson called Mr Hanvey on 27/4/97, the morning after the incident, and told him to burn his clothes”. DC McAteer took steps to pass this up the chain. The main thrust of the investigation at that time was to establish what Tracey Clarke had seen on that night in relation to the assault on Mr Hanvey (p. 95). Dealing with Andrea McKee about the Atkinson allegation was not his primary focus (p. 96). DI Irwin and DC McAteer spoke to Res Con McCaw who said Andrea McKee was not prepared to go to Portadown station. DC McAteer left it with Res Con McCaw to arrange with Andrea where and when they could meet (p96). Neither he nor senior officers present were in a position to decide if Andrea McKee’s information about the Atkinson allegation was truthful or not (p. 99). He thinks it is right to say that Hanvey was told to get rid of his clothes. He did not think “burn” was used (p. 182). P. 51 Inquiry Transcript “Atkinson told Hanvey...to get rid of his clothes, to burn his clothes or whatever” (p. 189).
- 3.21 From what Andrea McKee told DI Irwin and him, they were convinced that she had obviously heard information from Tracey Clarke, but they could not establish how truthful that was until they interviewed Tracey Clarke. They did not have a questionnaire by Tracey Clarke at the time so DC McAteer decided the best step was to speak to her and find out exactly what she saw (p. 97), but in the Pro Forma nothing of value was said (p. 98). When he made the pro forma he went to her house. She came down from upstairs. She was co-operative (p. 126). He was reluctant to go outside the pro forma questions (p. 127). It was a standard pro forma (p. 128). He did not probe her because the completed pro forma contained whatever information she would volunteer (p. 131). He did not remember if Tracey Clarke was reluctant to answer. He remembers very little of the interview (p. 132). He was not in a position that he could counteract or criticise any of the answers given in pro forma as the information given by Res Con McCaw was third or fourth hand (and did not have confirmation then, p. 134), but from the information they received from Res Con McCaw, he had no alternative but to suspect she was not telling the truth (p. 133). There was no thing in her demeanour to make him suspicious, had he not had the evidence from Andrea McKee (p. 134).
- 3.22 There is a difference between 22660 and 17649 (dated eight days apart). 17649 had question 10 added. DC McAteer said he did not record that. 17649 is not a reflection of 22660, it is a HOLMES document (p. 179). 22662 shows DC McAteer’s handwriting about people at party. DC McAteer said it was not part of the questionnaire. He did not remember when it was recorded (p. 197).
- 3.23 He was told when he was back in the office after completing Tracey Clarke's pro forma that Andrea McKee was not prepared to go into the police station. He and DI Irwin set out to accommodate her at a rendezvous point. An

officer accompanied Andrea McKee (p. 135). Res Con McCaw was there as a friend to Andrea McKee, not in a police capacity. The rendezvous took place in a car park by Kernan playing fields. Andrea McKee got out of her car with Res Con McCaw and got into the police vehicle. He did not know how long the meeting lasted (p. 136). DI Irwin introduced himself to Andrea McKee and explained about the investigation. Andrea McKee stated she had been talking to Tracey Clarke and related info Tracey Clarke had told her. She did not remember what she said but she confirmed what McCaw had said (p. 137). DI Irwin and DC McAteer discussed with Andrea McKee information given by McCaw to verify it (p. 138). Did not make any note of meeting with Andrea McKee in car as nothing had been confirmed; the only way to confirm was to interview Tracey Clarke (p. 142). Agrees information in 27118 is completely different from detail he gave in 53302 (p. 143). Andrea McKee was not scared, emotional or reluctant to co-operate with the police (p. 169). Was not indicated by Andrea McKee that she was trying to get people in trouble (p. 183). Andrea McKee was not offered an inducement to bring Tracey Clarke in (p. 188).

3.24 There were conferences in the morning and afternoon of 9 May 1997 and details of meeting with Andrea McKee were not mentioned as the information had not been confirmed; it was not appropriate to bring it out in open conference (p. 144).

3.25 He did not know how it came about but the only alternative then was to interview Tracey Clarke. He had nothing to “turn him the other way” with Andrea McKee being part of interview (p. 98). She sat through entire interview (p. 146). He did not perceive a risk that Andrea McKee would put words in Tracey Clarke’s mouth (p. 99), as per 80783, para. 31 and 32: “Before started explained procedure to Tracey Clarke and from outset recorded statement with name ‘Witness A’. Had to drag information out of Tracey Clarke in bits and pieces. Once she got talking she explained the whole thing. She was quite upset and could not believe Allister had done it. Tracey Clarke said that as long as her name did not come out, she was happy to talk about it and would give evidence in court”. DC McAteer said Tracey Clarke’s allegations against him about putting words in her mouth are nonsense (p. 100). He had no doubt Tracey Clarke was telling the truth (p. 101) and Tracey Clarke was telling the truth about what Allister Hanvey had told her. DC McAteer asked most of the questions and ran the interview and recorded the statement. Tracey Clarke was a voluntary attendee at the station (p. 102). Andrea McKee said things to support Tracey Clarke in the interview. She did not speak during the recording of the statement, but she spoke a bit when they were running through the facts (p. 148). When recording statement he would have got Tracey Clarke to explain what was in statement before he commenced recording the statement. He would record statement at her dictation. He would only ask questions to verify points (p. 149). When that was done he have read the statement over to Tracey Clarke. Then he would have verified she was happy and content that it was correct, and then he would have asked her to sign it (p. 150). Recorded everything Tracey Clarke was able to say about Allister Hanvey (p. 151). Hoped Tracey Clarke would give evidence different from that in pro forma (p. 155). He got

authority to proceed on basis of anonymity during interview. There were no conditions stipulated by Tracey Clarke before giving evidence (p. 156). It was not a strategy to offer anonymity and the only objective was to establish what information Tracey Clarke had in her possession (p. 157). Mentioned to Tracey Clarke that police did not believe her evidence in the pro forma. Did not know at what stage he said that. Was not aware Timothy Jameson was being interviewed in different part of station at the same time (p. 158). Per 263, "Saw Forbes, Hanvey, Bridgett, Muck and Robinson kicking and jumping on man in ground". His interpretation was that those people were jumping and kicking and accordingly there was enough detail about these people's actions (p. 164). Was not general rumour that someone had been kicked and beaten around the head (p. 166). Did not concern him that Tracey Clarke told him she had lied to Hanvey about contacting the police already. She did not give the impression she was a young, immature lady who was inclined to lie (p. 171). She did not know Tracey Clarke was upset that Hanvey's clothing had been bought by her (p. 172). At para. 37, 808783 Tracey Clarke said she was aware she had not been telling truth but did not want to get involved. This did not concern him (p. 175). There were two interview rooms in Portadown station. They were not next to each other (p. 176). He did not speak to DC Honeyford when interviewing Tracey Clarke. Did not speak to superiors above **P39** when interviewing Tracey Clarke. P39 was with him (p. 177).

- 3.26 Per 80783 para 32: "Tracey gave description of what Hanvey was wearing but I accept that this did not appear in statement". If Tracey Clarke had given a detailed description and identified a specific garment etc. he would have recorded that in a statement. Believes the description Tracey Clarke gave was a vague description. He would have recorded it if Tracey Clarke had said Hanvey was wearing a silver lightweight jacket with orange stripes down the sleeves (p. 103). He cannot remember whether he specifically asked her but he would have asked Tracey Clarke for the description. Would not expect a note saying, 'witness was asked for description but could not say' (p. 111); police only write down specific things a witness tells you that are relevant to the investigation (p. 112).

Albert McIntosh

Oral Evidence

- 3.27 Felt what happened when interviewing Allister Hanvey's parents on 11/5/97 as so significant he stopped just down the road to make notes (p. 8) so that nothing would be forgotten (p. 17). He and DC McCrumlish were detailed to interview Thomas Hanvey and search his house. Believed they had a warrant for that. After that they returned to Portadown and went to speak to the Hanveys at their house. Did not remember exactly but is sure they were told what approach they should take when interviewing the Hanveys. There was nothing in briefing or instructions that struck him as wrong (p. 9).

- 3.28 Para 23 80924 sees from notebook that when he saw Hanvey's parents, "Allister had told them a policeman at the scene had asked Allister to assist in keeping the crowd back and he did so. Mr Hanvey refused to give details of this policeman. I found this unusual" (p. 11). He would have progressed the situation to point that required him to write "refused" (p. 13). The Hanveys did cooperate and answered questions. Noted where they were not as forthcoming as they could have been. They volunteered information about Hanvey's jacket that was different to the jacket the police were looking for (p. 16).

Raymond White

Statement

- 3.29 Page 3, para. 4: no one was in a position to second guess an SIO. They were given freedom to conduct investigations and be accountable. The crime file that resulted would be documentation on which the SIO's professionalism and standard of work would be based. No one would review his day to day working standard.

Oral Evidence

- 3.30 Re 74231: "FHQ" is force headquarters, "CC" is the Chief Constable, "DCC" is the Deputy Chief Constable and the ACC was him (p. 84). He did not remember the meeting. Per the final para of 81256, "I did not know of allegations from outset... I did not have any specific meetings with McBurney about this". He agrees that 74231 contradicts this (p. 85). Accepts he was aware that they were made (p. 95). Thinks that the meeting would be about whether it should be investigated by C&D, what line of enquiry should be followed etc. but did not remember it. The allegation would have been taken extremely seriously (p. 86). Thinks the meeting would be relevant to suspension (p. 130).
- 3.31 Re first para. of 81257 and a discussion he had with DCS McBurney about the need for an independent witness who could undermine the Atkinson alibi, DCS McBurney had foreseen the breakdown of the McKee marriage and that was a mechanism for breaking the alibi (p. 116), as DCS McBurney felt Andrea McKee would be less under husband and Atkinson's influence (p. 117). Was not aware of any deal being offered to the McKees but whether such a deal would be discussed with him was matter for the SIO. He would expect to be notified if there would be an impact on a prosecution. He was not aware of any deal (p. 118). DCS McBurney felt that Andrea McKee wanted to tell the truth (p. 119).
- 3.32 There was an obligation under the Criminal Prosecutions and Investigations Act 1996 to take Andrea McKee's initial alibi statement (p. 128). There would have been criticism if that statement had not been taken. It was up to investigators to determine if they should take it then or come up with evidence to challenge what was being said (p. 129). He would have expected

DI Irwin to put to Andrea McKee that she was contradicting what she had already said (p. 134). He would have felt DCS McBurney had no option but to ask DI Irwin to take the alibi statement (p. 134). He did not discuss Andrea McKee's position on the alibi with DCS McBurney (p. 143). He would have expected DI Irwin to follow DCS McBurney's orders if DCS McBurney asked DI Irwin not to raise contradictory information unless Andrea McKee did (p. 145).

Blair Wallace

Statement

- 3.33 Para 20: he would have thought that as the ICPC was supervising the neglect complaint that the referral of the tip-off allegation would have been automatic.
- 3.34 Para 13: where the officer had a case to answer, the IO would refer the matter to ACC C&D for consideration of suspension. As a matter of urgency there would be occasions where this was done over the telephone.
- 3.35 Para 18: he was not aware there was a tip-off allegation.

Oral Evidence

- 3.36 He did not know about the Atkinson allegation until two to three months after the event (p. 21).
- 3.37 Re: 74231 "Attend meetings at [Regional HQ]. [Chief Constable in chair]. Briefed CC, DCC, ACC re allegation against Res Con Atkinson". Wallace was not the DCC and was not at that meeting (p. 19) There was establishment for two DCCs. He did not know whether there was a second DCC in post (p. 20).

Robert MacAuley

Statement

- 3.38 He was Superintendent New Complaints.
- 3.39 Para 12: Supt Reel appointed DCS McBurney as IO of neglect complaint.
- 3.40 Para 16: appointment form explains IO procedures to be adopted, in particular form 17(3).
- 3.41 Para 17: Art 8 referrals would not have been his responsibility. This was an Article 8 referral prior to the receipt of a complaint.
- 3.42 Para 20: he would have expected a criminal allegation against an officer arising from a public complaint to form part of the main complaint.

Richard Bradley

Oral Evidence

- 3.43 Only two files were sent to the DPP: murder and neglect. He would have expected allegations against Res Con Atkinson to be in the Neglect file (p. 62). Would have expected the DPP to take its course on the criminal side of the neglect complaint, then start a C&D investigation (p. 63).
- 3.44 Depending on the nature of the allegation, consideration would have been given to suspension at time form 17(3) was served. Would only consider suspension in serious cases (p. 57). In his opinion, the allegation against Res Con Atkinson certainly did not warrant consideration of suspension. The allegation was based on hearsay (p. 66).
- 3.45 It would be sufficient for an investigation into a complaint to be triggered if the complainant came in and made a verbal statement. It would not be sufficient if in the course of a criminal investigation police learned that a witness had something to say which showed an officer has committed a crime. If the witness made an allegation, that would be sufficient (p. 58). If you had a criminal investigation, the criminal investigation against the officer would be wrapped up in that (p. 61). If a witness came in and it was apparent they were lying, C&D would issue a form 17(3) but not immediately, since it goes through to the ICPC (p. 102). There was no standard applied before serving a form 17(3) (p. 103). It is C&D's responsibility to serve 17(3) not DCS McBurney's (p. 110).
- 3.46 There was no justification for a complaint investigation based on Clarke's statement as what she said was hearsay (p. 58). Re: Tracey Clarke's statement "in relation to the whole package, all the allegations and that aspect comes into it, there would be a criminal and disciplinary investigation. Tracey Clarke's statement was part and parcel of the criminal and disciplinary investigation being conducted. They went hand in hand (p. 60). Tracey Clarke's statement was sufficient to start a criminal and discipline investigation but not sufficient to trigger consideration of suspension because of second-hand nature of the evidence (p. 66). Unsure when he became aware of the corroboration of the allegation by telephone records. Did not think that was sufficient to warrant consideration of suspension as they were still working on the aspect of hearsay (p. 67). At this stage the officer would be interviewed under umbrella of a complete complaint against the police. Before he was interviewed he would have been served a 17(3) (p. 70). He accepted that the 17(3) in relation to the complaint would not include an allegation of collaborating with a suspect (p. 71). In response to "cannot question officer about a matter unless he has received a 17(3)", he stated "it is not the point that you cannot. You can. Whether it is accepted at end of the day is another thing" (p. 95). Stated Tracey Clarke did not make a complaint when pressed about whether tip-off was in Atkinson's 17(3), she made a statement of fact within a statement. In response to question "Did not matter

if person who gives info gives it in form of a complaint if it is in substance a complaint” says, “Aye, but the point is, it wasn’t a complaint”. He stated that he would have served a 17(3) if he had felt there was legitimacy in relation to what she said (p. 97). There is common law and legislation stating what a 17(3) is for. 17(3) sets out caution (p. 98). A 17(3) must be served as soon as possible, though there may be justifiable grounds for a delay. One of those grounds is that it might hinder a criminal investigation (p. 99).

- 3.47 Suspension was decided by Chief Constable (p. 67). All complaints go to Deputy Chief Constable. He was delegated by Chief Constable to look after complaints (p. 71). He would have expected DCS McBurney, if he knew about the Tracey Clarke allegation, to take it up to DCC level (p. 72). The ICPC would have a big say in the matter. It was not only the police’s responsibility to deal with a situation (p. 72).
- 3.48 Would have expected ICPC on reading Tracey Clarke’ statement to ask Chief Constable to let them supervise investigation into the allegation. CI Bradley says he should also have been saying that when he say Tracey Clarke’s statement. Re para, 14, 81519: “Became aware in early stages that Atkinson had warned suspect to dispose of his clothing. This was a criminal matter and I was not involved in that part of investigation and therefore did not see statements supporting allegation until received copy of DCS McBurney’s DPP file in December 1997” (p. 75). He did not know when he became aware of allegation against Res Con Atkinson (p. 76).
- 3.49 Not sure when he received the neglect crime file; 1997 may have been a bit early. Re para. 124, 60549: “In addition to Hamill complaint, is an allegation based on hearsay and contained in the statement of Witness A”... para. 135, “Having found no evidence other than telephone billing to substantiate the allegation of Witness A, one can remain sceptical, but there is absolutely no other evidence to substantiate the allegation. Therefore recommend no prosecution.” (p. 80). Started investigation into four not leaving the Land Rover, but not Atkinson as he dealt with it within the realms of the overall complaint. In response to the question that no part of his investigation involved the tipping off allegation, he says he is not sure what he said to Atkinson when he interviewed him (p. 81) Re para. 27, 81524: “Did not receive any additional papers in 2000 linked to allegation against Res Con Atkinson and discipline file concerned only allegation of neglect of duty against four Land Rover officers. Did not know any details of the matter involving Atkinson”. CI Bradley said that only refers to the later investigation (p. 82).
- 3.50 CI Bradley believed the extract from 61218 - “offences of withholding information and assisting offenders considered against you in light reservations were in touch by phone with a suspect... In view of allegation, which is tantamount to neglect of duty...DPP directed no prosecution against any officer... Is it correct you were served with 17(3) notice of allegation of complaint on behalf Hamill” (p. 84) - shows he questioned Atkinson about the tip-off.

- 3.51 Continuing on to 61219: “Is it correct during 17(3) service received form that explains not providing answers to questions, it could be detrimental to evidence at disciplinary proceedings. I now caution you”. He then produced map and itemised telephone bill (61221). When asked where reference to tip-off is states, “Have already explained no 17(3) was made out in relation to that but I told him nature of my enquiries that included aspect of making phone call and that’s in there” (p. 86). CI Bradley said he was actively investigating the allegation as is shown by first para. on page 61218 and the telephone billing. Had to put his mind to whether Res Con Atkinson tipped-off Allister Hanvey because it was part of interview notes DCS McBurney had interviewed him in relation to (p.87). CI Bradley had those notes and those were adopted by Res Con Atkinson. CI Bradley did not conduct any further interview as it would have been duplication and he would not have been allowed to. He stated that he could have come to a different conclusion re the criminal aspect if there had been evidence (p. 88). Then when this was repeated to him said, “no – from a discipline point of view”. Bradley repeated the allegation was put to him and it was included in investigations (p. 89).
- 3.52 Per 60561 in section marked discipline matters complained of “None. Is of a criminal nature. Misconduct by officer. Please see outline of case” outline is McBurney’s neglect report. Report continues: “Following interview under PACE caution by McBurney and Irwin, Bradley interviewed officers after discipline caution by way of recorder and they made oral statements agreeing to already made statements being used in disciplinary enquiry” This is what he refers to when discussing interview of Atkinson (p. 90) In conclusion 60562 states “Please see conclusions at part 1 p43-49 [of McBurney’s report]”. Continues “DPP has decided no reasonable prospect convicting any officer on evidence and it is considered same criteria applies to discipline. Evidence is equally not sufficient to warrant disciplinary proceedings (p. 91) Agrees reference back to McBurney is only reference back to neglect complaint. States he did not deal with tipping-off in the report. Did not know why. Perhaps because no 17(3) was served and reason he did not serve 17(3) was “there was no substance whatsoever to allegation from the outset, full stop. That’s all” (p. 92) May not have put reference because McBurney had done whole lot from the outset. Denies what McBurney did was untrammelled by CI Bradley or ICPC, as when file went to ICPC they issued a statement of satisfaction. So, as far as he was concerned, it was investigated properly (p. 93).
- 3.53 926 shows DCS McBurney briefed the ICPC about the incident and the investigation on 12 May 1997. CI Bradley’s partner Supt Anderson was there (p. 108). Re 80990: “Recall at meeting on 12/5 with DCS McBurney that I first became aware of witness Clarke and allegations against Atkinson” (p. 109). Probably can assume if Anderson knew about allegation on 12 May 1997, Bradley knew about it (p. 110).

Statement

- 3.54 Para 10: he visited Andrea McKee on 27 January 2004. DS Munn was with him as she had received a threat. He believed the police instigated the discussion about changing homes rather than Andrea McKee asking for it. She was adamant she did not want to leave her home. She told the police she was determined to give evidence and see it through in spite of concerns for her family

Catherine Jagger

Statement

- 3.55 Para 2: advised Andrea McKee re her police interview on 10 April 2001.
- 3.56 Para 4: contact by police was with DCS Colville Stewart and DCI K coming to her office with a local DCI.
- 3.57 Para 6: did not know if other solicitors were offered to Mrs McKee. Believed they wanted someone with knowledge of defendants turning Queen's Evidence. Jagger had dealt with these cases before.
- 3.58 Para 7: arrived at Wrexham station and met with DCI K and the local DCI who briefed her, but was not shown any statements as she had not been given instructions by her client. It was made very clear her client would be prosecuted. Made a note of the briefing (73010).
- 3.59 Para 8: was not aware at that stage that the investigation was linked to a complaint against the police, but was aware that the charge of perverting the course of justice related to a police officer. She became aware of PONI involvement when two people from that office were introduced at the interview.
- 3.60 Para 10: was satisfied she had adequate disclosure and sufficient time to prepare for the interview. She spent approximately two hours discussing options and procedures. Andrea McKee appeared very relieved to be tackling the matter.
- 3.61 Para 13: spoke to DCS Colville Stewart about 73017 on 22 October 2001 and drafted the letter the next day which she sent to DCS Stewart. The letter contained ideas of what may assist, rather than Andrea McKee's representations. The letter received back dated 2 November 2001 (34070) was in line with her expectations. Did not know if letter was produced to the judge.
- 3.62 Para 15: strikes her as strange now, as it was not considered at the time, that 14956 was taken when she admits 9200 was false without her receiving legal advice or being cautioned.

- 3.63 Para 16: Andrea McKee kept her updated at Jagger's request. At one stage Andrea McKee appeared to be complaining she would be required to go so many times in the proceedings.
- 3.64 Para 17: believed the RUC appeared to be using Andrea McKee as a witness who was to be given as much credit as possible. In Jagger's opinion, Andrea McKee was committed to acting as a witness.

Oral Evidence

- 3.65 There was a very brief meeting with police before Andrea was asked if she wanted this representation (p. 29). She was not given full disclosure until Andrea confirmed representation (p. 30).
- 3.66 She did not know if statement admitting involvement in conspiracy was not under caution (p. 20). Ms Jagger did not know if told on 10 April 2001 statement not made under caution. Did not know if told the case against her. Disclosure schedule included statements made (p. 21).
- 3.67 She advised Andrea McKee she did not have to admit anything but this was irrelevant as she wanted to make admissions (p. 22). She was relieved to tell the truth, which was related to separation from her husband (p. 28). She was absolutely aware of risk of prison (p. 26).
- 3.68 She knew there was a good chance the statements in 1997 not made under caution were inadmissible and was entitled to refuse to answer questions about topic (p. 23).
- 3.69 The case against her, apart from the statements, was based on the taxi log (p. 23).
- 3.70 Police intended to prosecute and hoped for leniency for cooperation (p. 24). There were no offers made at all (p. 28). 73017: was angling for a letter to help with the leniency, which she got (34070) (p. 25).
- 3.71 There was no reason to doubt June 2000 recantation statement was false (p. 27).
- 3.72 McKee did not have any complaint for how the statement April 2000 was taken (p. 28).
- 3.73 Jagger did not know McKee ever pleaded not guilty in 34354 (p. 33).
- 3.74 She did not know the circumstances how 9200 came to be made. Would not expect the police officer to take a statement in the solicitor's office (p. 38). Would be a conflict to have someone who is not your client in the office and to be representing someone being given cover. She would have advised McKee to give statement at the police station (p. 39).

Andrea McKee

Statement

- 3.75 Para 44: Was not using relocation to get a better house. Has never received inducement or benefit for giving evidence

Oral Evidence

- 3.76 Before 22/12/03 hearing her son (who was two p191) was ill and so she couldn't attend. Informed Patricia Murphy (p77) 74254 shows he was examined 18/11/03. 'E' stands for examination; 'O' for observation. Now knows that from nurse training not had that in 2003. did not know what "bom" means (p78) There was a question over mumps due to swelling below ears. Son had history of illness and swollen glands. Son was seen again on 1/12/03. 'S'=symptoms. He had high temp (p79) and symptoms of meningitis (p80) 59853 shows he was visited at home on 11/12/03. Seen again 22/12/03 day she should've been at hearing (p81) he was given penicillin and had '?' about blood testing. Andrea McKee says there is an entry missing about son being admitted to children's ward at A&E. He had respiratory distress and was admitted that evening (p82) at Wrexham Maelor Hospital. 74260 shows Andrea was ill and contacted Pendine on 26/11/03 (p83). Her son was ill on weekend before 22/12. To contact Pendine you call GP surgery and it forwards call. Pendine then tells GP about dealings. Her GP did not get in touch about illness on weekend before 22/12 (p84) 34024 shows GP called her at 10am 22/12 for 2mins 40. McKee did not understand as was at surgery around that time. She did not remember exact events of that morning (did not mention to doctor she'd gone to Pendine that weekend as son was receiving attention p152) When she took son to see doctor at Pendine, she was in waiting room at Pendine and saw doctor came out and call son (p85) She stayed in waiting room as son was with his dad (p143) Did not see examination take place (p144) Is aware doctors at Pendine did not remember her and there are no records. did not know why that is as she attended (p86) Is not lying about son's illness (p87)
- 3.77 Remembers meeting prosecuting barristers about Pendine visit. did not remember being told there was no doctor with grey hair at surgery (p142) Knew about hearing on 22/12 in advance. Was contacted on 19/12 by Patricia Murphy. Patricia Murphy says (81021) "Andrea McKee didn't mention ill son during phone call" (p147) Andrea McKee did not remember if she did mention it to Patricia Murphy. Andrea McKee also had medical on the Tuesday for new job (p148) Did not raise that with Patricia Murphy as if she missed it she could have another appointment (p149) Andrea McKee called Patricia Murphy on 21/12 to say she couldn't make hearing as (per 81021) "son had mumps, swollen testicles and there was concern he may fit" (p150) Andrea McKee did not know magistrate required medical certificate for absence (p152)
- 3.78 She went to a meeting with Christine Smith and Ivor Morrison (per 33991) (p154) Notes show "she called GP and it went to Pendine. Pendine called

back”. Thinks she called from a mobile (p156) Probably left number for them to call her back on (p194) There is no record of contact between Pendine and her home number that night (p157) She has no reason to contradict notes of meeting (p158) “Thinks it was Friday/Saturday of that weekend. Went to Pendine on lady doctor’s advice. Doctor felt neck and listened to chest”. Says must have gone in with doctor to know that (p161) “Doctor was old with grey hair and didn’t take notes”. Knows now there was no doctor matching description (p162) Denies story is a lie (p163) If son had been well, she’d have attended hearing (p196)

- 3.79 Met Gerry Simpson (per 33916) “Andrea McKee is surprised she didn’t mention illness to DC Murphy.” did not remember that. “says that must not have gone in room as description of Dr did not match any doctor on that evening” (p166) Was still prepared to give evidence at trial when at this meeting on 2/3/04 (p203) did not remember if she was asked about the mobile number when stated “may have used mobile she’s since given to niece” (per 33965) did not remember number (p205)
- 3.80 Received threatening letter that made her concerned for her safety (per 33997) she did not want to be relocated but would feel safe if moved to another address in area (p198)

Carl Simpson QC

Statement

- 3.81 Para 3: Gave advice in respect of deferring sentence of Andrea McKee pending her giving evidence in another matter. Advised it was neither appropriate nor desirable and the evidence would be weakened by it being linked to future punishment. Police only wanted advice, it was not their plan.

H

Statement

- 3.82 Para 2: Had been Detective from May 1984.
- 3.83 Para 3: Not involved in Robert Hamill murder investigation. First involvement was investigation into conspiracy. Did not know who SIO was for murder investigation. Investigations did not overlap in any material way.
- 3.84 Para 4: Became involved in conspiracy in 2000. McBurney and Irwin had visited McKee in Wrexham around that time.
- 3.85 Para 10: Financial Investigation Unit showed Hanvey’s bank account used at 08.47. Did not think it was obtained before.

- 3.86 Para 11: Wanted to keep any evidence gathered very tight to prevent leaks. DCI **K** may have kept secret policy books and not put evidence on HOLMES.
- 3.87 Para 12: Identified Smyth and Kitchen. Visited them on two occasions and recorded statements at 17380 and 17382 respectively.
- 3.88 Para 13: When trying to establish Smyth's presence on the night checked McKee's phone records. Was surprised that these had not previously been obtained to see if they were home at the relevant time.
- 3.89 Para 14: Investigated the anonymous call Father Dooley received.
- 3.90 Para 17: Spoke to **Res Con G** on 29/11/00 as his number appeared on telephone billing. **G** checked the phone records for the mobile he shared with Res Con McCaw. **G** made a statement on 7/12/00 (19843) mentioning the conversation with Timothy Jameson.
- 3.91 Para 19: Were told that Michael McKee had received a letter with a bullet.
- 3.92 Para 20: On 5/12/00 received the letter from McKee (17379). Bullet was not a security force issue round.
- 3.93 Para 21: Arrested Michael McKee on 10/4/01 with DC **J**. McKee made an open, free admission. Only McKees were charged; Atkinsons and Hanveys were not.
- 3.94 Para 23: Cannot comment on why Atkinsons and Hanveys were not charged. Evidence on McKees did not necessarily prove guilt of other. Decision to prosecute was for the DPP.
- 3.95 Para 24: Was intrusive surveillance at Atkinson's, Hanvey's and McKee's house. Two were compromised. Was tasked to retrieve devices. At Hanvey's house were elements of UVF and LVF. As a direct result of that he received threats to his life.
- 3.96 Para 25: In May 2002 received a letter regarding the refusal of Smyth and Kitchen to give evidence as Smyth had heard his name mentioned in pubs. Kitchen said she was not frightened and had not been threatened. Statement at 19959. Was for DPP to decide whether to compel witnesses.
- 3.97 Para 10: Dealt with **P42**. His role was to identify author of anonymous letter 1038.
- 3.98 Para 29: When spoke to **P42** said his wife or girlfriend had typed the letter. Refused to give statement and would not agree to what his address was 72308.
- 3.99 Para 30: Asked **P42** to meet Judge Cory's team. Did not know what happened at the meeting.

- 3.100 Para 34: Weekend prior to 22/12/03 (20/21) Andrea McKee telephoned to advise her son was ill and she could not travel. Was not surprised when she did not attend. Met Andrea on two occasions before and she indicated she would give evidence. Confirmed that she had attended the doctors on 1, 11 and 22/12/03. Could not confirm attendance on 19/12/03.
- 3.101 Para 38: Was not surprised at DPP decision to offer no evidence against Atkinsons as there were issues about her credibility and then there was fact she could not prove she'd been to doctor's on 19/12/03. Did not feel credibility issue was overplayed. Once papers were with DPP it was a decision for them but decision was taken in consultation with senior officers.
- 3.102 Para 39: Was no reluctance to prosecute conspirators. There were avenues open to them that would not normally be open in an ordinary conspiracy investigation "but I cannot go into those here".

Oral Evidence

- 3.103 Per 59860 H was at the magistrates court on 22nd December but he did not remember it (p140) He cannot recall if the statements were satisfactory (p141)
- 3.104 H recalls the committal on 27th October. Andrea McKee was willing to come back and give evidence (p141)
- 3.105 H believed Andrea was a willing witness. She had told lies on one occasion at the very start but had since told the truth (p143)
- 3.106 H did not have contact with Maurice Hewitt in 1997 as he was not involved in the Robert Hamill investigation (p146)
- 3.107 Per 59857, Andrea first gave the Pendine account to H. He immediately actioned that by passing it back to Mr Whitehead (p153)
- 3.108 Per para 37, he was not necessarily kept informed as the process unfolded of the evaluation of Andrea's credibility about Pendine (p154) as those would have been between senior police and directing officers. The phrase "do not feel that the issue about Andrea McKee's credibility was overplayed" was that it was an issue that would be tested in court and they were issues the DPP would have to consider. The decision was not overplayed as she had told lies in 1997. She tells the truth in 2000 and it would be made out she has been telling lies again (p155) because of Pendine (p156)
- 3.109 H was present when DCI K took the statement from Andrea McKee (p157)
- 3.110 There was no difficulty phoning or making contact with Andrea McKee (p156) Andrea was helping and cooperating unselfishly (p157)

Michael Irwin

Statement

- 3.111 81473: On 9th September was present when DCS McBurney discussed and agreed Atkinson interview strategy with Mr [REDACTED].
- 3.112 81474: It was DI Irwin's understanding that Atkinson would be questioned regarding phone calls to Hanvey's address. Assumed that reason McBurney did not was because Atkinson denied having any contact with Hanvey family including by telephone. For 9th October interview ICPC was not present. His absence had been agreed with McBurney. McBurney determined interview strategy in advance and provided Irwin with directions regarding that strategy.
- 3.113 81475: Was aware before interviewing Andrea McKee about conspiracy that phone billing did not support Tracey Clarke's statement that said Atkinson was ringing Hanvey every day.
- 3.114 81476: Asked McBurney what the strategy for McKee's interview should be. Was clear that at some stage McKee would be challenged about earlier information. McBurney directed that McKee not be confronted, exposed or in any way challenged unless she volunteered details of previous meeting.
- 3.115 81477: Not fully sighted to McBurney's overall strategy. Was in no doubt McBurney was pursuing course he believed was best.
- 3.116 81479: On 4th November 1997 McBurney stated that evidence gathered would not result in successful prosecution for the conspiracy. He informed Irwin he would continue to review investigation and await future opportunities.
- 3.117 81480: McBurney stated he would submit a file to DPP regarding ICPC investigation that would include Atkinson allegation. Irwin was aware that McKee's information given at the cemetery meeting was not on HOLMES. McBurney indicated he did not want this information in the HOLMES account nor in bundle for DPP file. Presumed this was because of sensitive nature. McBurney said he would address it personally. McBurney informed Irwin after the Hobson trial to encourage Coroner to hold an inquest as not all circumstances surrounding investigation had been exposed.
- 3.118 81481: McBurney would use this opportunity to recommence and develop McKee investigation. Was notified about Coroner's decision not to hold an inquest on 19th May 2000. Submitted a HOLMES message on 2nd June 2000. Was during this process, in October 1999 that he became aware that McKees had separated. McBurney directed that Irwin should try and confirm these facts and establish individuals address as he intended to speak to both McKees.
- 3.119 81482: Contacted Tracey Clarke's mother on 2nd June 2000 and further established Michael McKee had recently moved back into NI jurisdiction. Prior to speaking to Michael McKee, DCS McBurney said he would initially

Speak to him as a witness and would re-consider position if circumstances changed.

- 3.120 81483: Before interviewing Andrea McKee DI Irwin pointed out that she should be cautioned prior to interview. DCS McBurney said that was normally the situation but felt that due to many considerations she should be treated as a witness. Accepted that DPP might take a different view and may later direct a caution interview.

Patricia Murphy

Statement

- 3.121 Para 5: Attended Gough Barracks on 6/4/01 where he was given a briefing pack and interview material for investigation. A lot of officers were at the briefing and we spent the day working through the documents in the briefing pack.
- 3.122 Para 8: Equipment (that was referred to in 8:47 phone call on 27/4/97) was later delivered to her by Andrea McKee (21311).
- 3.123 Para 10: During interviews with Mrs Atkinson on 10/4/01 was asked about association with Kenneth Hanvey. At end of 3rd interview at 21:42 was approached by Sean Hagan who said “she thought she was being asked about friendship on a social level. She had not mentioned that she worked with him at NIE”.
- 3.124 Para 11: On 31/5/01 Eleanor Atkinson was interviewed again. Did not know why so much time elapsed. Was not his decision to re-interview and can only assume he must have told a senior officer about her association with Kenneth Hanvey and decision was later made to re-interview.
- 3.125 Para 14: During journey with Andrea McKee on 27/10/03 she did not give any indication that she would not give evidence in the future.
- 3.126 Para 15: Had contact with Andrea on 19/12/03 to make travel arrangements for her attendance at court on 22/12/03. She did not mention during the conversation that her son was ill.
- 3.127 Para 16: On Sunday 21/12/03 received a phone call from DC J who informed her that Andrea McKee had called Armagh Comms room and wanted to speak to someone about the case as she was unable to attend as her son was sick.
- 3.128 Para 16-18: Spoke to her at 1030 on 21/12/03. Andrea explained her son’s illness started two weeks earlier with an ear infection and she had taken him to see the doctor on two occasions and doctor had visited her home on one occasion. She was taking her son to doctors that Monday morning. Andrea was very apologetic but was not prepared to travel to court when her son was ill. She offered the half term break in Feb 2004 as being the ideal time.

Overall impression of Andrea after this conversation was not that she did not want to give evidence but that she did not feel able to attend the hearing because her son was sick.

- 3.129 Para 26: Throughout consultation on 2/3/04 Andrea did not appear to be intimidated and never indicated that she would not give evidence.

Oral Evidence

- 3.130 Ms Murphy cannot recall if it was intended for Andrea McKee to come over for one day on 27th October 2003 or if it was for longer (p100) and cannot recall if it was to be a day trip on 19th December 2003. Per 74234 (p101) it appears that Mrs McKee would have a day trip (p102).
- 3.131 Per 74234 Ms Murphy was told that Andrea McKee had rung in to talk about the illness of her child. She made those notes pretty soon after the telephone call (p102).
- 3.132 Ms Murphy was not sure if it were Mrs McKee or the doctor's fear that the son may fit (p103) She believed Mrs McKee's when she said that her son was sick (p105).
- 3.133 The notes at 74236 were made straight after the events recorded (p105).
- 3.134 Ms Murphy was not party to any discussions between prosecution and defence about the adjournment on 22nd December. She was not aware anything was raised other than a desire to get a medical certificate. She was not told the version was disbelieved. No question was raised about Andrea attending a hearing on 2nd January (p107).
- 3.135 Ms Murphy did not discuss the merits of the evidence Mrs McKee was giving. At no point did Ms Murphy change her point of view about the reason for non-attendance. She cannot recall anyone asking her opinion (p108).
- 3.136 Ms Murphy was present at the adjournment hearing but did not remember anything about the hearing (p110).
- 3.137 Ms Murphy had no difficulty in dealing with Mrs McKee (p112).
- 3.138 Ms Murphy did not know who took responsibility for satisfying the conditions of the adjournment (p113)

John Munn

Statement

- 3.139 Para 20: Was no suggestion whatsoever that Andrea McKee would not give evidence unless she was given a new house after she received the threatening letter on 23/12/03

Oral Evidence

- 3.140 74243 is the report showing Andrea McKee's commitments to her area. It is an accurate representation of his view (p2) She had two options: to move away in witness protection or to stay and have the local police help her and use her maiden name and other basic actions (p3) The option was hers to move and she qualified for the scheme (p5)
- 3.141 The scheme will not accept anyone who appears to have been given an inducement (p6) He had no belief that she was using the scheme to get a better house or any ulterior motive (p7)
- 3.142 Prior approval for her inclusion in the scheme had been given by ACC Crime on the basis that the threat was real (p6)
- 3.143 The investigative team helped by liaising with the local force and getting assistance from the local housing association (p9)
- 3.144 In 1997 a 17 year old girl threatened by paramilitaries would be taken totally out of the jurisdiction to another. She would have to be willing to do that. That would be both pre and post-trial (p11)

Trevor Anderson

Statement

- 3.145 Para 2: In April 1997 he was a team leader at RUC Gough Barracks. He was responsible for allocating complaints which were notified to him from central office in Belfast.
- 3.146 Para 3: The procedure was that the complaint would be forwarded to the superintendent, new complaints, who would allocate it to its appropriate regional office. He also notified the ICPC of that complaint so they could decide whether or not they would supervise the complaint. In the meantime, the papers arrived and he handed them over to the investigating officer who prepared the Form 17(3). The Form 17(3) had to be prepared and served as soon as practicable so that the officer had plenty of time to retrieve notes, etc. Then the complainant would be requested to attend for an interview. All complaints should go immediately to new complaints. On 9th May 1997, I was appointed to assist DCS McBurney with the investigation of the complaint made by Diane Hamill of neglect of duty. The appointments were made through the Assistant Chief Constable, G Department. The ICPC were asked to, did, approve the appointment of the senior investigating officer.

- 3.147 Para 6, 7 and 8: I can't recall whether or not a strategy was agreed with the ICPC, but in the normal course, the ICPC had the upper hand in relation to how things progressed and they would advise the investigating officers. They would probably have communicated with DCS McBurney by letter. When it came to interviewing, they wouldn't ask questions themselves, but would ask for questions to be put, but I can't now remember the detail of this investigation. I was kept up-to-date by CI Bradley, but we would discuss the matter only occasionally. The complaint investigation and the murder investigation were in essence one and the same, so the evidence from the murder investigation would have formed part of the complaint investigation file. I would therefore probably have been aware of witnesses Tracey Clarke and Timothy Jameson, but I can't remember anything more about them. I do know that I had no direct involvement with them. I was not made aware that Tracey Clarke had made an allegation against Res Con Robert Atkinson. It was never discussed with me. I can't say whether anyone else referred it to the ICPC, but it wasn't brought to my attention by DCS McBurney or anyone else. Normally during an investigation, if an allegation of criminal conduct by a police officer arises, the officers who had discovered it would be obliged to raise a file on the matter. The file should contain a statement outlining the nature of the complaint and that file would then be forwarded to the superintendent of new complaints. Thereafter, it would be referred to the ICPC and they would decide whether to supervise or not.
- 3.148 Para 9: I am unaware of anyone called Andrea McKee and unaware that there was any evidence relating to telephone records of Robert Atkinson or Allister Hanvey. McBurney did not discuss anything of that nature with me. In fact, I did not even know that the allegation had been made.
- 3.149 Pg 3: He recalls attending two meetings with Mr McBurney and the ICPC: on 12th May and 19th May.
- 3.150 Pg 4: He did not raise that at the previous meeting as he could not recall when it was.
- 3.151 Pg 5: Minute of a meeting is at 14823
- 3.152 Pg 6: he has no memory of being told of the Atkinson allegation. He says he may have left the meeting early. He was not aware that there was Witness A and **Witness B**. If he was referred to deal with them he would have remembered.
- 3.153 Pg 7: It would be up to the investigating officer in conjunction with the ICPC about what to do with the allegation. Had it come up in the course of things they might have had to raise another file. It could have been part of the file that's already there.
- 3.154 Pg 10: 14805 minute of meeting on 19th May. Mr Anderson did not recall being at that meeting. He cannot say if he was there when the issue of Atkinson was discussed. He did not recall the phone records being discussed with him

Colville Stewart

Statement

- 3.155 Para 2: Appointed by Sir Ronnie Flanagan on 15/12/00 as SIO into death of Robert Hamill and alleged conspiracy by Res Con Atkinson.
- 3.156 Para 6: On 15/12/00 met with David Wood and Chris Mahaffey. Mahaffey later wrote to him (14882) confirming strategy to be adopted in Atkinson investigation and fact that the Ombudsman would be investigating allegation of mishandling two witnesses.
- 3.157 Para 7: Spent some time discussing case with McBurney and he referred Stewart to DCI K who he felt had a very good handle on the case and was well placed to brief him.
- 3.158 Para 12: On 10/1/01 met Mahaffey and proposed a time frame of early Feb 2001 for arrests to be made as Ombudsman was anxious to move forward as quickly as possible with this phase of operation. Stewart's view was that when they did carry out the arrests had to make certain everything was in place.
- 3.159 Para 15: Investigation from Complaints & Discipline didn't really start until after arrests had been made in Atkinson investigation as did not want the activity to alert offenders.
- 3.160 Para 17: Continued to have meetings with Ombudsman's officers and on 16/2/01 met Mahaffey with DCI K where they sought views of Ray Kitson on legalities of proposals. Meeting was on 28/2/01. Was agreed McKee would be dealt with for criminality and her potential as a witness would be considered after she had purged criminal behaviour.
- 3.161 Para 18: Part of strategy agreed with Ombudsman was use of intrusive surveillance.
- 3.162 Para 21: Surveillance phase only lasted two / three days before compromised and Stewart's fears about Atkinson being alive to surveillance were justified. Could not rule out there had been a leak.
- 3.163 Para 22: Felt Atkinson should have been suspended in May 1997. Suspects reason not to was fear witnesses would not come to court.
- 3.164 Para 23: Looked at reports of Atkinson losing ammunition from locker. Forensic did not prove a link between that and ammunition in the letter to Michael McKee. Cannot be certain Atkinson was not involved in letter.
- 3.165 Para 24: Wrote to Andrea McKee's presiding judge at behest of her solicitor.

- 3.166 Para 25: Prior to McKee trial discussed with DPP on 31/1/02 possibility of having sentence suspended to ensure she gave evidence. Proposal was not accepted.

Oral Evidence

- 3.167 There is no truth at all in Mr Wood's suggestion on 14th March 2001 (75206) that "there is a lack of appetite to tackle Res Con Atkinson in a proactive way (p170). The phrase "sledgehammer to crack a nut" was not used. There was no delay in moving the investigation along (p171) Regarding the equipment being unavailable those who used the equipment discovered they were a few pieces short. This was explained to Mr Wood who then went to Mr Flanagan who authorised the purchase. There was nothing sloppy, all the equipment was in use at the time. Local officers were not used. The detectives stretched as far away as possible and selected officers who as far as they knew had no contact with Atkinson or any other suspect (p172) The letter is nonsense, Mr Stewart's suspicion is that Mr Wood had given commitments to Diane Hamill and her solicitor and wanted to make sure they were carried through (p173) Mr Stewart felt it was criticism of the current heads of the investigation, not previous (p174).
- 3.168 Mr Stewart was very clear intrusive surveillance would come undone. He was unhappy to do it in this way. He made it clear to the Ombudsman in form of both Mr Mahaffey and Mr Wood that he would have preferred to do surveillance prior to the arrest (p132) The Ombudsman was in no doubt that it would not work as the time taken to effect an arrest and install surveillance equipment can be very different. They felt that Atkinson would know what was happening (p167).
- 3.169 The regulations on surveillance were clarified on 2nd October 2000 when RIPA came into force. Mr Stewart cannot make any comment on the strategy before he came into the investigation on 18th December (p145).
- 3.170 He received a letter from the Ombudsman (14882) on that day which included "Intrusive surveillance strategy, as agreed, should be pursued". This strategy was the one Chris Mahaffey has discussed with Mr Stewart's predecessor and DCI K (p145) Mr Stewart discussed what the strategy was with DCI K. The ombudsman wanted to arrest then install intrusive surveillance. DCI K was unhappy and wanted surveillance to be placed covertly before arrest. The decision-making on operational matters rested with the Ombudsman (p146) Mr Wood was adamant that was the correct strategy in spite of advice from Mr Stewart and his deputy so Mr Stewart had no alternative (p147) The Ombudsman said that the surveillance must happen at the same time as the arrests, as must Andrea McKee's interview in Wrexham (p148) It was mainly Mr Wood's decision that Mr Mahaffey agreed with (p167) Mr Stewart did not believe it is going too far to say that insisting on installation at the time of arrest blew any chance of getting useful information. The other houses knew within hours of the Atkinsons discovering the device that they had intrusive devices as well. Mr Wood and Mr Mahaffey were not local (p169).

- 3.171 It is not necessary to arrest at the same time to install intrusive surveillance (p149).
- 3.172 Entry was made to the Atkinson house by way of lawful search warrant and there was adequate manpower on the street. There would have been more than one vehicle and more than three officers (p149) He is sure some people saw the activity. He cannot imagine that the police made “a hue and cry” about who was arrested; only that people had been arrested in Portadown in relation to the Hamill murder (p154).
- 3.173 The Atkinsons were not arrested at their home as they were not home when the police went to it (p150) They needed to be outside the house when the equipment was installed so they were arrested where they were found (p152).
- 3.174 Mr Stewart attended a meeting at the office of the DPP on 28th February 2001 with DCI K and Raymond Kitson. He was seeking Mr Kitson’s views in relation to Andrea McKee (p155) and her suitability as a witness. There was no suggestion that she should simply be treated as a witness, it was clear she would be prosecuted (p156) Minutes of the meeting are at 74152. "Mr Kitson pointed out that, at this stage, this case was still in the hands of police and he would therefore not be in a position to give any definitive directions in this case until the investigative file had been formally submitted to the DPP." This is Mr Stewart’s understanding of Mr Kitson’s position. Normal procedure for the DPP was for operational decisions to be a matter for police. Mr Kitson could provide guidance on any legal issues arising from the evidence. Mr Stewart understood that it was a police decision about how to proceed with Andrea McKee: either to be treated as a witness or to be prosecuted (p159)
- 3.175 Mr Stewart felt that the normal practice of not deferring sentence after a guilty plea where the defendant would be giving evidence for the prosecution should be varied for this case. He made a representation to the DPP to that effect on 11th February but the decision was taken to adhere to the advice of senior counsel (p161)
- 3.176 There was no sentence deferral or immunity from prosecution for Andrea McKee (p161)
- 3.177 In Mr Stewart’s report he felt there was a possibility Andrea McKee might walk away once the hearing was finished. It wasn’t unusual for that to happen but Mrs McKee kept in contact and remained involved (p162) There was nothing in it for Andrea McKee to continue to cooperate. Mr Stewart wrote two letters commending Mrs McKee’s helpfulness (p163) The DPP would not be provided with a copy of that letter (p164)

P5

Statement

- 3.178 Para 18: On 5 October 2000 he was briefed by DCI **K** about the Atkinson allegation. He was tasked with carrying out financial investigations.
- 3.179 Para 21: Financial investigation would have been available to the SIO in 1997. It would not be a priority line of enquiry. It depended on the individual SIO.
- 3.180 Para 22: The only significant inquiry was the financial positioning of Allister Hanvey at the Ulster bank ATM in Portadown. This was a transaction at 08.46 on 27 April.
- 3.181 Para 23: The ATM was outside the branch at 20 High Street, Portadown.
- 3.182 Para 26: DCI **K** and **P5** called at Andrea McKee's house on two occasions before seeing her at 1520 on 10 April 2001. K told her that she was to be interviewed under caution. She said she wanted to clear the whole thing up so she could get on with her life. She asked about the others and was told she would be arrested and reported to the DPP.
- 3.183 Para 28: Andrea McKee was not offered any inducements.

Oral Evidence

- 3.184 Financial inquiries were available in 1997 but they were not an obvious line of enquiry until 2000 (p79)
- 3.185 Mr P5 believes the account Andrea McKee gave on 10th April 2001 was truthful (p79) It was free-flowing and he did not think she had any reason to be telling lies. She seemed glad to get it off her chest. She was left in no doubt the matter would be reported to the DPP (p80)
- 3.186 **P5** did note that Andrea McKee said "this was always going to happen and wanted to get the whole thing cleared up once and for all so that she could get on with her life" (p83)

Kevin Whitehead

Statement

- 3.187 Para 5: Instructions were to be a local point of contact in Wrexham for Andrea McKee. Was to report to PSNI if need arose.
- 3.188 Para 7: When had seen McKee [before she received threatening letter] felt she was nervous about giving evidence.
- 3.189 Para 12: Comment that Dr [REDACTED] was not keen on keeping records came directly from Dr's secretary who he had spoken with. Dr was relying on memory rather than written records.

3.190 Para 13: Did not see written records from Pendine. Records were taken on a notepad. Relied on receptionist to check.

Oral Evidence

3.191 There was a change in Andrea McKee's demeanour when she received the threatening letter from the LVF as she was concerned about her and her child's safety. Mr Whitehead had no reason to disbelieve her concern (p2)

3.192 Mr Whitehead was asked by the PSNI to look at the genuineness of Mrs McKee's reasons for non-attendance on 22nd December. He was asked to ascertain whether she had contacted an out-of-hours doctor or any other doctor in the area. He was not asked to get a medical report from the child's doctor beyond the two statements (p4)

3.193 Mr Whitehead cannot remember the exact date that he was asked to look at the Pendine issue. Mr Whitehead agrees from the documentation (34052) that he was asked to look at the Pendine issue on 30th December (p6) He would act on that request immediately (p7) 34057 shows that it was not possible for the late team to visit Pendine on 30th December, so Mr Whitehead directed they visit on 31st December (p14) Mr Whitehead assumed he was asked to acquire establish the truthfulness of McKee's account. It was not an attempt to discredit her (p13)

3.194 Mr Whitehead could not find any evidence Andrea McKee had been to Pendine. He felt that as she was a witness in a major trial there would be serious consequences if she didn't appear. He felt it was an issue if she was not telling the truth (p19)

3.195 After 27th February 2004 no-one asked him to see Mrs McKee's GP and find out how ill the child was (p7)

3.196 Mr Whitehead believes the PSNI were "very professional when dealing with Andrea McKee. They knew what they wanted and he was given clear instruction" (p10)

3.197 Mr Whitehead was contacted by PSNI in 2003 and from that moment he was the only point of contact Andrea McKee had in the North Wales police (p20) He contacted her daily after that and there were no issues up until the letter arrived from the LVF (p21)

3.198 It is clear that Mrs McKee's son attended the surgery on 22nd December (p21)

DCI K

Statement

- 3.199 Para 18: Eleanor Atkinson worked at NIE where there was a central switchboard and open plan offices where anyone could pick up the phone.
- 3.200 Para 23: When interviewed Andrea McKee on 25/10/00 did not interview her under caution as she was willing to cooperate and felt he should interview her to extract full story. Could then build investigation around that. DPP had no involvement that decision.
- 3.201 Para 26: Had meeting with PONI officers who were taking over supervision of investigation on 2/11/00. Submitted progress report on 6/11/00 and it was forwarded to PONI. Report was also copied to Chief Constable's Secretariat by McBurney.
- 3.202 Para 30: Discussed how to use McKee as a Crown witness with Ray Kitson and McBurney on 5/12/00. Decided to deal with her criminality as other suspects the present her as a witness of truth.
- 3.203 Para 31: Kitson did not give a direction at this meeting. DPP would offer advice and direction upon receipt of crime file. DPP did not get intimately involved in prosecutions and was for police to decide how investigation should proceed.
- 3.204 Para 51: Single prosecution file was not prepared for all suspects. Was because needed to progress McKee in furtherance of strategy to utilise McKee as prosecution witness.

Oral Evidence

- 3.205 The reasoning for interviewing Andrea McKee not under caution in October 2000 was to get as much information to open investigative leads and a caution (p22) could have caused an uncooperative response. Their view was to arrest Michael McKee (p23) as he was a principal player and should face justice, whereas Andrea was caught up in the conspiracy (p24) Andrea just wanted to tell her story (p25) She totally cooperated. They met no difficulties in transitioning when Andrea was cautioned, even though she did not know she would be arrested when they saw her. DCI K believed her (p26)
- 3.206 Andrea seemed genuine in her reaction to the threatening letter (p28)
- 3.207 DCI K did not recall being at court on 22nd December (Patricia Murphy)
- 3.208 The police interviewed the doctors at Pendine (p32)
- 3.209 Per 59890 it is true that people were generally satisfied about the reasons for the adjournment but there was no substantiation for the visit to Pendine (p33) When Andrea was going to give evidence on 22nd, the police wanted to set up a child minding facility for her. They knew about her appointment on the 23rd but she would not rearrange things around that (p36) Andrea was in real fear after the threatening letter but was still agreeing to give evidence. He

was not sure she was telling the truth about Pendine when he went to the consultation with her (p37) they were offering her an exit from the lie, which they would have worked with. DCI **K** is convinced she is telling the truth about the conspiracy (p38)

- 3.210 DCI **K** was at the guilty plea hearing of the McKees. 20098 is an accurate record of the conspiracy (p39)
- 3.211 There were meetings with the directing officer about Pendine but the decisions on presenting her as a witness of truth was not for DCI **K** (p53) He told the DPP that he believed she told the truth about the conspiracy (p54)
- 3.212 None of the bullets lost by Atkinson were connected with the one received by McKee (p62)
- 3.213 Per the actions DCI **K** directed to Ms Murphy in 59858. She passed on the information and then **K** sent her to court the next morning to brief Christine Smith. Andrea had not said she'd been to Pendine so he has no reason to believe the magistrate was told about Pendine (p136) 34061 supports this view (p137)
- 3.214 The request for the medical reports in 59860 was possibly overlooked due to the Pendine issue (p138)
- 3.215 There are fingerprints on the threatening letter that are outstanding to this day. Fingerprints were not taken from her point of contact in Portadown (p66)
- 3.216 DCI **K** is not sure if the medical evidence was deemed sufficient for the magistrate (p69)
- 3.217 DCI **K** is not sure if he was at the consultation with Gerald Simpson on 3rd March 2004 (p70) He was at a meeting with counsel on 17th February. At that meeting Andrea's credibility was part of the discussion (p71) In that meeting the untruthfulness of the Pendine issue was made clear to DCI **K** (p72)
- 3.218 Per 14 81928 the police did not think the letter came from the LVF because the wording was different from other communications (p75) The police found no evidence to substantiate that Hanvey was being kept up to date with the investigation (p77)
- 3.219 Per para 30 81780 DCI **K** recalls the meeting with Mr Kitson on 5th December (p80) the group mentioned was the group of officers from the police and PONI (p81) 74152 reflects DCI **K**'s understanding of the division between the DPP and the police. The police felt that prosecuting Andrea would strengthen her credibility (p87)
- 3.220 Per 59858 before the court hearing DCI **K** wanted the information provided as to her son's illness and the treatment to date and a note from the last doctor the son saw (p90) Per 34061 and 59860 DCI **K** understood that the

case was listed on 2nd January for the production of documents (p91) They could not put those documents to the court on 2nd January (p93) DCI K was in the consultation on 9th January. He was aware in the consultation with Mr Simpson on 2nd/3rd March that there were issues with the identification of the doctor at Pendine (p95). He remembers that Andrea changed her story about the consultation (p96). DCI K thinks the changing the story would be of interest to the defence (p98)

- 3.221 The police conducted the phone enquiries at 59874 on their own volition rather than being advised by the DPP (p98) The police conducted the enquiries as they were relevant to her credibility (p101) Per 59877 the evidence had been put to the DPP about Pendine. The police had done as much as they could at that stage and the decision rested with the DPP (p103) H was the witness liaison with the protection team. H briefed him, per 59879, about the enquiries with Andrea McKee's husband and he could provide no information (p106)
- 3.222 DCI K would have wanted to look at the note himself if he had gone to Pendine so he could be satisfied (p110)
- 3.223 DCI K understands that where there is evidence of a critical witness, that can be explored at a committal (p113). DCI K would have liked to see the case go through committal and test the credibility issue and then to test it again in the Crown Court (p115) The police said to the DPP that the case should be seen in the round (p116)
- 3.224 DCI K takes exception to him criticising the decision not to arrest the McKees, per 26878. Para 36 81781 shows he did not criticise that. The meeting of 12th December 2000 touched on the issue of Timothy Jameson as McBurney wanted that passed to Mahaffey as soon as the information was received. Mahaffey was asking questions (that were critical p124). The Andrea statement was also touched on. McBurney (walked out p122. DCI K says that McBurney said he needed to do something else, left and did not come back p125) and Mahaffey asked DCI K about the conduct of the investigation. DCI K said (p119) that those issues were not within DCI K's remit. The questions required explanations but were not concerns (p120) until the explanations were received he would suspend judgement (p121)
- 3.225 DCI K thinks that lots of enquiries he conducted could have been done in 1997 e.g. establishing whether the Atkinsons or McKees could have been where they said they were or tracing the jacket (p56) This may have led to more fruitful investigations (p57)

We find it suspicious that the intrusive surveillance devices in the other homes were found only a matter of hours after RC Atkinson found the one in his home (please see 3.170 above). This suggests to us that there may have been further contact between Atkinson and the other suspects, which would go some way in helping to corroborate the conspiracy allegation. It is of course a matter for the panel to decide, but we would encourage the panel to give this issue due consideration.

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

The Panel is referred to submissions in Part 8

Submissions by the Police Service of Northern Ireland

See sections 4-11 below.

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

In evidence DCC Blair Wallace indicated that suspension would be considered by the assistant Chief Constable in charge of C & D or at his level, which was Deputy Chief Constable (p. 70).

Comment

- 4 It is plain that the detectives thought it vital to act quickly to get the telephone records. They obtained them by about 16 May 1997. They then did nothing until 9 September 1997. Apparently no consideration was given to serving a form 17/3 or to suspending Mr Atkinson. The crime file relating to the murder was submitted to the DPP before Mr Atkinson was even interviewed about the allegation. There is an issue about whether in the interview of 9 September 1997 the RUC could and should have put the telephone records to Mr Atkinson.

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

We disagree with Richard Bradley that there was no reason for RC Atkinson to be suspended even after the telephone records corroborated the allegations being made against him as they were still working on the assumption that Tracey Clarke's evidence was hearsay (please see 3.46 above). It is our opinion that once the telephone records corroborated this very serious and extremely sensitive allegation, then Atkinson should have been suspended immediately. The telephone records had progressed the allegation from potential hearsay to a strong possibility of truthfulness.

It is significant that Trevor Anderson was never informed about the Atkinson allegation, despite being assigned to work closely with DCS McBurney on the complaint of neglect made by Diane Hamill (please see 3.147 above).

DCS McBurney should have made him aware of the allegation, but instead he completely bypassed the normal system. As we have said in module 16, we consider that DCS McBurney deliberately set out to protect RC Atkinson, and this aspect further confirms us in that view.

It is also very troubling that RC Atkinson knew that Tracey Clarke had been interviewed by the RUC very shortly after the event (2.37). We share the Inquiry Team's concern that DCS McBurney may have been keeping RC Atkinson in the picture, which would have enabled RC Atkinson to do the same for Allister Hanvey. Two telephone calls between the Atkinson and Hanvey households were recorded on 27th April and 2nd May 1997 (2.32) but that does not rule out the possibility of other forms of communication. Since RC Atkinson was not suspended, he would have many opportunities to encounter Allister Hanvey.

There also appears to have been open discussion among RC Atkinson's fellow officers about the investigation into the allegations against him (3.4).

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

Policy decision 5 shows that DCS McBurney acted immediately to get the phone records. This is the first and obvious demonstration that McBurney was pursuing the allegation against Atkinson. The phone records arrived on the 16/5/97. All that these records showed was that two calls were made between the Atkinson and Hanvey households. These records did not prove who made the phone calls, to whom, or what the content of the phone calls were.

Even if a burnt coat was found or Hanvey's alibi was broken, or it was proved he owned other jackets, there was still no prospect evidentially of bringing a prosecution. To ascertain and prove the contents of the conversation required an admission from either Hanvey or Atkinson. We now know of course that the prospect of that was zero.

It has been suggested that what should have happened at that stage was that Atkinson should have been served with a form 17/3, suspended and interviewed under caution. We agree that this was one possible course of action, but pose the question as to what this would have produced in terms of a prosecution?

We suggest that what it would have produced was twofold-

1. A denial by Atkinson of any knowledge of the phone call resulting in no prosecution. Even if Atkinson had been arrested on the 16/5/97 and the phone records put to him in interview that day, the high probability is that he would simply denied any knowledge of the calls, or come back with the very explanation that he did come back with in October 1997.
2. The exposure of Tracy Clarke at this early stage, which would probably have compromised the murder investigation

The Panel will remember that a form 17/3 need not be served if to do so would prejudice an investigation-Richard Bradley p99. Such a form could not have been served without exposing Tracey Clarke, and it was right that the murder investigation take priority.

The question seems to linger around who took the decision not to suspend Atkinson? This assumes that he should have been suspended. Such an approach is flawed. First of all, there are many grounds to be considered before a member can be recommended for suspension by supervisory officers. These are well documented in RUC & NIO Codes and were listed by the independent expert, Mr Murray. A key point, maybe not highlighted, is the availability of admissible evidence, bearing in mind the Human and Employment rights of the accused officer and potential for Judicial Review. It has to be understood that officers are not suspended merely on PR grounds or to abate political flak, which may or may not be justified. Another key point is the investigative strategy to be pursued in allegations of criminal activity The goal is to gain evidence not lose it. In terms of process, it has to be understood that any consideration of suspension was not a 'top-down' process. Force structures existed whereby 'G' Department was the channel for referring any cases to the DCC, if the appropriate criteria were fulfilled. In the Atkinson case, the late Supt T Anderson (head of C&D in the Region) was fully involved, from a discipline aspect, alongside D/C/Supt McBurney (SIO) and both were overseen – as records show – by the ICPC until at least Sept, when Atkinson went sick and suspension would then have been of less importance. It therefore follows that if the Superintendent thought it appropriate to refer the matter upwards with a recommendation for suspension, bearing in mind the overall criteria to be fulfilled – including McBurney's investigative strategy – then he would have done so. These were experienced Officers paid to take these decisions, in consultation with the ICPC, and were not duty bound to refer such matters upwards for decision when they clearly believed such action to be unnecessary or inappropriate. Likewise, it was not the duty of the CC or DCC to seek detailed reports on the many matters coming to their attention for the purpose of 'second guessing' the decisions of others. Vitally, the ICPC was involved from the outset on matters that were inextricably linked.

The Atkinson tip-off allegation was treated as a separate investigation from the murder investigation. If anything relevant to the murder investigation had surfaced, this could have been forwarded to the DPP.

There is an issue as to whether the RUC could and should have put the phone records to Atkinson on the 9/9/97 or indeed earlier. We refer to the following extract from DI Irwin's evidence p87..

".MR ADAIR: Mr Irwin, I want to ask you just a brief
18 number of questions on a various number of topics.
19 A. Okay, sir.
20 Q. Just going to the phone records situation back in 1997,
21 my understanding of your evidence is that some companies

22 would provide the evidence and some companies would not.
23 Is that right?
24 A. That's correct, sir.
25 Q. Was there also an unspoken agreement with some companies

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1 that they would provide the information in the form of
2 intelligence, but the understanding was it was not to be
3 revealed that they had provided it?
4 A. That's correct, sir.
5 Q. Amongst the reasons you have given for that was one of
6 the more obvious reasons back then, the fear that one of
7 their employees might be subjected to either injury or
8 death?
9 A. That would be correct, sir, yes.
10 Q. Was there any way of forcing a company who had records
11 back in 1997 to provide those records?
12 A. No, not from my understanding, there wasn't, sir, and in
13 fact, at times they threatened to remove the facility
14 from us because we were maybe making too many demands in
15 certain circumstances. So I don't believe there was any
16 facility that we could demand evidential telephone
17 material from those people.
18 Q. Of course, it may be self-evident, but if you have
19 information in the form of intelligence from a service
20 provider, if you inform the suspect of that, you are
21 immediately making it clear to him that a service
22 provider has given the police that information?
23 A. That is correct, sir, yes."

We refer to Force Order 17/97 wherein it stated that details of phone records obtained were on a confidential basis and for police information only, and were not to be disclosed to suspects during interview.

This was a matter that Mr Murray originally placed great emphasis on, but was unaware of the situation in practice that prevailed.

We remind the Panel that up to September 1997, the ICPC was supervising the tip-off allegation as part of the neglect complaint.

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

These are all matters outwith the control of Reserve Constable Atkinson

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

Sir Ronnie Flanagan has been given limited participant status in this inquiry. By virtue of this status he and his representatives have not had access to all of the evidence relating to the investigation. Sir Ronnie Flanagan was not actively involved in the investigation or privy to the specific investigative strategy employed by DCS McBurney which may explain his acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

Detectives acted with commendable haste in procuring the telephone records which were to prove that telephone calls were made between the homes of Robert Atkinson and Alistair Hanvey.

At first blush it appears surprising that no steps were taken to advance an investigation into the question of whether Res. Con. Atkinson had conspired to pervert the course of justice until at least 9 September 1997.

DCS McBurney was interviewed by PONI on the 27 March 2001 and during that interview he provided an insight into his thinking. In essence he explained that the delay in dealing with the allegation which Tracey Clarke had raised against Atkinson was a question of priorities (at bottom of page 22829).

First of all it was imperative to investigate the murder. The second aspect was the investigation of the land rover crew regarding the neglect/inactivity complaint. Finally there was then a need to investigate the allegation that Atkinson had conspired to pervert the course of justice. DCS McBurney explained that having primarily used the 9 September interview (which was conducted under the supervision of ICPC) to deal with the neglect/inactivity complaint, he was able to concentrate on the conspiracy to pervert the course of justice issue by bringing Atkinson in for re-interview a month later.

In general terms the Inquiry will of course consider that while the investigation of every crime or allegation is important, some have to be considered more important or more urgent than others given limitations of resources and manpower.

It would appear that DCS McBurney had a particularly busy role and would have had to prioritise his case load. In the five months after the murder of Mr. Hamill DCS McBurney was responsible for investigating five other murders (45440); Graham and Johnston (16 June 1997); Martin (15 July 1997); O'Donoghue (26 July 1997); O'Rawe (28 September 1997). He had other police work to perform quite apart from these murder investigations. Bearing in mind that he was also committed as senior investigating officer to the neglect/inactivity complaint, the issue of his time and resources becomes

a significant and persuasive factor in explaining why the Atkinson investigation wasn't taken forward sooner.

It is suggested (above) that there is an issue about whether in the interview which took place on the 9 September 1997 the RUC could and should have put the telephone records to Mr. Atkinson.

The Inquiry has heard evidence about the difficulties which the RUC experienced at that time in terms of the use that could be made of information provided by telecommunications companies. It would appear that DCS McBurney was aware of this difficulty and it may well have dictated a strategy of putting the onus on the suspect (Atkinson) to produce his own phone records.

When discussing the first Atkinson interview with PONI, DCS McBurney explained that he was concerned to get the telephone records from Atkinson as a proof for court (22829): "The only question he was asked at that stage in relation to the telephone call was, with regard to the original telephone account for that date and I wanted possession of the account that he had in my possession, and I wanted that rightly or wrongly for court that was my intent and I wanted for court, I wanted it to prove."

DCS McBurney went on to explain that it was also part of his strategy to draw Atkinson out, to provoke a response (22829): "...I wanted to make him think. I wanted to make him move one way or the other..."

It is clear that in this latter respect the strategy was successful because Atkinson did "move" and in moving he made the error of involving a large circle of people in a conspiracy to cover the phone call, including Andrea McKee. This ought to have been Atkinson's undoing and would have been but for the decision of the PPS that McKee could not be relied upon as a prosecution witness.

The alternative approach which is suggested is that DCS McBurney could have jumped straight into questioning Atkinson on the basis that police had information that he was assisting Hanvey which was potentially corroborated by the telephone records which had been obtained.

Clearly, this was a feasible approach but it was not without its problems: it would have risked exposing Tracey Clarke as the whistle-blower at a time when all the indications were that she was still prepared to assist the prosecution; it would also have been a departure from the normal practice of only using the information supplied by telecommunications companies for intelligence purposes.

Moreover, it is far from clear whether the suggested approach would have been any more efficacious than that which DCS McBurney actually pursued. Of course it is possible that Atkinson could have provided a clumsy explanation under the heat of the interview situation when confronted with the allegation and the telephone records, but is it not more likely that he

would have played for time and denied all knowledge of the calls? He would have known that the call itself proved nothing and that might well have been his response.

In all of the circumstances the Inquiry is invited to defer to the experience and know-how of an experienced detective in terms of the strategy which he adopted here. Even if the Inquiry takes the view that it might have adopted a different approach that does not mean that the strategy of DCS McBurney was in any sense wrong.

- 5 Andrea McKee was then allowed to give an alibi statement which DI Irwin and DCS McBurney believed to be false. There is an issue about whether she could and should have been forcibly reminded of her incompatible earlier dealings with police.

Submissions by Arthur J Downey Solicitors (Andrea McKee)

It would appear that DI Irwin and DCS Mc Burney did not believe that this alibi statement was true. We refer to Para 2.250 of Folder 8, which sets out Andrea McKee's impression of DI Irwin and his reactions during the taking of this alibi statement:

"DI Irwin had been in the car when Andrea McKee spoke to the police but he was not in Tracey Clarke's interview. He looked at her with raised eyebrows. She expected him to say he did not believe her (Page 67 of her transcript). If he had said anything she would not have given a statement (Page 68)."

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

It could be argued that, DCS McBurney, having not only warned RC Atkinson that he was interested in his telephone records but also told him about the specific allegations that he had telephoned Allister Hanvey and advised him to dispose of his clothing (2.11), knew full well that RC Atkinson was likely to go out and manufacture an alibi. Indeed, on 25th October 2000, when Andrea McKee told DI Irwin and DCI K the truth, she said that the false alibi was RC Atkinson's idea (2.37). In allowing Andrea McKee to make a false statement in October 1997, which ultimately led to her prosecution and conviction, it is possible that DCS Burney was guilty of entrapment.

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

In relation to this issue, the police were obliged to take a statement from her even though they believed it to be false. As ACC White stated at p128, there was an obligation on police under the Criminal Procedure and Investigations Act 1996 to take that "alibi" statement, and there would have been criticism if the statement had not been taken.

The declaration at the top of her "alibi" statement was drawn to her attention by DI Irwin.

Importantly, this was seen by DCS McBurney as a potential breakthrough in the pursuit of Atkinson. We refer the evidence of DI Irwin on this issue at p96...

"Q. Now, I want to turn to another, separate issue,
16 and that's the issue of how Andrea McKee was dealt with
17 in relation to the taking of -- can we call it -- well,
18 it is clearly a false alibi statement.

19 A. That's okay, sir, yes.

20 Q. Well, have you any doubt that it is a false alibi
21 statement now?

22 A. No, I have no doubt now, sir.

23 Q. Now, you will understand that one of the matters that is
24 important is trying to get into the mind of

25 Mr McBurney --

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1 A. Yes.

2 Q. -- as to what strategy or tactic he was engaging in in
3 relation to Andrea McKee.

4 A. Yes, sir.

5 Q. Am I right in saying he wasn't a man for telling others
6 really very much about his strategy?

7 A. No. He would have given you an indication what he
8 wanted, and, yes, you certainly could question him on
9 points and he would give you indications and that, but
10 he would move on very quickly, sir, and he wouldn't
11 dwell on it that much.

12 Q. Now, if we have page 81486, please. I was actually
13 looking for page 59 of this witness statement. Is there
14 another page 81486 on the system?

15 THE CHAIRMAN: What we have up is the alibi statement, is
16 it?

17 MR ADAIR: Yes. It was actually this witness' statement
18 I wanted up. 81418. Well, I will deal with it
19 without the statement.

20 A. Okay, sir.

21 Q. Mr McBurney directed you to go and take the statement
22 from Andrea McKee.

23 A. That's correct, sir.

24 Q. You discussed with Mr McBurney as to whether you should
25 confront her with her earlier actions, ie being present

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1 when Tracey Clarke made the allegations --

2 A. That's right.

3 Q. -- whether she should be confronted with this or whether

4 you should simply take a witness statement from her?
5 A. That's correct, sir.
6 Q. So it was obviously something that was tasking the mind
7 of Mr McBurney at that stage?
8 A. Is certainly was, sir, yes.
9 Q. He directed you that you should not confront her, but
10 you should, in fact, just take the witness statement?
11 A. That's correct.
12 THE CHAIRMAN: What, draw her attention to the declaration?
13 MR ADAIR: Yes.
14 THE CHAIRMAN: If she backed out at that, leave it; if she
15 didn't, take a statement?
16 MR ADAIR: That's right, sir.
17 Now, I don't think you have said it in so many
18 words, but is this proposition a reasonable one as to
19 what Mr McBurney was doing? Did he see this, in other
20 words, Andrea McKee making a false alibi statement, as
21 the potential way to break into the conspiracy?
22 A. Sir, when Michael McKee was interviewed in Lurgan police
23 station and I had a brief word with Mr McBurney after
24 that, he was delighted that the Atkinsons had introduced
25 other people into the conspiracy, because he saw here we

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1 have a one-minute phone call between one house and
2 another house and what he had to prove -- here we were,
3 two families, both of interest, not to tell the truth.
4 What he had to prove was not only who made the phone
5 call, but what was actually said on that phone call, and
6 for any investigator that is a massive task in relation
7 to a phone call.
8 You can prove a phone contact, but who made it and
9 what was said on it -- and he saw the introduction of
10 people outside those family units as a real bonus to the
11 investigation. He believed at that stage this was
12 a bonus and an opportunity.
13 Q. Now, we all know, as lawyers, the dreaded alibi
14 witnesses --
15 A. Yes.
16 Q. -- and what they are usually like. Did he see, just to
17 put it in a nutshell, the making of a witness statement
18 by Andrea McKee, this false alibi statement, as the
19 potential breakthrough eventually --
20 A. He did indeed, sir.
21 Q. -- into Atkinson?
22 A. That's correct, sir.
23 Q. Have you any doubt whatsoever that his strategy at that
24 stage was to get this false alibi statement and, when
25 the time was right, break the alibi statement?

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1 A. I have no doubt whatsoever, sir. What I would say is,
2 after I took the witness statement off Andrea McKee and
3 we spoke about it, he certainly gave me his view at that
4 stage that now the timing wasn't right to move on,
5 because what you would simply get was Andrea McKee and
6 a statement after caution from her potentially, which
7 then could not be used against Robbie Atkinson.

8 Q. In relation to the McKees, Michael McKee and
9 Andrea McKee --

10 A. Yes.

11 Q. -- was there any discussion between you and Mr McBurney
12 as to whether he thought he might be able to break
13 Andrea McKee eventually?

14 A. Because of probably her relationship, that she'd come to
15 the police at the start, and underneath it all
16 Mr McBurney was of the view that she had been used and
17 forced into this situation and that she was the weak
18 link in the whole conspiracy.

19 Q. What about your knowledge of whether the marriage was
20 a solid one or otherwise between Michael and Andrea?

21 A. Yes. Mr McBurney had certain views on this as well. He
22 believed that it wouldn't last, so he did, sir.

23 Q. Again, I think I have used this expression before, was
24 his strategy at that stage then to get this statement
25 taken and wait in the long grass?

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1 A. That's right, sir. That was his strategy. On saying
2 that, he had to move at some stage. Obviously, with the
3 trial going on, and then the inquest, time was on his
4 side, but he had to move at some particular stage, and
5 when he moved was, you know, a choice, a judgment
6 decision for him.

7 Q. Yes.

8 THE CHAIRMAN: You say he thought Andrea McKee had been
9 forced into the conspiracy. Did he say by whom?

10 A. No. He believed that they had been introduced by the
11 Atkinsons into the whole conspiracy issue, sir.

12 THE CHAIRMAN: But you used the word attributing it to
13 Mr McBurney's view that she had been forced.

14 A. Yes, sir.

15 THE CHAIRMAN: Did he say who or what had forced her?

16 A. I think it was the case of the relationship with the
17 Atkinsons. Obviously he believed that the Atkinsons had
18 went to the McKees to help him and, because of that
19 relationship, they had certainly been forced into
20 assisting the Atkinsons.

21 MR ADAIR: Again, lest there be any doubt about it, what was
22 your impression as to whether Mr McBurney was determined

23 to try to nail Atkinson?

24 A. He was very determined, sir. The difficulty was the
25 timing of the move. He was very firm that he would

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1 move, but the timing was vitally important to that move."

The efficacy and propriety of this approach was commented on by Mr Kerr
Q.C.'s at p85....

"Q. Yes. Now, I want to ask you something about this issue
10 of the taking of a witness statement from Andrea McKee.
11 Are you aware of the essential facts concerning
12 that?

13 A. Well, as you know, someone else advised on that case,
14 but I was aware of the general background to the case,
15 yes.

16 Q. I just want to ask you what your experience is in
17 relation to, first of all, the police duties and the
18 potential for cross-examination if the police don't do
19 certain things.

20 Now, to summarise in this case, the police knew that
21 Andrea McKee had been down at the police station with
22 Tracey Clarke when Tracey told them about the tip-off
23 allegation. So they regarded her as a credible witness
24 at that stage, as a reliable type of person. Then,
25 whenever Atkinson makes the story about the phone call,

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1 he arranges for a number of people to make witness
2 statements, including Andrea McKee. Are you with me?

3 A. Yes.

4 Q. The police essentially know that, when they are going to
5 take this statement from Andrea McKee, if she says in it
6 something to back up Atkinson, it's a lie, just to put
7 it in bald terms.

8 THE CHAIRMAN: I'm not sure if Mr Irwin went quite as far as
9 that. There seems no doubt that McBurney did.

10 MR ADAIR: I am putting it at its worst scenario.

11 Certainly pretty much they believed that
12 Andrea McKee had come down and was a responsible person
13 and so on and so forth. The taking of this statement at
14 that stage would probably be an untruthful one if she
15 backed up the alibi.

16 Are you with me?

17 A. Yes.

18 Q. Now, if the police are given an alibi by a suspect and
19 given a name of a person who can back up that alibi --

20 A. Yes.

21 Q. -- at that time, in 1997, was there an obligation or not

22 on the police to take a statement from that person?
23 A. There was an an obligation on the police to pursue any
24 evidence which either assisted the defence or assisted
25 the case against the defendant, and, therefore,

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1 basically there was an obligation on them to pursue such
2 matters.

3 Q. So say, for example, they hadn't gone and taken this.
4 Say they were told by Atkinson, "Andrea McKee can make
5 a witness statement backing up my story", and they
6 refused to take it, can you see the potential for
7 defence counsel, in cross-examining witnesses, if they
8 have not taken the statement?

9 A. Oh, certainly. Absolutely. Certainly.

10 Q. Which could cause problems for the case?

11 A. Indeed.

12 Q. I think the one difficult area, I am going to suggest to
13 you, is whether -- it is not whether they should take
14 the statement, but whether, when she starts to give what
15 they believe is the false story, they should in some way
16 at that stage say, "Now, listen. Hold on. Before you
17 continue with this, we are aware, for example, that you
18 came down and were present when Tracey Clarke gave us
19 this story and so on", but should they stop at that
20 stage and say, "Hold on a minute here", remind them of
21 the declaration at the top?

22 A. I think they have to be clear the extent to which they
23 feel they can establish that it is a lying statement.
24 Ordinarily, I would have thought the best way, once the
25 statement is commenced, is to allow her to complete her

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1 statement and then take time to consider whether or not
2 it required further action.

3 Q. What about this scenario where, say, they are aware
4 before she starts to make this statement it is going to
5 be we will call it an alibi statement which they
6 suspect/believe is not the truth.

7 Do you think at that stage they should say, "Now,
8 before you make this, just be very careful"?

9 A. Well, no, I don't think it is likely that you would tell
10 her before she makes the statement. There may be
11 an issue once she starts to make a clearly lying
12 statement that, at that stage, you might have to caution
13 her.

14 THE CHAIRMAN: Well, Mr Irwin told us he reminded her of the
15 declaration before the taking of the statement began.

16 A. Well, that would be entirely proper. That wouldn't be
17 the content of the statement. It would be a declaration

18 as to its truth and that would be entirely proper.
19 MR ADAIR: Of course, Mr Kerr, do you agree with me that you
20 and I -- well, you know through your experience over --
21 is it 30 years?
22 A. About. One less than you, Mr Adair.
23 Q. You know that prosecutors, and I don't say this --
24 prosecutors very often rub their hands with glee when
25 they see an alibi witness in a case. Isn't that right?

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1 A. That's correct.
2 Q. Because one of the ways, especially in a conspiracy-type
3 situation, one of the best ways to break the conspiracy
4 theory is to break the alibi witness?
5 A. That's correct.
6 Q. It can very often, am I right in saying, in your
7 experience, be hard to break the initial conspiracy
8 unless you have something else, some other ancillary
9 avenue to break into it?
10 A. That's correct.
11 Q. Tactically, that would be a perfectly sound road to go
12 down?
13 A. Oh, indeed, yes. "

We remind the Panel that DI Irwin informed DCS McBurney in October 1999 of the McKee's break-up, which would appear to confirm DI Irwin's knowledge of the strategy. As K further stated in evidence p4,

"In terms of what I was briefed by Mr McBurney, and on my
12 appointment he had indicated to me that his intention
13 was always to monitor the McKees, and he briefed me that
14 they had subsequently separated and he briefed me that
15 his strategy always was that he may have been able to
16 penetrate this conspiracy by taking advantage of that
17 separation, and, consequently, when he found out that
18 they had separated and were both living apart, he took
19 the decision at that point to approach both of them."

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

This are matters outwith the control of Reserve Constable Atkinson

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

Sir Ronnie Flanagan has been given limited participant status in this inquiry. By virtue of this status he and his representatives have not had access to all of the evidence relating to the investigation. Sir Ronnie Flanagan was not actively involved in the investigation or privy to the specific investigative strategy employed by DCS McBurney which may explain his acts and omissions. It is not the role of a Chief Constable to become involved in and

direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

As with the issue raised above concerning whether DCS McBurney should have confronted Atkinson at the first interview, there are also at least two schools of thought on the approach which ought to have been adopted with Andrea McKee.

DCS McBurney explained his strategy during the PONI interview on the 27 March 2001 (22832). He saw that the best opportunity for cracking the conspiracy was through the McKee's: "if we were to get Atkinson to court the McKee's held the key." He believed that so long as Andrea McKee was under the influence of her husband (Michael) she would not break from the conspiracy for the obvious reason that to do so would bring everyone into serious trouble, and particularly her husband.

In her oral evidence Andrea McKee confirmed that she was wedded to the conspiracy for as long as she was married to Michael McKee (page 95): "Q. It was only when you had separated from him and started and new life that you thought better of it? A. Yes."

The Inquiry may consider that there would have been nothing lost if DI Irwin had put pressure on Andrea McKee when they met in Mr. Hagan's office in 1997 by reminding her that what she was now saying was inconsistent with the fact that she was the source which brought information to the police about Tracey Clarke's knowledge of Atkinson and his activities.

Perhaps nothing would have been lost by such an approach, but what would such an approach have achieved? It is obviously the case that in order to get a case against Atkinson into court the RUC were entirely dependent upon one of his co-conspirators coming forward, telling the truth and agreeing to give evidence against Atkinson and the rest of the group in court. As Ms. McKee accepts herself this was not a likely scenario for as long as she was living under the same roof as Michael McKee.

DI Irwin offered a further insight during his oral evidence (page 77). He indicated that it was DCS McBurney's view that had Andrea McKee been pressured during the meeting in Mr. Hagan's office, "potentially he would get Andrea, but he wouldn't get the Reserve Constable" - meaning that she might implicate herself, but she would not agree to give evidence against Atkinson or the others.

Earlier in his evidence on the same issue (page 76) DI Irwin referred to the timing of any particular step to be taken in an investigation as being a "judgment decision" (sic). It is submitted that this must be correct.

Investigators will often have fine line decisions to make. The decisions of DCS McBurney regarding the Atkinson-McKee axis fall into this category. The Inquiry must of course subject such decisions to rigorous analysis in order to test his motivations and the veracity of his explanations.

However, while the Inquiry might consider that there was another approach open to DI Irwin and DCS McBurney in their investigation of Atkinson, it appears safe to conclude that he could not have been placed before a court unless one of his co-conspirators agreed to testify against him. For that strategy to succeed it required a patient and painstaking approach. It would appear that DCS MCBurney recognised this.

- 6 The matter was then not advanced until June 2000. Some further investigations could have been conducted in that period, such as about Mr Hanvey's jacket and the recollections of those who attended Tracey McAlpine's party. The Panel will no doubt consider whether they could and should have been.

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

The investigation continued to be extraordinarily dilatory after Andrea McKee made her false statement. Kenneth and Elizabeth Hanvey were not interviewed until 25th November 1997, and the report on the neglect complaint was not submitted to the DPP until 22nd December 1997 (2.16). The report itself was misleading in many respects, as the Inquiry team's analysis shows (ibid).

No attempt was made to break Allister Hanvey's alibi by interviewing the party-goers, there was no investigation of Thomas Hanvey's false alibi for RC Atkinson, and no attempt to clarify which jacket Allister Hanvey had been wearing on the night of the assault and whether it had been destroyed. We believe that DCS McBurney deliberately neglected to pursue these matters because of his desire to protect RC Atkinson.

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

The alternative strategy, including the further investigative steps of the coat, ATM, and taxi, were completed by K and his team. The evidence collected could not sustain a prosecution against Atkinson and others. It was in fact the strategy of DCS McBurney in foreseeing, rightly, a possible breakthrough with one of the conspirators which would have resulted in a potentially successful prosecution, were it not for the decision of the DPP not to put Andrea McKee forward as a credible witness.

We have already commented about the likelihood of anybody at the McAlpine party giving any evidence against Hanvey.

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

This issue was outwith the control of Reserve Constable Atkinson

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

Sir Ronnie Flanagan has been given limited participant status in this inquiry. By virtue of this status he and his representatives have not had access to all of the evidence relating to the investigation. Sir Ronnie Flanagan was not actively involved in the investigation or privy to the specific investigative strategy employed by DCS McBurney which may explain his acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

The PSNI accept that all relevant investigations which can meaningfully advance an investigation should be carried out. The timing of particular investigations might well be a judgment call for investigators to make.

In the context of building a case against Robert Atkinson it is difficult to see how investigating the recollections of those who attended the party in relation to either Hanvey's presence or his clothing could have substantially advanced that case. The police were already in possession of information (since shortly after the assault on Mr. Hamill) which contradicted Hanvey's assertion that he was wearing a black CAT jacket eg. the evidence of Res. Con. Paul Warnock and the evidence of Jonathan Wright.

More fruitfully perhaps, DCS McBurney ought to have given greater thought to how he could disprove the assertion that the McKees stayed over in the Atkinsons house on the 27 April 1997. This was certainly an investigative line which was open to him and would have independently established that the alibi was false.

It is suggested, however, that it is probable that McBurney realised that unless he had a witness from within the conspiracy to advance a prosecution by giving evidence against Atkinson, there would not be substantial progress. To this extent it might be argued that the investigators became somewhat complacent. More probably, however, there is very little doubt that in the nature of his busy role as a senior detective, McBurney would have faced new and pressing priorities eating into his time, and that he simply moved on with those while waiting the opportunity to revisit the McKees.

- 7 There appears to have been a failure to take steps to investigate the tip-off allegation with due diligence in all the above respects, and both DCS McBurney and DI Irwin have the responsibility for that. The Panel will wish

to consider whether the desire to protect Tracey Clarke with a view to her giving evidence in the murder justified that failure.

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

We do not believe that the over-riding concern was to protect Tracey Clarke. Both Allister Hanvey and RC Atkinson knew that she had been to the police. Both she and Timothy Jameson withdrew their statements in October 1997, and DCS McBurney's failure to act against Atkinson (instead, specifically warning him in September 1997), created the vacuum in which pressure could be put on both witnesses by the local community to resile from their statements. In our opinion, the over-riding concern was to protect RC Atkinson. No other explanation fits the catalogue of poor policing that DCS McBurney's two investigations (the complaint and the murder) represents.

DI Michael Irwin insists that he was not completely aware of what his superior, DCS Maynard McBurney's strategy was in dealing with the conspiracy allegation, but he felt that McBurney knew what he was doing (3.115). He also says that he had no responsibility for the enquiries and was merely the office manager (2.63). As we have remarked elsewhere, DI Irwin gave his evidence after the unfortunate death of DCS McBurney, and it difficult to resist the sense that he was deeply unwilling to accept any responsibility for the investigations

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

We do not agree that there was a lack of due diligence. If there was any omission on the part of DCS McBurney, which was motivated by a desire to protect Tracey Clarke with a view to her giving evidence in the murder, that was justifiable in the circumstances.

Submissions by Gus Campbell Solicitors (Marc Hobson)

Whilst this was a decision that rested with the PPS the RUC's actions or inactions clearly dictated the assessment that the PPS could or did employ regarding the tip off allegation file. The RUC failed in its due diligence to properly inform the PPS as to the true position of one of the main police witnesses in the murder file to the extent that the murder file was submitted before the Atkinson collusion file, there were evidential shortcomings which must question the due diligence of DI . Irwin and DCS.McBurney and their possible investigative failures on the Atkinson collusion file. Senior officers within the RUC up to the Chief Constable and in complaints and discipline did not press for oversight of this investigation or at the very least seek to consider to suspend the officer involved in the allegation.

It could be said therefore that the sensitivities from document 39453 were given effect by the inadequacies of the police investigation and oversight of the Atkinson allegation and when considered by the AG and DPP it was

viewed that the conviction of Hobson may prove unsafe, from briefing notes dated 30th October 2000 (pt 2.38).

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

The investigation of the wrongful allegation was a matter in which Robert Atkinson had no input.

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

Sir Ronnie Flanagan has been given limited participant status in this inquiry. By virtue of this status he and his representatives have not had access to all of the evidence relating to the investigation. Sir Ronnie Flanagan was not actively involved in the investigation or privy to the specific investigative strategy employed by DCS McBurney which may explain his acts and omissions. It is not the role of a Chief Constable to become involved in and direct the investigative strategy of an investigation. The evidence presented to this Inquiry is clearly that if Sir Ronnie Flanagan was aware that there was a potential line of investigation open then his view was that it should be pursued rigorously and without compunction.

Submissions by the Police Service of Northern Ireland

For the reasons set out above the allegation that there was a failure to take steps to investigate the tip-off allegation with due diligence is not accepted. It is submitted that just because other steps or strategies were open to DCS McBurney and DI Irwin and not taken, does not call into question the diligence of their approach.

It is of course legitimate to scrutinise their approach. By scrutinising their approach it may be seen that there were options available to them which were not taken. McBurney could have launched an investigation into Atkinson by arresting him as soon as he had a telephone record seeming to corroborate Tracey Clarke's allegation, but he didn't. He could have pressed the issue with Atkinson on the 9 September 1997 but he didn't. Irwin could have called Andrea McKee's honesty into question when he met her in Mr. Hagan's office but he didn't.

It is submitted, however, that investigators are quite entitled to reject tactics which might seem efficacious to the outsider but which the investigator's experience tells him is a blind alley, or is likely to be damaging to the investigation in the longer run.

If the Inquiry accepts that delaying the launch of the investigation into Atkinson's conduct was influenced by a concern to protect Tracey Clarke and to safeguard the murder investigation, it is submitted that it will have no difficulty in finding that this was justified.

If the Inquiry accepts that at the interview on the 9 September 1997 DCS McBurney had a plan to trigger a reaction from Atkinson and to obtain the

record of the telephone account from the suspect himself, it is submitted that the Inquiry will again conclude that these were prudent and justifiable policing decisions.

Lastly, if the Inquiry accepts that DCS McBurney had a genuine determination not to "burn bridges" with Andrea McKee in the hope that more favourable circumstances would permit police to use her as a witness in the future, then it is submitted that the Inquiry will accept that this was a legitimate consideration albeit one that would involve police adopting a wait and see approach.

This strategy which in 1997 placed Andrea McKee at the centre of future police action against Atkinson, but which depended upon her separating from her husband, has been the subject of much debate and DI Irwin was subjected to particular challenge about it (see day 61, page 136).

If, as has been suggested, DCS McBurney wished to bury any prospect of a prosecution against Atkinson (day 61, page 136 line 16-19), consideration has to be given as to why DI Irwin should wish to reinvigorate the investigation by noting on the 19 October 1999 the separation and movements of Andrea McKee and Michael McKee, and by informing DCS McBurney (02395). It is submitted that this note proves that the investigation of Atkinson had never been buried, but always awaited the fresh impetus of a development which could usefully be advanced to prise open the conspiracy.

It is submitted that no persuasive reasons have been put forward to undermine the veracity of any of the explanations put forward by DCS McBurney (and DI Irwin) in respect any of their investigative decisions or strategies.

Submissions by Russell, Jones & Walker Solicitors (Michael Irwin)

It is submitted that it is clear that DCS McBurney did not involve Michael Irwin in the strategy regarding the tip off allegation. Michael Irwin was helping to run the murder investigation, understanding that the ICPC was supervising the tip off allegation. As it turned out, DCS McBurney was treating the tip off allegation as forming part of the complaint file. Michael Irwin was not party to this decision in any way. DCS McBurney had his own strategy from the start regarding the Atkinson tip off and at no stage made Michael Irwin privy to that strategy. Michael Irwin would not question DCS McBurney's strategy, although he was concerned enough to make sure that when interviewing Andrea McKee at solicitor Sean Hagan's office, that he checked that DCS McBurney did not want the interview to be under caution. Michael Irwin drew Andrea McKee's attention to the declaration at the start of her statement and was never given any reason to believe that the solicitor present, Sean Hagan, was not in fact Andrea McKee's solicitor at that time. Please refer to the evidence of Andrea McKee at page 185.

Evidence in support of Michael Irwin and his actions in taking the controversial statement from Andrea McKee comes from a number of sources. Chris Mehaffey, following an extensive PONI investigation decided that Michael Irwin took "... Andrea McKee's statement only because he was ordered to." ACC Raymond White said that he would have expected Michael Irwin to follow DCS McBurney's orders. Colin Murray provided an updated report and revised his view on Michael Irwin, now not criticising Michael Irwin at all. Colin Murray says that Michael Irwin was a good Detective Inspector, very thorough, very diligent, very active. He says that Michael Irwin was the driving force behind the investigation and that he tried to bring the investigation to a satisfactory conclusion and that there was not much more that Michael Irwin could do.

- 8 Further, those detectives should have been subject to oversight by the Complaints and Discipline officers, namely CI Bradley and Superintendent Anderson. The Panel may need to determine whether they acted with due diligence. The Panel may wish to consider whether the ACC's, Deputy Chief Constable Blair Wallace and the Chief Constable should have pressed for action.

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

ACC Raymond White said it all when he said in his statement, "no one was in a position to second guess an SIO. They were given freedom to conduct investigations and be accountable. The crime file that resulted would be documentation on which the SIO's professionalism and standard of work would be based. No one would review his day to day working standard." (3.29)

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

Unfortunately due to the untimely death of Mr Anderson, the Panel has not had the opportunity of hearing Mr Anderson.

The neglect complaint and the tip-off complaint were the subject of criminal investigations. These criminal investigations had primacy over internal discipline investigation. The internal disciplinary action would not be reported upon until the criminal investigation was fully completed and a decision about any criminal proceedings taken-see Para 11 Richard Bradley's Inquiry Statement.

We do not accept that there was any lack of oversight by C&D officers or that there was any lack of due diligence.

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

Sir Ronnie Flanagan was of the opinion that the investigation was being conducted by an experienced Detective Chief Superintendent who was being supervised by an experienced member of the ICPC. The matter had been

referred to the ICPC pursuant to Article 8 of the Police (NI) Order 1987. Sir Ronnie Flanagan did not understand there to be any restriction upon their terms of reference. That there was an issue regarding the ICPC investigation was not brought to Sir Ronnie's attention and had it been he would have had no hesitation in ensuring that the ICPC were to supervise the tipping off allegation. DCS McBurney was being supervised by his regional Assistant Chief Constable in whom Sir Ronnie had confidence. The Complaints and Discipline Department had appointed an officer to and were involved in the supervision of the investigation.

There is no evidence to suggest that Sir Ronnie Flanagan was made aware of any due diligence issues upon which he should have acted but did not. On the occasions that concerns were raised with him he acted immediately and decisively to ensure that the investigation could progress, was transparent and would enjoy public confidence. This is evidenced by his appointment of Colville Stewart following reservations expressed on behalf of the Police Ombudsman's office and his intervention to ensure that the appropriate surveillance equipment was purchased for the investigation (14633). Mr David Wood comments that Sir Ronnie took the PONI complaints seriously, was proactively cooperative and could not have done any more (p. 150).

Whilst Sir Ronnie has no personal recollection of any briefing by ACC Hall on the 12th May 1997 it is clear from ACC Hall's evidence that the information he provided included that the ICPC were supervising the issue (p. 32). ACC Hall was at that stage aware there was to be a major strategy meeting between the investigating officers and ICPC later that afternoon. ACC Hall had telephoned Mr Murnaghan of the ICPC to confirm that he was aware of the tipping off allegation (p. 38) and it was included in his remit.

Aside from the occasions on which Sir Ronnie Flanagan became personally involved there is no evidence to suggest that he was on notice of any issue that required his personal input by way of 'pressing for action' or otherwise. The evidence to the Inquiry suggests that had he been made aware of any issue on which he could assist he would have acted immediately and decisively.

Submissions by the Police Service of Northern Ireland

Superintendent Anderson attended meetings which were convened by DCS McBurney on both the 12 and 19 May 1997. At each of these meetings the information provided by Tracey Clarke concerning the conduct of Atkinson was discussed. Mr. Anderson has claimed that he was unaware of this issue and that DCS McBurney did not discuss it with him (Para 9 of his statement). Whether or not Mr. Anderson remained at these meetings for their duration it seems scarcely conceivable that he wasn't appraised of the issue by DCS McBurney at some point either before or after the meetings.

It is also clear that DCS McBurney had referred the matter of the allegation against Atkinson to Mr. Hall and that it was discussed with senior officers at an ops meeting at Police Headquarters on the 12 May 1997.

Based on these factors it would be surprising if Complaints and Discipline were unaware of the issue at the earliest possible stage. If they were so informed, normal procedure would have dictated that Res. Con. Atkinson would have been served with a 17/3 to cover the tipping off complaint. It would appear that service of a 17/3 can be deferred if it could have the effect of undermining a criminal investigation. However, it is not clear that this was the reason why a 17/3 was not served on Atkinson but it might well have been a consideration.

Nor, is it satisfactory to suggest as CI Bradley did that a 17/3 wasn't served because it was an allegation based on hearsay. He articulated this in his oral evidence (p 91) by saying that "there was no substance whatsoever to the allegation from the outset." If this was the case it is unclear why CI Bradley saw any need to raise the alleged tip off at all when he interviewed Atkinson for disciplinary purposes on the 7 February 2000 (61216).

Ultimately, it is accepted that the RUC ought to have taken a more proactive approach to the discipline aspect of this case. The failure to serve a 17/3 creates the false impression that the organisation was not concerned about the serious allegations which were made about Atkinson.

However, the probability is that an assumption had been made by senior officers - including CI Bradley (see page 92) - that this was a matter which would be investigated thoroughly by DCS McBurney in tandem with the ICPC. It was probably believed that if there was substance to the complaint they would bottom it out together. The reasonableness of this assumption is discussed below (at 9).

It was upon this assumption that the case fell between a gap formed by the relative inactivity of the ICPC and Complaints and Discipline. This had the consequence of allowing the investigation led by DCS McBurney to proceed unsupervised.

Would a different outcome have materialised even if Complaints and Discipline had taken a closer interest in the Atkinson issue from the outset?

It is submitted that as McBurney's investigation was unable at that stage to present a viable case to the DPP for a criminal prosecution, the outcome to the disciplinary process would have remained unaltered..

- 9 The knowledge of the tip-off extended upwards to the Chief Constable by 12 May 1997. It appears that no officer senior to Mr McBurney took any interest in it until mid 2000. Considerable evidence was led to the effect that senior officers believed that the ICPC was supervising, so they did not need to take any closer interest. In fact, as Mr McBurney knew, the ICPC was not supervising that part of the investigation. Nor, as a matter of law, could it

have been without a referral. The Panel may wish to consider whether the RUC as a whole failed to act with due diligence over the tip-off.

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

It is quite obvious that DCS McBurney was able to manipulate a system which contained no checks or balances. It is scandalous that DCS McBurney's superiors, from the Chief Constable down, assumed that the ICPC was investigating the Atkinson allegation, and that not one of them bothered to check that that was in fact the case. However, ACC Raymond White's description of the culture within the RUC at the time is wholly accurate.

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

The investigation of the tip-off was not a top down process. A very senior experienced detective chief superintendent was appointed to lead both the murder and neglect complaints. The neglect complaint and investigation was being supervised, along with the tip-off allegation to September 1997, by Mr Murnaghan, a respected man of integrity and independence. These senior police were entitled to rely on the experience and commitment of DCS McBurney as an investigator, and the fact that C&D and the ICPC were supervising him. He was known to be an exceptionally experienced detective, who was given freedom to conduct investigations-see Raymond White at 3.29 above.

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

It is our submission that a referral had been made in this matter pursuant to Article 8 of the Police (Northern Ireland) Order 1987. The evidence supporting this is

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

There was no necessity for the ICPC to accept this Article 8 referral as they were bound to supervise it. There were no restrictions upon the terms of this referral and Sir Ronnie Flanagan would have been surprised if restrictions had been suggested. There was de facto supervision of the allegations until

September 1997 and there is no evidence that ACC Hall was informed that the ICPC had in effect changed its position in this regard. It is not correct to say that the fact of ICPC supervision led senior officers not to take a closer interest. There is no evidence Sir Ronnie Flanagan failed to act or was on notice that there were any issues that required his 'closer attention'.

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

It is important to contextualise Sir Ronnie Flanagan's position in and around 1997 and onwards. He was at that time the Chief Constable to one of the largest police forces in the world. The number of serving officers was in the order of 15,000. This was a police force which by necessity had become quasi militarised by virtue of its position as the frontline defence against terrorism. Despite the peace process in Northern Ireland, it remained a deeply divided country and a very dangerous place. The risk to both sides of the community remained high. This was only too well illustrated by the Omagh bomb in which killed 29 people on 15th August 1998. There had been a general election in May 1997 and the Drumcree parade tension had commenced.

One of Sir Ronnie Flanagan's stated priorities on being appointed as Chief Constable was to rebuild trust and confidence particularly between the nationalist community and the RUC. However he continued to have to deal with national and province wide issues not least the threat of terrorism generally and the peace process. The IRA ceasefire broke down in February 1996 and Constables Graham and Johnston were murdered as they walked the beat in Lurgan in July 1997.

Submissions by the Police Service of Northern Ireland

It is respectfully submitted that to say that no officer senior to Mr. McBurney took any interest in the matter until June 2000 stretches a point.

The matter was of interest to Mr. Hall. He made a journal entry about it (74321). It was an important issue. He reported the matter on the 12 May 1997 to the ops meeting at force headquarters, attended by the Chief Constable amongst others. He had no specific recollection of what those attending the meeting said about the claims which had been made against Atkinson but he was sure that they were of a view that such behaviour "could

not be tolerated and required rigorous investigation (page 32)." He said that those attending the meeting, however, were satisfied that the matter was "in the hands of the ICPC as part of the overall supervision of the circumstances touching upon the death of the late Robert Hamill (page 32)."

Therefore, rather than being disinterested in the issue the better view of the evidence is that senior police believed that the matter was the subject of scrutiny through the usual channels.

As it transpired the ICPC were not supervising an investigation into the "tip off." Mr. Hall was not the only senior officer to be surprised by this. Even the Chief Constable demonstrated by his evidence that he was wrong footed: (page 192/193).

However, it is submitted that given that the ICPC were already supervising the "neglect complaint" it was reasonable for these senior officers to have assumed that the ICPC would also supervise the Atkinson "tipping off" allegation. Support for this position is found in the second statement of Mr. Paul Donnelly, who was the Chairman of the ICPC for three years.

At paragraph 10 of this statement he commented upon what he saw as the possible factual connection between an allegation that officers remained in the land rover during the assault, and the allegation that an officer might be minded to assist an offender. Mr. Donnelly saw an overlap between the two which led him to the view that the "neglect" complaint and the "tip-off" complaint were part of a continuum which for supervisory purposes would be best examined together.

At paragraph 3 he confirmed his thinking and explained that he thought the assumption by senior police was entirely understandable:

"I can understand why senior police officers were of the view that the Atkinson allegation was linked to the original complaint referred to the Commission and that they thought it was being supervised. It was reasonable on the senior police officers behalf to have expected the linking of the Atkinson allegation because the practice was quite normal."

It has been suggested above that the assumption of the senior officers was invalid because as a matter of law the ICPC could not have looked at the Atkinson issue without a referral. However, it is Mr. Donnelly's view that this is an overly restrictive interpretation and one which is inconsistent with what the practice was.

At paragraph 4 of his second statement Mr. Donnelly was asked to look at the options which were available to Mr. Murnaghan at the time of his supervision of the neglect complaint, once he was informed of the Atkinson issues. At 4(a) Mr. Donnelly explained that Mr. Murnaghan could have simply expanded the remit of his investigation without a new referral. He explained that this would have been "the normal way to proceed in the absence of any objection from the police service."

Later at paragraph 4(d) he explained:

"d. Should Mr. Murnaghan have done nothing until the RUC came to him with a referral? This could be argued as a strict interpretation of the statutory boundaries, but in terms of ethical consideration I don't think it was the right or a defensible position to adopt. There was almost a tacit invitation from the police to supervise the allegation. If I had known that we were not supervising the Atkinson allegation I would have gone to the Chief Constable to impress upon him the public interest benefit of extending the referral. If he did not share that view I could have gone to the Secretary of State and advised that they refer the matter to the ICPC, or signalled a move toward Judicial Review, as once we did with a previous Chief Constable. All that being said, I am convinced that the Commission supervising and directing an "extended" investigation would have met with no resistance from the police."

It is submitted that Mr. Donnelly's analysis is absolutely correct. It was entirely understandable that the senior echelons of the RUC should have assumed that ICPC had supervisory carriage of the allegations which had been raised about the conduct of Res. Con. Atkinson. Mr. Murnaghan should have been supervising DCS McBurney in his investigation of the Atkinson "complaint" but inexplicably failed to do so. The linkage between the complaint which he was supervising and the Atkinson issues was such that it would have been a formality for him to have broadened his remit. It would not have required a new referral.

In the circumstances it is submitted that there is no basis for the contention that the RUC as a whole failed to act with due diligence over the tip-off. When the Chief Constable discovered that the matter had not been the subject of ICPC supervision he immediately took steps (on 21 June 2000) to remedy a problem which was not of the RUC's making.

- 10 The Panel may also need to determine whether the re-interview of Andrea McKee in June 2000 was prompted by Mr McBurney or by Sir Ronnie Flanagan. Their evidence is in conflict over that. If it was indeed by Sir Ronnie then the Panel will no doubt consider why he did not do so before, and what it was that prompted him to press for the re-interview when he did.

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

We doubt that the Chief Constable would take responsibility for something he did not do

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

The evidence of Sir Ronnie Flanagan is as follows, p199...

"Q. Let me just give you a bit of context here. What we 21 understand is that Mr McBurney went to see Andrea McKee

22 in Wales in June. The only reason he did that -- there
23 were two reasons for that.
24 Firstly, there was a long-view strategy that at some
25 point the McKees would break up and that he might be

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1 able to get into this conspiracy by getting her to admit
2 her part in it.
3 Secondly, they, having broken up and there being --
4 they, having broken up, this was the chance to go see
5 her.
6 A. That's exactly the brief that Maynard McBurney gave to
7 me. At that time, having received that briefing,
8 I remember contacting the Director of Public
9 Prosecutions, and I think you earlier referred me to
10 a note that the director made about that contact.
11 I also contacted the ICPC to ensure that they supervised
12 what McBurney was going to do, having consulted the
13 Director of Public Prosecutions.
14 Q. Again, that's entirely consistent, if I may so, with the
15 evidence we have heard. The difficulty I have with this
16 is that this sentence puts it the other way round. Look
17 at the second sentence in the paragraph 7 again:
18 "The chief constable said that when the coroner had
19 given [whatever it was] to Robert Hamill's family
20 solicitors, he himself had 'pushed and pushed' and the
21 re-interview of Mrs McKee followed directly from that."
22 A. I cannot understand what he is noting there. I certainly
23 pushed and pushed, having been given the briefing by the
24 late Maynard McBurney.
25 Q. Does it follow from that then, that as far as you were

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1 concerned, there was nothing going on live in that part
2 of the investigation until Mr McBurney came to you and
3 said, "I have been to see her and she's cracked"?
4 A. My understanding -- no, sorry, he came to me before he
5 went to see her.
6 Q. Right.
7 A. I was pushing and pushing then, "You must make
8 arrangements. Go and see her now. But, before you do,
9 discuss the strategy with the director. Should she be
10 treated as a suspect? Should she be treated as
11 a witness?"
12 So his briefing to me was before he travelled to
13 interview her.

This confirms that DCS McBurney initiated or prompted the re-interviewing of Andrea McKee, and this was encouraged by the Chief Constable.

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

The Panel may also wish to determine whether the decision to re-interview Andrea McKee in June 2000 was influenced by pressure upon the police service which resulted in an approach orientated to satisfy public pressure.

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

There is no evidence that any delay in interviewing Andrea McKee can be attributed to an act or omission of Sir Ronnie Flanagan. DCS McBurney approached him prior to travelling to Wales to re-interview Andrea McKee on the 20th June 2000. Sir Ronnie Flanagan took immediate action; he met the ICPC on the 21st June 2000 and contacted the DPP on 22 June 2000 (18977) to arrange a point of contact. The notes of xxxxx xx following a meeting with Sir Ronnie on the 9th June 2000 do not mention the potential re-interview of Andrea McKee, (see notes 39623). This suggests that Sir Ronnie Flanagan had not been informed by DCS McBurney about Andrea McKee at that stage.

Submissions by the Police Service of Northern Ireland

The materials show that DCS McBurney was influenced by the separation of the McKees, the return of Mr. Michael McKee to Northern Ireland and the decision of the Coroner to refuse to hold an Inquest, and that it was his decision based on those factors to go to Wrexham (on the 20 June 2000) to interview Andrea McKee: see 22803 and 22834, and Para. 99 of McBurney's Inquiry statement at page 80816.

Sir Ronnie Flanagan gave evidence (page 200-1) that when DCS McBurney briefed him about developments in the case he told DCS McBurney, "you must make arrangements. Go and see her now." He also recalled advising DCS McBurney to seek advice from the DPP before doing so, to see whether she should be treated as a suspect or a witness.

There is no date for this meeting and apparently no record of it. However, even in the absence of Mr. McBurney's input it is not impossible to reconcile the two accounts.

If, as seems likely, DCS McBurney wanted to brief the Chief Constable about developments in this case there is no reason to doubt that the Chief Constable would express enthusiasm for a proposal that McBurney should visit McKee in Wales. After all this presented a new opportunity to advance an important and controversial case which had gone stale.

It is entirely to be expected that the Chief Constable would want to see an urgent and aggressive exploitation of this investigative opportunity. In that respect there appears to be no difference between his position and that of McBurney. However, his interest in the proposal may have created a belief in

his own mind that he had ownership of the idea. This would appear to be a mistake on his part.

To the extent that the Inquiry feel the need to resolve this issue it is submitted that there is no doubt that the Chief Constable would have been a cheerleader for the plan and he might well have told McBurney to make the arrangements and get on with it, but it seems clear from a number of sources that the better view of the evidence is that the decision to visit McKee in Wales was McBurney's from the outset.

- 11 The steps taken by the RUC from June 2000 onwards have not been the subject of any criticism. A viable case was presented to the DPP, and when the DPP asked for further work to be done it was conducted with great thoroughness.

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

This is not an accurate portrayal of the post June 2000 situation.

On 25th October 2000 Andrea McKee was interviewed without the benefit of legal advice and without being cautioned (3.205). This was a very risky enterprise because if she had changed her story under caution then the case against RC Atkinson would have collapsed.

On 8th November 2000, Dean Hagan was interviewed about his advice to Andrea McKee. He said that he would need to check a number of matters (2.43). There appears to have been no follow-up by the RUC.

On 23rd May 2001, a crime file was sent to the DPP recommending that Andrea McKee be prosecuted. No mention was made of Michael McKee (2.68)

The RUC were asked by the DPP to look into Andrea McKee's failure to turn up at the committal hearing. The picture adopted by the DPP (please see module 18) was distorted. On 27th January Officer J visited Andrea McKee about the threatening letter she had received. He says that the police suggested that she move house. She was adamant that she did not want to leave, and was still determined to give evidence (3.54). Andrea McKee's solicitor, Catherine Jagger, was convinced that her recantation of the false alibi was genuine (3.71), as was officer P5 (3.185), who confirmed that she was not offered any inducements (3.183). Officer H believed she was a willing witness and that she had only lied when she gave the false alibi (3.105). Patricia Murphy said the overall impression she had was that Andrea McKee did not attend the hearing was not because she did not want to give evidence, but because her son was sick (3.121) and that she believed her (3.132). John Munn, head of Witness Protection, said there was no suggestion whatsoever that Andrea McKee would not give evidence unless she received a new house (3.139). Somehow, the DPP was left with the

impression that Andrea McKee was completely lacking in credibility, had sought to benefit from having received a threatening letter, and had lied about her son's illness, none of which is true. The RUC knew that it was not true (with the exception of her son's illness, where insufficient enquiries were carried out to establish the truth – 3.195), but do not appear to have put the record straight. We believe that DCS Burney wanted the Atkinson trial to collapse, and may have deliberately misled the DPP in this matter.

On 14th May 2005, PONI wrote to the Chief Constable a very critical letter, in which they openly accused the RUC of seeking to stave off a public inquiry into Robert Hamill's case (2.85).

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

We point out that the only reason why a "viable" case was capable of being presented to the DPP, was because of the strategy of DCS McBurney.

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

Detective Chief Superintendent Maynard McBurney

1. "Whether dost thou profess thyself, a knave or a fool?" Count Lafew asked the Clown in All's Well That Ends Well. The Clown professed to be either, depending on the master he was serving. So it was with Detective Chief Superintendent McBurney who has sought to present to this Inquiry the countenance of a fool in his explanation for his conduct of that part of the investigation concerning the allegations against Reserve Constable Atkinson.
2. The role of the fool of course is perhaps in life as well as in literature a most convenient and effective disguise for those whose conduct is motivated by bad faith rather than well intentioned incompetence.
3. The family of Robert Hamill submits that the investigation of the murder of Robert was fatally compromised by a series of actions or omissions, which can be directly attributed to this police officer in his conduct of the investigation of the allegation made by Tracy Clarke, that Reserve Constable Atkinson had been assisting Alastair Hanvey escape the consequences of his part in the murder of Robert Hamill. The family contends that Detective Superintendent McBurney deliberately and knowingly managed and directed the investigation in 1997 in such a way that Atkinson would be shielded from prosecution for his overtly criminal conduct.
4. The Inquiry has commissioned and received a report from Colin Murray, an independent expert, in relation to all aspects of the RUC handling of the investigation of this murder. That report has now been placed in evidence before the Inquiry by Mr Murray who appeared before it on 21st and 22nd of September 2009. Sections 20 through to 25 inclusive are as comprehensive and detailed an analysis of the papers contained within the core bundle as one could expect so we do not intend to repeat the exercise.

Mr Murray was severely critical of the conduct of the murder investigation led by Detective Chief Superintendent McBurney in a number of respects and concluded that the only rational explanation for the manner in which the investigation was conducted was that Mr McBurney had deliberately protected Reserve Constable Atkinson from prosecution for his criminal behaviour. The most likely explanation for this was a misguided belief that it would preserve the good name of the RUC. We seek to adopt the thrust of this analysis and the conclusions as stated in his report.

5. Mr Murray however, in a written note to the solicitor to the Inquiry made available shortly before he gave evidence, has revised the conclusion expressed in his report that DCS McBurney was guilty of “criminal negligence”. He explained, when being questioned by Mr Adair QC that he meant that term to convey a deliberate intention to mislead. In view of the high esteem in which the late Mr McBurney was clearly held he felt he ought to alter his conclusion to one of simple negligence. He said in evidence that he was influenced in particular in this regard by the evidence of Sir Ronnie Flanagan who was effusive in his praise of the honesty, integrity and commitment of DCS McBurney who, he said, was tenacious, hardworking and had not a trace of sectarianism in his body.(1) Mr Murray has also said that he was influenced to revise his view by the evidence of Inspector Irwin, “who reflected on the strategy that Mr McBurney was playing”(2) Mr Murray clarified that the references in his note to Ms Kemish concerning the consideration by the RUC of the safety of Tracy Clarke (3) and the apparent reluctance of telephone companies to allow their disclosures to be used in interrogation(4) , did not in fact affect his view as to the reasons for Mr McBurney’s conduct.

6. We do not seek to challenge the fact of the formidable reputation enjoyed by DCS McBurney about which evidence has been given by the former Chief Constable, Sir Ronnie Flanagan and other witnesses, usually following a well placed question from Mr O’ Hare or Mr Adair QC. The Inquiry may of course take his reputation amongst his peers into account but it should do so with caution. We say, with respect, that it must be upon the actions taken DCS M Burney in this case and this case alone that such judgements should be made.

7. Looking at the evidence of Inspector Irwin, he has expressed his belief that DCS McBurney was following a “wait and see” strategy right up to the time that the Coroner made the decision not to hold an inquest in June 2000. We have no doubt that is what he was told but it must have been obvious to this officer that the actual conduct of DCS McBurney was inconsistent with a desire to bring Reserve Constable Atkinson to justice. We further submit that Inspector Irwin has a vested interest in expressing such a belief for he, by his own conduct, is directly associated with this so called strategy. While he expressed his misgivings to DCS McBurney about the taking of the Andrea McKee alibi statement on 27th October 1997 he still took the statement, albeit following a specific direction from his superior officer. Moreover, although it was McBurney who authored the section of the neglect file submitted to the DPP that dealt with Atkinson, Irwin assisted him

prepare it and was very much associated with it. In fact he accepted to Mr Adair QC that he was “substantially involved” with the report.(5)

8. It is clear from the evidence of Inspector Irwin that the entire strategy concerning the investigation of the allegation against Atkinson and of the telephone alibi put forward by him was attributable to DCS McBurney.(6) He has pointed to the expression of scepticism in the report on the part of the police as to the truth of the alibi as evidence that the matter was still under investigation. He refused to accept however that the language of the report suggested to the reader that the police were of the view that the matter could be taken no further. It is a matter for the Panel whether or not the language of the report was misleading. We strongly submit that it was. The relevant part of the report is to be found between paragraphs 125 through to 135.(7) The final paragraph is particularly misleading and, we submit, was intended to be so. If the Panel has any doubt about that then it only has to consider the actions of the police thereafter. There was nothing to be lost by simply confronting Andrea McKee there and then. She has said in evidence that she would have buckled had this been done.(8)

9. Inspector Irwin, when questioned on behalf of the family by Mr McGrory QC on September 21st and 22nd could only point to the information he passed to Mr McBurney in October 1999 that the McKees had split up as evidence that the investigation was still alive.(9) This was new information however, which Inspector Irwin was bound to pass on. He is simply unable to answer how the investigation would have been progressed had the McKees not split up. Indeed, had they not, then it would have become increasingly difficult for the police to justify a challenge to an alibi that she gave years earlier. In any event, at its height, the recording and passing on of this information is only evidence that he felt it was proper to inform McBurney of any developments. Whether or not McBurney actually intended to do anything about it is another matter. Inspector Irwin told Mr McGrory QC on September 9th that the October note of the separation of the McKees indicated Mr McBurney’s intention to interview them again.(10) The document(11) reveals that McBurney told Irwin that they should both be spoken to “at an opportune time regarding the Coroner’s inquest”. The Panel will have to decide if this is an appropriate response by DCS McBurney to the news that the McKees had now separated and that one was in xxxx and the other in Wales.

10. In the absence of any written record or indeed any indication of a “wait and see” strategy involving the possible separation of the McKees, this document simply cannot be treated as evidence supportive of that contention. In fact, we submit it does the opposite. If DCS McBurney had a genuine strategy to wait for the McKees to separate, now was his chance to act. For him to tell Inspector Irwin that they would be spoken to in the context of the forthcoming inquest reveals the truth of the matter, that the last thing DCS McBurney wanted to be told was that he could now implement this strategy.

11. DCS McBurney did not in fact do anything about it. The document disclosed that Michael McKee had gone off with another woman and was

living in xxxx. When asked on September 9th why they hadn't taken steps to find him, Inspector Irwin stated that they had no idea where he was.(12) When he was asked why they couldn't have spoken to Andrea on her own he said it was preferable to have a more complete investigation.(13) The following day(14) , faced with the document he accepted that he knew he was in xxxxx and that the Garda in the Republic could have been asked to locate him and even interview him on their behalf.

12. Inspector Irwin has stated that the matter was kept under review throughout the trial process and later, pending the inquest. He has offered no valid reason however why Andrea McKee could not have been approached at any time either before or after the separation. Even if we accept, which we do not, that the influence of her husband would prevent her from being forthcoming there was no excuse for not immediately speaking to her after the separation. Inspector Irwin was quick to throw up the fact that the family had asked the Coroner not to hold an inquest almost as if to suggest that this foiled an otherwise great plan to obtain evidence from Andrea McKee. The fact that an inquest was yet to be held was neither here nor there. We submit that this witness knows perfectly well the discourse between the Coroner and the family concerning the holding of an inquest has absolutely no bearing on the inexcusable failure on the part of the RUC to follow through on their belief that the alibi put forward by Reserve Constable Atkinson was a complete fabrication from start to finish. Yet again, when challenged as to this evidence he relied on the answer that it was really all to do with DCS McBurney(15) .

13. The Panel is entitled to consider when evaluating this witness that he would be acutely aware that any admission of doubt about the existence of a strategy on his part would reveal him to have been complicit in the "cover up" by virtue of his silence. Even if, in his heart, he doubts that DCS McBurney ever really intended to pursue Atkinson, it would be difficult for him now to admit it for to do so would be tantamount to accepting that he was taken for a fool by his superior officer.

14. Mr Murray has also, significantly in our submission, questioned whether or not he was the appropriate person to be expressing a view on whether or not the "McBurney strategy" was negligent or, to use his term "criminally negligent".(16) We agree with Mr Murray entirely on this. It is perfectly appropriate for him to express a view on the effectiveness and wisdom of any strategy or methodology employed by the RUC in the conduct of any part of this investigation. It is also proper that he should express a view that any aspect of the investigation was conducted negligently, in particular if he feels that it impacted negatively on the outcome of the investigation. The question of the existence of dishonest or improper motive for any such conduct must remain for the Panel. It should not be lost on the Panel however that Mr Murray was steadfast in his evidence that the strategy employed by DCS McBurney was both incomprehensible and negligent.

15. It is our submission that no such strategy existed and that DCS McBurney personally crafted a report for the DPP that was designed to deceive and mislead those in the office of the Director of Public Prosecutions responsible for determining whether there was a case made out to prosecute Reserve Constable Atkinson for the offence of assisting offenders. Below is a sequenced timeline of the key events relevant to this analysis.

8th May 1997 DCS McBurney was appointed Senior Investigating Officer retaining overall responsibility for the investigation into the murder of Robert Hamill; The investigation into the public complaint made by Rosemary Nelson against the Land Rover crew; the allegations made against Reserve Constable Atkinson.

8th May 1997 DCS McBurney received information about Tracey Clarke, via Andrea McKee

8th May 1997 DCS McBurney received information from Reserve Constables McCaw and G regarding Timothy Jameson admitting that he had 'put the boot in'

9th May 1997 Timothy Jameson interviewed by DC Honeyford on DCS McBurney's orders

10th May 1997 Tracey Clarke made a statement. Telephone records sought. (This process may have even begun the previous day on the strength of the information from Andrea McKee)

12th May 1997 DCS McBurney met with Superintendent Hooke and the Deputy DPP to brief the Deputy in relation to the six persons charged with Robert Hamill's murder

12th May 1997 Meeting with ICPC when DCS McBurney briefed the ICPC of the incident and the investigation and Mr Murnaghan outlined his role in supervising the complaint made by Diane Hamill

13th May 1997 DCS McBurney met with the DPP. Mr Junkin, Mr Kitson, DS xxxxxx from the Crime Branch and DCI P39 were present. Medical evidence was discussed as were Tracey Clarke, Timothy Jameson and Reserve Constable Atkinson

15th May 1997 DCS McBurney and DI Irwin attended Mr Kitson's office to give Information regarding their meeting with Professor Crane

19th May 1997 By this date DCS McBurney knew the result of the request for Reserve Constable Robert Atkinson's phone billings

9th September 1997 DCS McBurney interviewed R/Con Robert Atkinson in the presence of DI Irwin and Kevin Murnaghan ICPC

19th September 1997 Decision of ICPC that it was outside its remit to continue supervising(17)

9th October 1997 Second interview of R/Con Atkinson by DCS McBurney and DI Irwin

9th October 1997 Michael McKee gave a witness statement to DCS McBurney

29th October 1997 DI Irwin took witness statement from Andrea McKee and he was ordered by DCS McBurney not to put issues to her regarding her alibi evidence

22nd December 1997 DCS McBurney submitted his report (a.k.a. the "neglect file) to DPP

22nd February 1999 Trial of Marc Hobson in which R/Con Atkinson is a Crown witness

19th October 1999 Inspector Irwin reports separation of McKees to McBurney and is told that they can be spoken to at an appropriate time in the context of the Coroner's inquest.

11th January 2000 Coroner informs family through Mr Mc Grory of the contents of the statements of Tracy Clarke and Timothy Jameson

1st June 2000 Coroner announces decision not to hold an inquest

9th June 2000 xxxxxxxx, Permanent Under Secretary to the Northern Ireland Office has a meeting with Sir Ronnie Flanagan(18)

20th June 2000 DCS McBurney travelled to Wrexham and spoke to Andrea McKee without having spoken of his intentions to the Chief Constable. He spoke to the Chief Constable upon his return and he in turn briefed the DPP

26th June 2000 DCS McBurney met with Mr Kitson, DPP

16. The family of Robert Hamill submit that Atkinson should have been immediately confronted with the telephone billing evidence and treated as a co suspect along with the principals. We will never know just what Reserve Constable Atkinson would have said about those calls to the Hanvey household had he not the opportunity between his September and October interviews to approach the McKees for help with an obviously lying explanation. It is our submission that a prudent and diligent investigator would and should have taken that course. The benefits of having someone suspected of acting as an accessory after the fact of a crime prosecuted alongside the principals have been acknowledged by a number of witnesses to this Inquiry including Mr Murray(19) .

17. Although we do not accept it, it may just be arguable that any failure in this regard on the part of DCS McBurney may have been attributable to a misjudgement on his part. It will be said on his behalf that his early conduct was not that of a man who was about the business of protecting a fellow officer. He informed the DPP and the ICPC within days of the allegation as told to the police by Tracy Clarke. He immediately sought the relevant telephone billing records and he informed his superiors who brought the matter to the attention of the Chief Constable on Monday 13th May. He even spoke to the Chief Constable twice on the day Tracy Clarke made her statement; although Sir Ronnie denies that he was told then of the "tipping off" allegation. Although there was a delay of some four months, he did arrest and caution, in September 1997, Reserve Constable Atkinson for the offence of assisting offenders as well as for other matters. He did put to Atkinson the suggestion that he had been in contact with Hanvey specifically. It may also be reasonably argued that his failure to confront Atkinson there and then in September with the telephone billing evidence paid dividends in the subsequent ill thought out and clumsy presentation by Atkinson of Michael and Andrea McKee as alibi witnesses to the phone calls, thereby opening up investigative opportunities.

18. However, it is the handling by DCS McBurney of the presentation of an alibi which McBurney himself has accepted he never believed(20) that

betrays his true intentions. We will never know why Kevin Murnaghan of the ICPC took the view that he needn't supervise the remainder of the investigation but his decision not to do so afforded Mr McBurney the opportunity to write a report that skilfully but deliberately and dishonestly hid from view the true situation concerning the evidence against the Reserve Constable.

19. DCS McBurney regrettably died before he had the opportunity to give evidence to this Inquiry. He was however interviewed at length and the Panel has listened to the recordings of those interviews. It is our submission that he bluffed and blustered his way through the presentation of a carefully prepared but fanciful explanation for his conduct of this investigation. The Panel will have noted that many of his lengthy answers to questions were actually read from a pre prepared script he brought with him to interview. We submit that the account given was an elaborate fiction, carefully constructed from previous explanations and interviews given by him to the office of the Ombudsman when eventually asked to account for himself upon the creation of that office in November 2000.

20. That explanation stretches the credulity of even the most generous of listeners. We have heard much of the dedication and skills of this larger than life police man and we doubt none of it. When it came to the ultimate test of bringing home the prosecution of a corrupt and bigoted member of his own Force however he stumbled. If he was the man of such experience and skill attributed to him he must have cringed to hear himself spin his story to the Inquiry interviewers. The question may well be asked, why would he do it? The answer, we submit, may well lie in the unfolding of events in early 2000 beginning with the revelation by the Coroner to the family of Robert Hamill of the contents of the statement of Tracy Clarke.

21. An important pillar on which the case for arguing the existence of a long term plan to re interview Andrea McKee rests is the suggestion that the decision to visit her in Wales on 20th June 2000 was an independent one prompted only by the fact that the Inquest was not now going to occur. DCS McBurney very clearly informed the Inquiry that he had spoken to no one in advance of that visit to Wales. This is to be found at pages 181 and 182 of his Inquiry interview on 4th May 2006. We now know of course that Sir Ronnie Flanagan received a briefing from DCS McBurney sometime before he met xxxxxxxx, the Permanent Under Secretary on the 9th June and that Sir Ronnie claimed he had personally "pushed and pushed" for progress in the case.(21)

22. We address the significance of the material emanating from the Northern Ireland Office in much more detail in a later submission. Insofar as it relates to the discrete issue of the timing of the DCS McBurney briefing to his Chief Constable on the Atkinson issue is concerned however, we submit that the material and Sir Ronnie's comments on it(22) amount to incontrovertible evidence that DCS McBurney misinformed the Inquiry that he had gone to Wales on his own initiative. We respectfully submit that this could not have been a mistake but was a deception designed to support the

case he was making that he was always intending to re interview her at some point. It is of course possible that DCS McBurney had simply forgotten that he had briefed his Chief Constable prior to the latter's June 9th meeting with the Permanent Under Secretary. We submit that this is unlikely.

23. It is our very firm submission that the most likely explanation for the sudden revival of this investigation was the realisation that the cancellation of the inquest had served only to increase the interest in this case at the highest of political levels and that the deliberate attempt to protect Atkinson was about to be revealed unless urgent action was taken. That was the moment when the interests of the RUC required the exposure of Atkinson's behaviour rather than its concealment.

Detective chief Superintendent Mc Burney (References)

- (1) September 10th page 261
- (2) September 22nd page 6, line 23
- (3) September 22nd pages 7 and 8
- (4) September 22nd pages 11 and 12
- (5) September 21st page 102
- (6) September 21st page 62 lines 13 to 16. It was Mc Burney's decision not to arrest Atkinson along with other suspects named by Tracy Clarke. When it came to the taking of the alibi statement he told Mr Adair QC (page 97) that he was acting on the direction of McBurney. September 21st page 76 line 13, he went back to Mc Burney after taking the alibi statement and suggested getting a team together to break the alibi. Page 77, he said that Mc Burney came back to him to say that the time wasn't right, that he might get Andrea McKee but not the Reserve Constable.
- (7) 09079-09082
- (8) February 11th page 67 line 22 - page 68 line 11
- (9) 02395
- (10) September 9th page 133 line 18-19
- (11) 02395
- (12) September 9th page 137 line 17
- (13) Ibid page 139 lines 1-4
- (14) September 10th pages 1ff September 9th page 140
- (15) September 9th page 140
- (16) September 21st page 59
- (17) Material bundle 2720
- (18) 39623
- (19) September 22nd page 2 lines 19 - 22
- (20) Pages 159 - 162 Maynard McBurney's first Inquiry Interview
- (21) 39693
- (22) September 9th page 200 line 6 - page 201 line 14

Submissions by the Police Service of Northern Ireland

The PSNI agree with this comment. However, to the extent that the comment implies a criticism of what went before June 2000, there is disagreement (for the reasons set out above).

For the avoidance of doubt there was no support in the RUC and there is no support within the PSNI for those whose actions undermine the rule of law and corrupt the office of constable.

It was for that reason that the RUC (and subsequently the PSNI) devoted significant energies and resources into constructing a viable case against Robert Atkinson and others. From June 2000 police action has involved working closely and painstakingly with ICPC and subsequently with PONI in developing investigative lines and strategies designed to secure the objective of bringing Res. Con. Atkinson and his associates to justice.

Many hours have been spent on this work. It is hoped that the Inquiry accepts that no stone has been left unturned in this exercise. Part of that work involved the planning and utilisation of a complex arrest strategy and the use of covert surveillance. It also involved the sensitive handling of a co-conspirator (Andrea McKee) to ensure that she would co-operate by giving evidence against Atkinson at the appropriate time.

The decision to withdraw the prosecution against former Res. Con. Atkinson was one which was wholly within the prosecutorial discretion of the Public Prosecution Service. It was a decision which was entirely outside of the control of the PSNI.

The net effect of the decision, however, was that the person at the centre of the conspiracy, Mr. Atkinson, escaped justice, whereas the foot soldiers in that conspiracy (such as Andrea McKee) felt the full rigours of the law. The PSNI deeply regrets the conduct of Res. Con. Atkinson and shares the disappointment of many that its best investigative endeavours have not secured his conviction.

Potential criticisms or adverse inferences

Robert Anderson

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

Sir Ronnie Flanagan

- Failed to ensure that the ICPC was supervising the investigation into the tip-off

Allister Hanvey

- Participated in the attack on Robert Hamill
- Provided the RUC with a false account of his movements and his clothes

- Destroyed the clothing that he was wearing at the time of the attack

Michael Irwin

- Shared responsibility with Maynard McBurney and **P39** for the conduct of the investigation
- Failed to ensure that a full and thorough briefing was delivered prior to the search of the Hanvey house on 10 May 1997
- Took a witness statement from Andrea McKee, which he knew to be untrue, and allowed it to be advanced as true

Maynard McBurney

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

Andrea McKee

- Provided false information at the meeting in Seagoe
- Coerced Tracey Clarke into giving a false statement to the RUC about the murder of Robert Hamill and the tip-off allegation against Robert Atkinson
- Falsely accused Robert Atkinson of conspiring to pervert the course of justice

Blair Wallace

- Failed to ensure that consideration was given to suspending Res Con Atkinson or serving a Form 17(3) on him in relation to the tip-off allegation