

1. Introduction

- 1.1 As the appointed independent police expert for the Robert Hamill Inquiry, I have been asked to prepare a report detailing what disciplinary action the Royal Ulster Constabulary (RUC) took in 1997 in respect of the allegation of misconduct made against Reserve Constable Atkinson.
- 1.2 The alleged misconduct was reported by Tracey Clarke on 9 May 1997. She alleged that Allister Hanvey had told her that, following the assault on Robert Hamill and D on 27 April 1997, he had received a telephone call from Reserve Constable Atkinson in which the officer advised him to destroy his clothing.
- 1.3 I have been asked to examine the policy in place at the time which dealt with complaints against police and internal police investigations where police misconduct was suspected but not subject to a complaint. I have also been asked to determine, if possible, whether the then RUC had complied with the policy in place and, if not, to try to determine why that occurred.
- 1.4 I have also been asked to report on the apparent failure of the RUC to refer the investigation to the Independent Commission for Police Complaints (ICPC).

2. Methodology

- 2.1 In preparing my report I have:
 - Relied upon the papers I read when compiling my earlier report dated 8 September 2006;
 - Researched policy pertaining to the RUC when conducting discipline and criminal investigations with regard to RUC officers;
 - Researched policy pertaining to the ICPC when supervising investigations undertaken by the RUC;
 - Sought clarification from the Police Service of Northern Ireland (PSNI) with regard to police practice in 1997 when dealing with alleged misconduct by members of the RUC.
- 2.2 In preparing my report I have considered and commented upon the actions taken by Detective Chief Superintendent McBurney when investigating the alleged misconduct by Reserve Constable Atkinson.
- 2.3 It is not my intention to duplicate parts of my previous report, which covered in some detail the investigation into Reserve Constable Atkinson, but to comment upon the time line of that investigation.

3. Sequence of Events

- 3.1 On 27 April 1997 Robert Hamill and **D** were assaulted by a number of people in Portadown town centre. The RUC subsequently commenced an investigation into the assault. It is not disputed that 4 police officers from the RUC were in a marked police Land Rover in Portadown town centre at the time of the assault.
- 3.2. On 6 May 1997 [REDACTED], a solicitor acting on behalf of the family of Robert Hamill, made a written complaint to the RUC alleging inactivity by the 4 officers who had been present at the time of assault on Robert Hamill and **D**. The letter of complaint was received by the Complaints and Discipline department at Gough Barracks on 7 May 1997 (Appendix 1, page 63708).
- 3.3 Allegations were also made that, following the assault, the RUC had released a number of inaccurate and misleading press statements. However, it is not my intention to deal with that aspect in any detail.
- 3.4 On 8 May 1997 Robert Hamill died from injuries sustained during the assault on 27 April 1997. Detective Chief Superintendent McBurney was appointed as the Senior Investigating Officer to investigate the murder of Robert Hamill.
- 3.5 By a letter dated 9 May 1997, Detective Chief Superintendent McBurney was formally appointed as the Investigating Officer into the complaint of alleged inactivity by the 4 officers present during the assault (Appendix 2, pages 63711 – 63712).
- 3.6 It should be noted that point 9(c) of this letter on page 63712 refers to an extract from paragraph 44(e) of the Royal Ulster Constabulary Code Section 9 (as amended by the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) (Amendment) Regulations 1989 (Appendix 31, at pages 73569 – 73573)), and reads:

A further Form 17/3 (Caution 1) should be served as and when fresh criminal/discipline matters arise during the course of the investigation...
- 3.7 The purpose of Form 17/3 is to comply with police discipline regulations, as outlined at paragraph 6.4 of my report. The purpose of Form 17/3 from an officer's point of view is to advise the officer of the allegation or breach of discipline in order that he or she can take the opportunity to gather any evidence that may later be lost for the consideration of the investigation team, or for any subsequent discipline hearing. Failure to serve Form 17/3 within days without good reason would lead to any disciplinary investigations failing.
- 3.8 The regulations make it clear that the investigating officer has the right to delay the service of this form if in the investigating officer's opinion the service of the form

would lead to the alerting of the officer, thus leading to a loss of evidence. However, once that evidence has been secured or steps have been taken to preserve it then the form must be served as soon as reasonably practicable.

- 3.9 This extract from paragraph 44(e) makes clear what Detective Chief Superintendent McBurney should have done on learning of the alleged criminal conduct on the part of Reserve Constable Atkinson. I shall comment further at paragraph 7 of this report on the relevance of the Royal Ulster Constabulary Code Section 9.
- 3.10 In the event of a serious criminal allegation being made against an officer or a serious breach of police discipline being suspected then consideration should be given to suspending the officer from duty until the matter is resolved.
- 3.11 In my experience, suspension from duty is not a matter that is taken lightly and the Deputy Chief Constable (DCC), who would take that decision, would consider a number of matters when reaching that decision, for instance: how serious is the alleged wrong doing? Could the officer continuing to work interfere with the enquiry? An example of this may be where an officer is accused of assault and other officers are yet to provide evidence for or against the officer. Were the officer to continue to work alongside those officers then that officer could possibly influence that evidence. Even in this example, the officer subject of investigation could be moved to another part of the organisation to prevent that occurring.
- 3.12 The DCC would also have to consider the public perception of the complainant if the officer accused of a serious crime or breach of discipline is allowed to remain in post. The DCC would have to also consider that many people who are arrested make spurious complaints in an effort to tarnish the police evidence. In the case of Reserve Constable Atkinson a complaint had not been made but an allegation of alleged misconduct was brought to the attention of Detective Chief Superintendent McBurney.
- 3.13 Another issue for the DCC to consider is that the suspension of the officer is seen by many within the organisation as a sign of guilt, when clearly the officer is innocent until proven guilty.
- 3.14 In my experience any officer suspended from duty is in a very stressful situation. Serving officers are formally discouraged from contacting the suspended officer and the suspended officer is barred from entering police stations unless for formally agreed reasons such as criminal or disciplinary interview. The only formal contact the officer should have is with a nominated welfare officer. Consequently the officer will frequently feel themselves to be isolated and fearful for their career. Great difficulty is sometimes experienced in returning a suspended officer to work if he or she is exonerated of any alleged misconduct.
- 3.15 I am aware from the papers I have viewed that consideration was given to suspending Reserve Constable Atkinson following his interview on the 9th October

1997 but the fact he went on sick leave and remained so negated the need to suspend him.

- 3.16 I have previously reported that I believe Reserve Constable Atkinson should have been arrested following the allegation being made by Tracey Clarke. Had he been arrested then that may have necessitated his suspension from duty.
- 3.17 On 9th May 1997 a copy of the letter of complaint that had been received by the Complaints and Discipline Department was faxed to the ICPC for the attention of Mr Greg Mullan, the Deputy Principal of the ICPC (Appendix 3, pages 63707 to 63708). There followed a document which formally referred the complaint to the ICPC (Appendix 4, page 63699).
- 3.18 On 12 May 1997 Mr Mullan made a file note following the referral of the complaint from [REDACTED] on behalf of the Robert Hamill family. Mr Mullan identified to that referral being made under Article 7 of the Police (Northern Ireland) Order 1987 (the "Order"). The file note outlined a number of issues and referred to the following:

Notwithstanding the above, I believe it would prove useful to request the IO to contact the RUC press office for the purpose of submitting to the Commission (i) copies of all RUC Press Releases Issued, (ii) all media material relating to the incident now under investigation (Appendix 5, page 27271).

- 3.19 On 12 May 1997 Mr Mullan met [REDACTED], another ICPC member, at Portadown police station prior to meeting with Detective Chief Superintendent McBurney, Detective Chief Inspector **P39** and Superintendent Anderson. Mr Mullan later made a file note of that meeting (Appendix 6, page 27269 – 27270).
- 3.20 The file note dealt with the clarification of who was the investigating officer dealing with the complaint of alleged inactivity, namely Superintendent Anderson or Detective Chief Superintended McBurney. The file note stated how the ICPC members, Mr [REDACTED] and Mr Mullan, were briefed about the attack on Robert Hamill.

- 3.21 Page 27270 of the file note stated at the first paragraph:

It was at this juncture that Detective Chief Superintendent McBurney referred to a matter arising. During interview of Tracey Clarke the latter stated she had been talking to a person named Hanvey prior to his arrest by police. According to Ms Clarke, Mr Hanvey had boasted to her that one of the four officers at the scene (Reserve Constable Atkinson) had told him to get rid of the clothing he was wearing at the time of the assault.

Comment

It should be noted that as early as 12 May 1997 Mr Mullan and Mr [REDACTED] from the ICPC were aware of the alleged misconduct by Reserve Constable Atkinson.

This file note and its significance will be subject of further comment later in my report.

- 3.22 On 13 May 1997 Constable Neill and Reserve Constable Atkinson were each served with a Form 17/3 outlining the allegation that they had failed to act promptly when Robert Hamill was assaulted (Appendix 7 pages 61146 and 61214 – 61215).
- 3.23 It should be noted that Reserve Constable Atkinson was not additionally informed on that same Form 17/3, or another such form, that he was being investigated for alleged misconduct whereby he had allegedly advised Allister Hanvey to dispose of his clothing. That will be subject of further comment later in this report.
- 3.24 On 13 May 1997 Mr [REDACTED] wrote to Diane Hamill stating that he was supervising the investigation into the complaint made by [REDACTED] on behalf of Diane Hamill. The letter pointed out the responsibilities of the ICPC (Appendix 8, page 15262).
- 3.25 On the same date Mr Mullan wrote to the RUC to inform them that the ICPC had decided to supervise the investigation under Article 9 (1) (a) of the Order, and identified Mr [REDACTED] as the Supervising Member over the investigation (Appendix 9, page 63686).
- 3.26 Appendix 14 page 44407 identifies a memorandum from Assistant Chief Constable Hays dated 27 June 1997 which indicated that the complaint made by [REDACTED] on behalf of the family of Robert Hamill had been referred to the ICPC under Article 8 (1) of the Order. That referral had been made by the Chief Constable Sir Ronnie Flanagan prior to the receipt of the Hamill family's complaint at Gough Barracks on 7 May 1997.
- 3.27 In the absence of awareness on the part of Complaints and Discipline that the complaint had already been voluntarily referred, the ICPC undertook supervision under Article 9 (1) (a) as opposed to 9 (3) (b) Police (Northern Ireland) Order 1987.
- 3.28 On 14 May 1997 Reserve Constable Cornett was served with a Form 17/3 outlining the allegation that she had failed to act promptly when Robert Hamill was assaulted on 27 April 1997 (Appendix 10, page 61313).
- 3.29 On 15 May 1997 Mr Mullan prepared a memorandum for consideration of a meeting to take place on the 19th May 1997 between Mr [REDACTED], Detective Chief Superintendent McBurney and Superintendent Anderson (Appendix 11, pages 27253 – 27254). The stated purpose of the proposed meeting was *"to agree a*

strategy as to how best to pursue supervised investigation re the alleged inactivity of police at scene of attack on Robert Hamill".

3.30 At point 9(j), the conclusions to that memorandum stated:

Has Allister Hanvey been interviewed in relation to his alleged boast to Tracey Clarke re Reserve Constable Atkinson? What further action is proposed by the 10 re this disturbing aspect? In particular, has a record of telephone calls made from Portadown Station on 27/28 April been secured? Has consideration been given to securing a record of telephone calls emanating from Reserve Constable Atkinson's home during the same period?

Comment

It should again be noted that Mr Mullan from the ICPC took an interest in the alleged misconduct on the part of Reserve Constable Atkinson. Within the file note no mention is made that the ICPC was not supervising that aspect of the investigation.

This file note will again be subject of comment later in my report.

3.31 On 19 May 1997 a further meeting took place between Mr Mullan, Mr [REDACTED], Detective Chief Superintendent McBurney, Superintendent Anderson, Detective Chief **P39** and Detective Inspector Irwin. Mr Mullan later prepared a file note of that meeting (Appendix 12, pages 27250 – 27252).

3.32 That meeting dealt with an update of the murder investigation, the fact that 3 of the 4 officers had each been served with a Form 17/3 and the expectations of Mr [REDACTED].

3.33 The concluding part of that file note entitled 'Other Issues Raised' at point (6) stated:

IO dealing with issue of Reserve Constable Atkinson allegedly telephoning Mr Hanvey. Telephone records are in the process of being seized.

3.34 On 19 May 1997 Reserve Constable **P40** was served with a Form 17/3 outlining the allegation that he had failed to act promptly when Robert Hamill was assaulted on 27 April 1997 (Appendix 13, page 61098).

3.35 Appendix 14 page 63627 identifies a memorandum from Assistant Chief Constable Hays dated 27 June 1997 which indicated that the complaint made by [REDACTED] on behalf of the family of Robert Hamill had been referred to the ICPC under Article 8 (1) of the Order.

3.36 That referral had been made by the Chief Constable Sir Ronnie Flanagan prior to the receipt of the Hamill family's complaint at Gough Barracks on 7 May 1997.

3.37 On 8 September 1997 Constable Neill was interviewed by Detective Chief Superintendent McBurney and Detective Inspector Irwin in the presence of Mr [REDACTED] and Mr [REDACTED], a solicitor representing Constable Neill. Constable Neill was informed of the following:

OK you're going to be interviewed here today in relation to criminal neglect of duty in relation to an incident at Portadown town centre in which you were the driver...." (Appendix 15, page 9389).

3.38 Constable Neill was then cautioned and subsequently interviewed. It is not my intention to refer in detail to that interview.

3.39 On 8 September 1997 Reserve Constable **P40** was interviewed by Detective Chief Superintendent and Detective Inspector Irwin in the presence of Mr [REDACTED], the ICPC supervising member, and Mr [REDACTED], a solicitor representing Reserve Constable **P40**. Reserve Constable **P40** was informed that:

...You are being interviewed in relation to criminal neglect of duty at Portadown town centre on 27th April 1997 (Appendix 16, page 9351)

3.40 Reserve Constable **P40** was then cautioned and subsequently interviewed. Again, it is not my intention to refer in detail to that interview.

3.41 On 9 September 1997 Reserve Constable Atkinson was interviewed by Detective Chief Superintendent McBurney and Detective Inspector Irwin in the presence of Mr [REDACTED] and Mr Sean Hagan, a solicitor representing Reserve Constable Atkinson. Reserve Constable Atkinson was informed of the following:

...you're about to be interviewed in relation to criminal neglect of duty, assisting offenders and withholding information about an arrestable offence regarding an incident on the 27th April 1997 (Appendix 17, page 09476).

3.42 Reserve Constable Atkinson was then cautioned and subsequently interviewed. I have previously commented on that interview in my previous report, and I do not intend to report on it in detail here. However, it should be noted that, when later asked, Detective Chief Superintendent McBurney stated Reserve Constable Atkinson was not interviewed on 9 September 1997 for assisting offenders and withholding information since Mr [REDACTED] was not supervising that aspect of the investigation.

3.43 On 19th September 1997 in part of a file note Mr Mullen wrote, "*The investigation team intend to re-interview Const Atkinson re – his alleged involvement with Hanvey. On your behalf I advised that this aspect was outside the Commissions remit*" (Page 27209 refers).

3.44 On 2 October 1997 Reserve Constable Cornett was interviewed by Detective Chief Superintendent McBurney and Detective Inspector Irwin in the presence of Mr [REDACTED] and Mr [REDACTED], a solicitor representing Reserve Constable Cornett. Reserve Constable Cornett was informed that:

Now this interview is going to be conducted in relation to an allegation of criminal neglect of duty and it's in relation to the murder of Robert Hamill... (Appendix 18, page 09440).

3.45 Reserve Constable Cornett was cautioned and subsequently interviewed. Once more, it is not my intention to refer in detail to that interview.

3.46 On 9 October 1997 Reserve Constable Atkinson was again interviewed by Detective Chief Superintendent McBurney and Detective Inspector Irwin in the presence of Mr Hagan, a solicitor representing Reserve Constable Atkinson. Reserve Constable Atkinson was informed of the following:

What we want to continue on is from the last interview which you were cautioned in relation to criminal neglect of duty, withholding information and assisting offenders (Appendix 19, page 09541).

3.47 Reserve Constable Atkinson was cautioned and subsequently interviewed. The interview dealt with the allegation that Reserve Constable Atkinson had advised Allister Hanvey to dispose of his clothing. I have commented in detail in my previous report in respect of that allegation and therefore do not intend to comment further here. Mr [REDACTED] was not present during that interview.

3.48 On 22 December 1997 Detective Chief Superintendent McBurney submitted his report. At page 46 of his report, Detective Chief Superintendent McBurney concluded:

Having assessed these papers I am satisfied that collectively and as 4 individuals the 4 police officers concerned did not wilfully neglect to perform their duty on the date in question and therefore I recommend no further action criminally or disciplinary in this instance (Appendix 20, page 09079).

3.49 In respect of the alleged misconduct on the part of Reserve Constable Atkinson, Detective Chief Superintendent McBurney concluded:

Having found no evidence other than the telephone billing to substantiate the allegation of Witness A one can remain sceptical but there is absolutely no

other evidence to substantiate the allegation by Witness A. I therefore recommend No Prosecution (Appendix 21, page 09082)

3.50 On 12 January 1998 Mr Mullan compiled a memorandum following receipt of the report from Detective Chief Superintendent McBurney. The memorandum addressed to Mr [REDACTED] outlined Mr Mullan's observations. Mr Mullan concluded that:

...all relevant lines of enquiry have been exhausted, and in consequence, I recommend the Commission issues a Statement (Criminal) to this effect (Appendix 22, pages 27199 – 27201).

3.51 Mr Mullan stated at paragraph 5 (page 27201):

I must admit to having my suspicions regarding the purpose of the two telephone calls made from the Atkinson household to the Hanvey home. However, in the final analysis, Reserve Constable Atkinson denies any knowledge of the calls and witnesses have come forward to explain their purpose. The prospect of proving these allegations, even if additional lines of enquiry were pursued, is in my view, remote.

Comment

Once more Mr Mullan makes reference to the alleged misconduct on the part of Reserve Constable Atkinson. The main part of his memorandum deals with addressing the alleged neglect of duty by the 4 officers deployed to Portadown town centre on the night of 26/27 of April 1997. In my view that memorandum does not read as if recommending a statement of satisfaction with regard to the alleged criminal conduct on the part of Reserve Constable Atkinson; nor should it do so since the ICPC were not supervising that part of the investigation.

3.52 On 16 January 1998 Mr [REDACTED] issued a statement of satisfaction in respect of the alleged criminal neglect of duty on the part of the 4 officers deployed to Portadown town centre on the night of 26/27 April 1997 (Appendix 23, page 15162).

3.53 It is to be noted that the statement of satisfaction dealt only with the alleged inactivity by the 4 officers at the time of the assault on Robert Hamill. It made no reference to the alleged misconduct of Reserve Constable Atkinson.

3.54 On 29 September 1999 the DPP directed that no criminal prosecution of any officer should take place.

- 3.55 On 1 December 1997 Chief Inspector Bradley interviewed Reserve Constable **P40** under discipline caution. Reserve Constable **P40** agreed for his criminal interview to be used as part of the disciplinary process thus negating the need for a further interview (Appendix 24, pages 60833 – 60835).
- 3.56 It should be noted that asking an officer if he or she consents to their interview under criminal caution being used for consideration of the disciplinary issues was common police practice and completely appropriate.
- 3.57 On 20 December 1999 Chief Inspector Bradley interviewed Constable Neill under discipline caution. Constable Neill agreed for his criminal interview to be used as part of the discipline process.
- 3.58 On 7 February 2000 Chief Inspector Bradley interviewed under discipline caution Reserve Constable Atkinson. Reserve Constable Atkinson also agreed for his criminal interview to be used as part of the disciplinary process.
- 3.59 It should be noted that Chief Inspector Bradley was only dealing with the aspect of alleged inactivity by Reserve Constable Atkinson and others; he was not dealing with the misconduct relating to the allegation that Reserve Constable Atkinson telephoned Allister Hanvey to advise him to dispose of his clothing.
- 3.60 On 6 March 2000 Chief Inspector Bradley interviewed under discipline caution Reserve Constable Cornett. Reserve Constable Cornett agreed for her criminal interview to be used as part of the disciplinary process.
- 3.61 On 30 March 2000 the ICPC issued a statement of satisfaction in relation to the discipline investigation following the complaint of inactivity made by [REDACTED] on behalf of the family of Robert Hamill (Appendix 25, page 63444).
- 3.62 On 12 June 2001 Reserve Constable Atkinson was served with a Form 17/3 by Superintendent Kennedy. The Form 17/3 related to allegedly conspiring with the Hanvey family to pervert the course of justice (Appendix 26, page 27889 and Appendix 27, page 63864). It is not my intention to deal with the investigation undertaken by Superintendent Kennedy since that investigation is not relevant to this report.
- 3.63 Appendix 27 at pages 63864 and 63847 gives an update on the investigation and confirms that Superintendent Kennedy served a Form 17/3 on Reserve Constable Atkinson on 12 June 2001. This should in my view have been served some 4 years earlier.

Comment

From the above sequence of events it is evident that the allegation of misconduct on the part of Reserve Constable Atkinson was not supervised by the ICPC. However it should be noted that that allegation was openly declared and discussed by Detective Chief Superintendent McBurney with members of the ICPC. Mr Mullan from the ICPC did not ask DCS McBurney why the alleged misconduct on the part of Reserve Constable Atkinson had not been referred to the ICPC. The reason for this is difficult to determine.

4. Complaints and Discipline

- 4.1 In 1997 Sir Ronnie Flanagan was responsible for the good order of the RUC. Responsibility for the day to day management of the then Complaints and Discipline Department was delegated to the Deputy Chief Constable.
- 4.2 Upon request, Detective Constable Browning from the PSNI has provided two statements (Appendix 28, pages 73442 – 73444 and 73446 – 73449).
- 4.3 Based upon figures supplied by the PSNI, the Complaints and Discipline Department in 1997 had a rank structure consisting of the following:
 - One Assistant Chief Constable
 - 11 Superintendents
 - 25 Chief Inspectors
 - 11 Inspectors
 - 9 Sergeants
 - 12 Constables
- 4.4 In 1997 the RUC opened 326 internal investigations. In 259 of those cases a formal discipline investigation was directed, an investigating officer appointed and a Form 17/3 served on the officer subject to the investigation.
- 4.5 There are 3 major policy areas which dealt with the guidance for the RUC to handle complaints against the police, which I shall consider in turn:
 - 4.5.1 Northern Ireland Office Guidance to the Chief Constable on Police Complaints and Discipline Procedures (1988 edition) (the “Guidance”) (Appendix 29, pages 73598 — 73709);
 - 4.5.2 Manual of Guidance for Investigating Officers and Team Superintendents (the “Manual”) (Appendix 30, pages 73711 — 73881 inclusive);
 - 4.5.3 The Royal Ulster Constabulary Code Section 9 (the “Code”) (Appendix 31, pages 73450 — 73582 inclusive).

5. Northern Ireland Office Guidance to the Chief Constable on Police Complaints and Discipline Procedures

- 5.1 The Guidance was based upon the various statutory provisions “which govern the handling of complaints, disciplinary matters and appeals”, as listed in section 1 of the Guidance. Section 1, paragraph 1(a) of the Guidance makes reference to the Order. Although the Order has now been repealed, it was applicable in 1997.
- 5.2 The Guidance outlined in detail how the RUC should deal with complaints against police officers.
- 5.3 The Guidance was intended to inform the RUC how to deal both with complaints against police and the referral of any matter, not the subject of a complaint but relating to the conduct of a member of the RUC, to the ICPC for supervision.
- 5.4 For the purpose of this report, I will refer to the relevant parts of the Order and the Guidance.
- 5.5 As discussed in my previous report, the investigation into the alleged misconduct against Reserve Constable Atkinson was not as a result of a complaint, but as a result of Tracey Clarke bringing the allegation to the attention of the RUC.
- 5.6 At section 2, paragraph 2.1 of the Guidance a complaint was defined, for the purposes of procedures set out in the Order, as “any complaint about the conduct of a member of the police force which is submitted by or on behalf of a member of the public”.
- 5.7 By section 2, paragraph 2.5 of the Guidance, the Chief Constable was required to take the following immediate steps upon receipt of a complaint:
 - Obtain and preserve evidence;
 - Determine who is the “appropriate authority” in relation to the member concerned;
 - Record the complaint;
 - Send the complaint to the Police Authority where it is the “appropriate authority” and notify the complainant accordingly.
- 5.8 By Article 2(2) of the Order, the Police Authority was the appropriate authority for complaints directed at a senior officer (those officers above the rank of Chief Superintendent), and the Chief Constable was the appropriate authority for complaints directed at all other members of the force.

- 5.9 Section 2, paragraph 2.9 of the Guidance (Appendix 32) outlined what records were to be maintained by the RUC upon receipt of a complaint. I would have expected similar record keeping for the internal investigations.
- 5.10 Section 2, paragraph 2.25 of the Guidance (Appendix 32) made it clear that the Order applied to both members of the RUC Reserve as well as members of the RUC.
- 5.11 Section 6, paragraph 6.7 of the Guidance outlined the ICPC's powers to supervise complaints and referrals made which the ICPC had chosen to supervise (note that the Guidance refers to the ICPC throughout as, the "Commission"). It provided:

Where the Commission supervises an investigation (and this includes a complaint or an Article 8 matter) it will also have power to impose reasonable requirements affecting the conduct of the investigation and the use of resources employed to carry it out; for example it may ask that an enquiry follow a particular course or that the investigating officer should carry out a more searching examination of matters already considered. It will be able to appoint one of its own members to take personal responsibility for the supervision of a particular investigation and to keep in close touch with the investigating officer throughout the course of his enquiries.

- 5.12 Where the Chief Constable or the Police Authority, whichever was the appropriate authority, had decided to have a complaint formally investigated, Article 7(1) of the Order required the appropriate authority to refer that complaint to the ICPC.
- 5.13 Article 9(1) and 9(3) of the Order dealt with the mandatory and discretionary supervision of complaints made.
- 5.14 Article 8(1) of the Order dealt with other referrals made by the Chief Constable or the Police Authority. With reference to referrals under Article 8(1) of the Order, paragraph 5.3 of the Guidance stated:

The Chief Constable and the Police Authority (as "appropriate authorities") have discretion to refer the investigation of any matter, not the subject of a complaint but relating to the conduct of a member, to the Commission for supervision. The appropriate authority should exercise its judgement as to whether or not the matter in question is sufficiently grave or has arisen in such exceptional circumstances as would warrant the Commission's involvement. It should also provide the Commission with as much information as possible about the matter, together with a view as to why it considers that the investigation should be supervised. Since the Commission has discretion as to its involvement (Article 9(3)(b) of the Order) it may require to be satisfied that the appropriate authority has given sufficient consideration to the matter in question and that it meets the criteria for referral in this way. If the Commission accepts that its supervision is warranted, the procedures in

the Order which govern the investigation of complaints, their reference to the DPP, consideration of criminal matters and the Commission's involvement in subsequent disciplinary procedures, will apply to matters referred under Article 8(1), as they apply in respect of formal complaints investigations.

- 5.15 The question then to be asked is whether the alleged conduct of Reserve Constable Atkinson was sufficiently grave that it should have been formally referred to the Commission.
- 5.16 Many internal matters, not subject of a complaint by a member of the public, are routinely investigated either formally or informally. For example, late time keeping may be commented upon and a note recorded in the supervisors note book. Such conduct would not warrant formal investigation. However an officer may have been found internally to have stolen an item of found property handed in by a member of the public. Such conduct in my view strikes at the very integrity of the officer and I would expect to see something like that referred to and supervised by the Commission.
- 5.17 Appendix 32 provides an extract from the Chief Constable's 1997/98 Annual Report. This shows that 11 incidents were referred to the Commission under Article 8 of the Order. One of those referrals concerned *"the death of a member of the public in Portadown on 27 April 1997 where police response is the subject of complaint."*
- 5.18 Under Article 9(3) of the Order, the ICPC had a discretion to supervise any matter, not the subject of a complaint, but relating to the conduct of a member of the RUC, if the ICPC considered it desirable in the public interest to supervise that matter.
- 5.19 The Order did not give the ICPC the authority to require the Chief Constable or Police Authority to refer matters under investigation that were not the subject of complaint.

Comment

The above Guidance outlined how the Chief Constable had authority to refer any matter, not subject of a complaint but relating to the conduct of a member of the RUC, to the ICPC asking for that investigation to be supervised.

The above Guidance did not allow the ICPC to direct the Chief Constable to refer such matters to the ICPC for supervision.

When considering the extract I have quoted above from section 5, paragraph 5.3 of the Guidance, it is my belief that the allegation of criminal conduct against Reserve Constable Atkinson should have been referred to the ICPC.

6 Manual of Guidance for Investigating Officers and Team Superintendents

- 6.1 The Manual seems to apply to members of the then Complaints and Discipline Department.
- 6.2 The Manual sets out the procedure to be followed when dealing with complaints against police and the investigation of internal breaches of discipline.
- 6.3 Section 3 of the Manual dealt with initial action.
- 6.4 Section 3, paragraph 6.2(i) of the Manual identified the legal requirement for the investigating officer to serve Form 17/3 as soon as practicable, unless to do so would prejudice that or another investigation:

The early service of Form 17/3 (Caution 1)(Appendix 3.5), like 'immediate action', is a vital stage of any investigation. The I/O is legally required to service Form 17/3 (Caution 1) on the member(s) under investigation within days of being appointed I/O, unless to do so would prejudice that or any other investigation. The reasons for any delay in the service of Form 17/3 (Caution 1) must be sustainable at any subsequent disciplinary hearing...

- 6.5 Section 3, paragraph 6.5 of the Manual outlined in detail the purpose and format of Form 17/3.
- 6.6 Section 6 of the Manual dealt with the interview of police officers.
- 6.7 Section 6, paragraph 2 of the Manual dealt with the interviewing of police officers under investigation for a criminal offence.
- 6.8 Paragraph 3.1 of section 6 of the Manual dealt with the interviewing of police officers under investigation for an alleged disciplinary offence, and stated:

Where a criminal allegation is involved the necessary interview relating to Disciplinary matters (complained of or residual) will not take place until the termination of the criminal aspect of the interview.

- 6.9 Paragraph 3.2 of section 6 of the Manual then stated:

The directions at 3.1 ante do not inhibit the officer concerned, should he/she so wish, from making a candid statement which may establish that a complaint is unfounded or exaggerated, to the Investigating Officer or Chief Constable at any time after service of Form 17/3.

Any such statement will be voluntary and will be admissible in evidence should there be any disciplinary proceedings arising from the complaint, allegation or report.

6.10 Paragraph 3.3 of section 6 stated:

*Where no further questioning in relation to the criminal allegations (if any) is necessary, appropriate, or could amount to a breach of PACE (for example because the accused officer has been charged or informed that they may be prosecuted), the Investigating Officer will consider addressing the disciplinary aspect(s) of the investigation. If the accused officer is a voluntary attender and has not been charged or informed that they may be prosecuted, the Investigating Officer, having terminated the criminal interview, will introduce the disciplinary aspects of the investigation. This will be accomplished by firstly reminding the police officer(s) concerned of **all** the provisions of Form(s) 17/3 (Caution 1) already served and effect service of any additional Form(s) 17/3 (Caution 1).*

Comment

The Manual provided clear directions as to how the RUC should deal with complaints and internal investigations and clarified how the RUC should deal with officers suspected of committing criminal offences.

From my own personal experience it would have been common police practice to interview an officer under caution for a suspected criminal offence and on conclusion of that interview to commence a second interview to deal with the disciplinary issues.

It would be common practice during the course of that second interview to refer to the Form 17/3 previously served on the officer and to then ask that officer if he or she was content for the criminal interview to be used in the disciplinary interview.

In my experience officers would normally agree for that course of action; to do otherwise would lead to a second interview covering many of the questions already asked in the criminal interview.

7 The Royal Ulster Constabulary Code Section 9

7.1 The Code was provided by Detective Constable Browning and is referred to in his statement as policy for dealing with complaints and other investigations which

would have been relied upon by the RUC in 1997 (Appendix 31 page 73450 - 73556).

- 7.2 Paragraph 23 outlined what should occur in the event of internal disciplinary investigations. In summary it outlined how the divisional commander should consider the matter. If he or she believed a formal investigation was required then he or she should forward a report together with supporting material to G Department (Complaints and Discipline).
- 7.3 The officer subject of report should be informed that he or she was subject to investigation unless informing that officer could prejudice that investigation.
- 7.4 Paragraph 23(7) stated:

In serious cases, or in cases which may involve the commission of a criminal offence by members, the divisional commander will immediately report the matter to 'G' Department, by telephone if necessary.

- 7.5 Paragraph 24 dealt with suspected criminal offences committed by police officers when there is no complaint from a member of the public. In summary it outlined how the matter would in due course be referred to the Director of Public Prosecutions. It also outlined how the papers would be forwarded to G Department. Paragraph 24(2) was later amended by Force Order 7/93 dated 11 May 1993 (Appendix 33).
- 7.6 Appendix 9(1) of the Code outlines those cases that must be notified to Complaints and Discipline. Paragraph 5(b) states:

Cases involving any arrestable offence, the commission of which is intended or likely to lead (or has led) to any of the following consequences:

(b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;

- 7.7 Appendix 9(10) of the Code outlines the instructions to investigating officers when investigating complaints or other matters being investigated.
- 7.8 Paragraph 32 of Appendix 9(10) of the Code states that where an officer is being investigated for a suspected criminal offence then he or she should be interviewed first in relation to that before Form 17/3 is served. However paragraphs 44 — 51 of the Code were later amended by the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) (Amendment) Regulations 1989 (Appendix 31, pages 73569 – 73573). Paragraph 44 was replaced with a new paragraph numbered 44(a) – (e).
- 7.9 Paragraph 44 of the Code was amended at paragraph 44(b) to read:

...Therefore, where a report, allegation or complaint is formally investigated the member concerned should, under Regulation 6 of the RUC Discipline Regulations or Regulation 5 of the RUC Reserve (Part Time) Discipline Regulations as appropriate, be told in writing 'as soon as practicable' and given the following caution ...

7.10 After specifying the wording of Caution 1, the same paragraph goes on to state:

The legal requirement of 'as soon as practicable' to be interpreted as meaning that the member concerned is told in writing within days of the investigating officer receiving the Deputy Chief Constable's directive to investigate the matter, unless to do so would prejudice his or any other investigation of the matter

7.11 Paragraph 44 of the Code was amended at paragraph 44(e) to read:

A further Form 17/3 (Caution 1) should be served as and when fresh criminal/discipline matters arise during the course of the investigation...

7.12 Paragraph 47 of the Code was amended to read:

When the stage is reached in the investigation where it is considered appropriate to formally interview the member concerned the investigating officer will:

- (a) Where a criminal allegation is involved conduct the necessary interview under PACE, and related codes of practice.*
- (b) Where no further questioning under (a) is necessary introduce the disciplinary aspect of the investigation and remind the member concerned of all previous Form(s) 17/3 (Caution 1) served on him.*

7.13 In 1993 Force Order 7/93 referred to above (Appendix 33) made an amendment to the RUC Code. The amendment required the divisional commander, when a member of the Force was suspected of committing a criminal offence, to notify G Department with preliminary details by way of MSX. MSX was an electronic message sending and receiving service in use at that time.

7.14 The format for notification is outlined at Appendix 31 page 73450 - 73556. The purpose of early notification was to enable the investigating officer to serve Form 17/3 (Caution 1) on the member who was the subject of investigation.

Comment

It is clear from the above policy extracts that G Department (Complaints and Discipline) should have been notified at an early stage by means of MSX of the allegation made against Reserve Constable Atkinson.

No formal notification was made. It should be noted that Superintendent Anderson, a team leader from G Department (Complaints and Discipline), was present at the meeting with Mr Mullan when the allegation concerning Reserve Constable Atkinson was discussed.

Based on my own experience and considering the policy outlined within this report, in my professional opinion the following action should have been taken in respect of the allegation that Reserve Constable Atkinson had advised Allister Hanvey to dispose of his clothing.

The allegation in my view should have been immediately brought to the attention of the head of the then Complaints and Discipline department. The serious nature of that allegation should have been discussed at a senior level.

I believe the Deputy Chief Constable as the officer with overall responsibility for Complaints and Discipline should have been briefed since consideration should have been given to suspension of the officer.

The allegation should have been properly recorded in Complaints and Discipline Department. A Form 17/3 should have been prepared. Immediate service of that could have compromised the investigation but once action had been taken to secure evidence then that should have been served on Reserve Constable Atkinson.

In due course Reserve Constable Atkinson should have been interviewed in relation to allegedly attempting to pervert the course of justice. On conclusion of that interview, he should have been reminded of the contents of the relevant Form 17/3, and asked if he agreed for his criminal interview to be used when the discipline issues needed to be considered. This could have been done at the time or shortly afterwards.

That is what happened with regard to the complaint against the 4 officers who were accused of failing to protect Robert Hamill.

In view of the serious nature of the allegation I believe the allegation should have been referred to, and supervised by, the ICPC.

Had this investigation been formally referred to the ICPC, the ICPC would have then considered the material before issuing a Statement of Satisfaction. That is issued once the ICPC are satisfied all lines of enquiry have been carried out. Once the ICPC were satisfied with the investigation then the matter would be considered by the Director of Public Prosecutions to determine whether criminal charges should follow.

Once the criminal process had been completed, the file would have then been returned to the ICPC to determine whether any discipline charges should follow. In the absence of timely serving of a Form 17/3, any discipline charges would be undermined and any hearing subject to legal challenge.

There is no suggestion that Detective Chief Superintendent McBurney concealed from the ICPC the alleged misconduct of Reserve Constable Atkinson. On the contrary there is evidence within the papers I have read indicating that the alleged misconduct on the part of Reserve Constable Atkinson was discussed in the presence of members of the ICPC.

Based upon the papers I have read I am unsure why this aspect of the investigation was not formally notified to the ICPC. At this stage I prefer to hear the relevant evidence before attempting to reach any conclusions regarding the apparent failure to refer to the ICPC the alleged misconduct of Reserve Constable Atkinson

DECLARATION

The facts as stated in this report are true to the best of my knowledge and belief. I understand that this report and any oral testimony may be used in the proceedings at the Inquiry into the death of Robert Hamill. I make it knowing that I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or that I do not believe to be true.

I understand that as an expert witness I have a duty to assist the Inquiry with matters within my expertise and to advise independently of whoever has instructed me. In compiling this report I believe I have complied with that duty.

COLIN MURRAY

INDEPENDENT POLICE EXPERT

Dated 7 November 2008