

4. In preparation for committal hearings I often consult with Prosecution witnesses to ascertain whether they will be credible and whether their evidence is likely to be consistent with the statement they previously gave to the police. It is usual for the police to be present during these consultations and afterwards there would be a discussion between the Prosecution and the police about whatever has arisen in the course of the consultation. It is a regular practice in Northern Ireland to hold consultations where we feel it is appropriate.

5. On 21 October 2003, I consulted with Andrea McKee in Wrexham police station. Ivor Morrison and Detective Constable J were also in attendance although Detective Constable J was in and out of the room talking to Wrexham police and so was not present throughout the entire consultation. The purpose of that consultation was for Andrea to relate what would be her evidence in an attempt to see whether it was consistent with her statement of evidence. She did not have the benefit of her statement in front of her while I was talking to her. What she told me was entirely consistent with what was in her written statement. The only document I am aware of which refers to that consultation is the note of Ivor Morrison containing page number 33865. I did not take an independent note of the consultation. Andrea appeared to me to be a plausible witness at that stage because she related effectively what was in her witness statement with little variation. She seemed willing to give evidence for the Prosecution and certainly gave no indication to the contrary.

6. As I understood it, that consultation took place in Wrexham for Andrea's convenience. The committal was listed for 27 October 2003 and it was felt appropriate that I should consult with Andrea prior to then because she had indicated that she would only be available for one day. I did not want to use up time on the morning of the committal consulting with her so we agreed to travel to Wrexham in advance of the hearing. It is not unusual to do a consultation in a police station; the Wrexham police offered their station for use in this instance. From recollection Andrea was attending college which was adjacent to the police

station so that made it more convenient for her to meet us there. I am unable to comment as to whether there may have been other reasons for the consultation taking place at the police station.

7. The committal hearing fixed for 27 October 2003 was adjourned on the morning of the hearing following an application by the Defence that the matter should have been listed before the Resident Magistrate, not the Deputy. The Defence felt that it wasn't appropriate that a Deputy be assigned to deal with this particular case. The Deputy Magistrate agreed reluctantly and the committal was adjourned to 22 December 2003. That date was fixed before we left court. I recall that we fixed it taking account of Andrea McKee's availability.
8. On 22 December 2003, I attended court to conduct the committal hearing but was advised on my arrival that Andrea would not be attending. I believe she had informed a police officer the night before who had in turn advised Ivor Morrison of the position. He had been unable to get in touch with me that night and told me at court in the morning. Detective Constable J was at court and I think Detective Constable Patricia Murphy was also there. Detective Constable Murphy was making arrangements for Andrea to travel and I think she was the one who spoke to Andrea. The Prosecution made an application to adjourn the proceedings due to Andrea's non attendance, which was ultimately granted.
9. Andrea had said that she was unable to travel to court that day because her son was ill, with swollen testicles and suspected mumps, and she didn't feel that she could leave him. I advised the Defence in the same terms and they agreed that if that was the case then it was right to adjourn the matter. The Defence team was, however, sceptical about the reason for non-attendance and agreed to the adjournment on condition that some documentary proof of the child's illness was provided on the next occasion.

10. On 9 January 2004, I had another consultation with Andrea McKee at Wrexham police station. Ivor Morrison, Acting Detective Superintendent **K** and Acting Detective Sergeant **H** were in attendance. I did take a note of that consultation, which contains page numbers **33991** to **33997**. This is the only written note that I made of any consultation between myself and Andrea McKee. The reason for this consultation was an issue over her attendance at Pendine Park Surgery, where she said she had taken her child on the night of 19 December 2003. By that date, I do not believe the police had completed their inquiries into the reason for Andrea's non-attendance on 22 December 2003. They had carried out some inquiries but further inquiries were carried out following the meeting on 9 January 2004. I cannot be sure what further inquiries the police made but I was aware by then that there was a question over her attendance at Pendine Park Surgery. At that stage no statements had been received from Pendine Park but they had been contacted and had indicated that there was no record of any visit to the out of hours clinic. I do not think that the delay in obtaining these statements was any fault of the police; I think they acted as expeditiously as they could, particularly given that it was a different jurisdiction. I was particularly concerned to get the details of her child's illness because I had told the court the reason for non-attendance, which may have been misleading.

11. I think we had received the statement of Dr [REDACTED] dated 13 December 2003 by the time of the consultation. He said that he had seen Andrea's child on 11 December 2003 at home for an ear infection, but not on 19 December 2003. This was totally inadequate as regards to satisfying the court for the reason for the adjournment in that there was no reference to 19 December 2003 and the reason he saw the child on 11 December was an ear infection, not for the reason Andrea had given the police. The Prosecution felt that we needed more information on this from Andrea and so we arranged the consultation on 9 January 2004. At that consultation, there was also mention of a threatening letter dated 19 December 2003 and received by Andrea on 23 December 2003 but it was Acting Detective Superintendent **K** who asked her about that.

12. I came away from that consultation with a very different impression of Andrea McKee to the one I had before. I had real concerns about her credibility from that point on. Her attitude at that stage was that she still wished to give evidence, but on her terms. She stated that she was a willing witness, but I did not feel that her terms could be met, that they were unrealistic. I got the impression that she would have been quite happy not to have to give evidence.
13. The police officers I spoke to were very anxious to ensure that Andrea McKee attended court to give her evidence. They were keen for the case to proceed whereas I, as a lawyer, was looking at it from a different angle.
14. I had a brief discussion with the others who had attended the consultation about the future conduct of the case which was to the effect that the police would carry out further inquiries in relation to Pendine Park Surgery to ascertain whether or not she could have gone there. I understood the police were also to follow up on the threatening letter and whether or not they could offer Andrea some sort of witness protection which would meet her requirements. She was adamant that she would not leave Wrexham because her partner, son and mother were there so relocation was not a realistic option. She was happy to move to another address in Wrexham but it had to be a certain area and near her mother. To me that did not seem at all practical and it also made me question the authenticity of the threat to some extent. Furthermore, she had told a woman from Portadown, called Glynis Finnegan, about the letter and I got the impression that if Andrea was still in contact with this woman then no matter what the police did to relocate her, she could be found. The police took the letter seriously and carried out what investigations they could to ascertain its provenance. The letter purported to come from the LVF but, from recollection, there was something in it that led the police to think it was not them.
15. On 17 February 2004, I attended another consultation to discuss the case. It was held at Ivor Morrison's office in Belfast. Gerald Simpson QC, Ivor Morrison, and I think Acting Detective Superintendent **K** and Detective Constable

J were there. Andrea McKee was not there. On 25 February 2004 I attended another consultation with the same people. I did not take a note of either consultation but I have seen Ivor Morrison's brief note dated 30 March 2004, containing page number **33865**. I turned up very late to one of those consultations and had to be filled in on what had happened, but I do not remember which one.

16. As a result of those consultations it became clear that Andrea McKee could not be put forward by the Prosecution as a witness of truth. Further investigations had failed to provide any evidence that she had been to Pendine Park Surgery on 19 December 2003. I recall that the police still wanted to proceed but on 25 February Gerald Simpson QC and I advised against that because Andrea's credibility was shot. She was the essential Prosecution witness and without her there was little or no evidence against the Atkinsons and Kenneth Hanvey; the case could not proceed without her. I am unaware of any other reason for why the case did not advance. Due to the nature of the case it was Alastair Fraser, the Director of Public Prosecution's decision whether or not to withdraw the prosecution; I believe a consultation was arranged between Gerald Simpson and Mr [REDACTED] the Deputy Director of Public Prosecutions. Ivor Morrison may have made notes of this meeting but I do not have a copy. As a result of that meeting, Gerald Simpson was instructed to consult with Andrea McKee to assess her credibility as a Prosecution witness, which he did on 2 March 2004. I was not present at that consultation. I have now been shown the advice of Gerald Simpson QC dated 15 March 2004, containing pages **33915 – 33918**, which I had not seen previously. I cannot comment upon it other than to say that I agree with the contents of it. He advised that Andrea could not be put forward by the Prosecution as a "witness capable of belief"; I would have shared that view.
17. The issue of whether Andrea McKee went to Pendine Park Surgery on the night of 19 December 2003 was a wholly peripheral issue and not directly relevant to the evidence in the prosecution of the Atkinsons. However, having determined that she

had lied on a peripheral issue, her entire credibility was in question and she could not be put forward as a witness of truth.

18. I had the distinct impression that the police were keen to prosecute this matter particularly as it was a high profile case having arisen from the murder of Robert Hamill. I think they were very conscious of the fact that there had been such media attention to this case and they were anxious to be seen to be doing something. The DPP, however, accepted Gerald Simpson's advice and on 21 March 2004, I attended court to withdraw the prosecution.
19. I do not think that prosecuting the McKees at the same time as the Atkinsons and Kenneth Hanvey would have been feasible because Andrea McKee's evidence was required for the latter prosecution. She had to have been dealt with before she could be used as a witness. I do not think it was unusual that the committal hearing for the Atkinsons and Kenneth Hanvey was listed over a year after the McKees were dealt with because cases of that type would often take quite a while to come to court. However, without seeing a chronology I do not feel able to comment on the delay.
20. I do not know if any statement was taken from Andrea's partner about his child's illness. I have a vague recollection of him not willing to be involved in any way but I cannot say with any certainty whether anyone spoke to him.

Christine A Smith

SIGNED:

CHRISTINE SMITH

22nd June 2009

DATED: