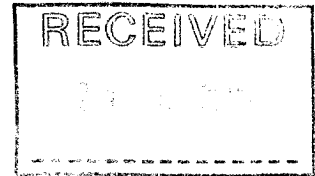


STATEMENT OF WITNESS



STATEMENT OF CHRISTOPHER MAHAFFEY

DATED THIS 27<sup>th</sup> DAY OF July 2009

I, CHRISTOPHER MAHAFFEY, declare that this statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence at the Inquiry I will be liable to prosecution if I have wilfully stated in it anything I know to be false or do not believe to be true.

1. The Inquiry has disclosed a number of documents to me. Where I make specific reference to a document in my statement I have given the number of the relevant page.
2. was I ~~am~~ a Senior Investigating Officer employed by the Police Ombudsman for Northern Ireland and in this role I have investigated and supervised investigations surrounding the death of Robert Hamill.
3. I have made previous statements in connection with those investigations and prepared reports into the allegations.
4. On commencing work with the Police Ombudsman I was identified as the person who would have responsibility for the Hamill investigations. I had access to the ICPC file papers and Mr. Greg Mullan was available for any queries that I had in connection with the file he having been involved in the initial supervised complaint made by the Hamill family. In November 2000 I had my first meeting with Mr. Barra McGrory the Hamill family solicitor.
5. The Police Ombudsman has powers under the Police [Northern Ireland] Act of 1998. The supervision and investigation of complaints against police or malpractice are covered under sections 55[4] and 55[6] of the Act.

6. Section 55[4] allows the Chief Constable to refer to the Ombudsman any matter which appears to the Chief Constable that an officer may have committed a criminal offence or behaved in a manner which would justify disciplinary proceedings.
7. Section 55[6] gives the Ombudsman power of her own volition to formally investigate anything which indicates a member of the PSNI may have committed a criminal offence or behaved in a manner which could justify disciplinary proceedings.
8. The Ombudsman has powers to investigate and supervise police investigations. This is the major difference between the roles previously performed by the ICPC.
9. During my involvement with the Hamill inquiry I kept an action log, [page 28067], of contact, meetings and decisions which I was involved with regarding the various strands of the Hamill inquiry. A Chronology was also prepared in the Ombudsman office, [page 26873], which sets out the key elements of the various investigations.
10. At the outset I was supervising the investigation into the allegations of conspiracy made against Reserve Constable Atkinson. The complaint files, [crime and discipline] submitted respectively by Detective Chief Superintendent [DCS] McBurney and Chief Inspector Bradley had been finalised by the DPP and ICPC prior to the involvement of the Ombudsman and I used them as a briefing and reference facility.
11. The outstanding matter within the Chief Inspector Bradley file was a disciplinary recommendation for neglect of duty against Constable Neill made by the ICPC which was being contested by the Deputy Chief Constable. This matter was discussed with David Wood, the Director of Investigations for the Police Ombudsman, and at his suggestion we obtained Counsel's opinion on the neglect of duty disciplinary action. Counsel was of a view that there was insufficient evidence to substantiate a charge under the Discipline Code. This

was the same opinion that the Deputy Chief Constable had received and it was agreed that no action would be taken against Constable Neill.

12. On 2 November 2000 I had an initial meeting with DCS McBurney and DCI K to discuss the investigation into Reserve Constable Atkinson. I then received a report from DCI K, page **2860**, which outlined progress in the investigation up to that date.
13. On 23 November 2000, page **28068** I met DCS McBurney and DCI K at Gough Barracks and was briefed by DCS McBurney on his proposals for the arrest of Michael McKee and searches at key houses to recover any potential evidence. I returned and discussed the case with Mr. Wood and we formed a view that this wasn't the way forward but that we should take more positive action and arrest all of the parties concerned. We also discussed the insertion of covert surveillance equipment at one of the addresses.
14. On 5 December 2000, page **28071** I again met with DCS McBurney and DCI K and put forward the revised strategy. No obstacles were raised to these proposals but the use of covert intrusive surveillance had obviously not been considered by either person as part of a strategy.
15. On 12 December 2000 at the request of DCI K I attended Gough Barracks for a meeting to discuss the investigation into the alleged conspiracy involving Reserve Constable Atkinson. During that meeting K expressed concerns about the handling of the two witnesses Timothy Jameson and Andrea McKee. I recorded in my action log page **28075**:

*“Gough Barracks, spoke to DCI K, read through the statements of Constable G and Timothy Jameson. There was considerable disparity between the two accounts. DCI K researched the HOLMES database and all other available material at this time, nothing can be found to explain how Timothy Jameson has progressed from the status of being a suspect to that of a vital Crown witness. I directed DCI K he should make no further inquiries in relation to this matter. Any related actions drawn up should be held as pending. I would*

*inform Dave Wood of this development and notify DCI K of the outcome. DCI K also drew my attention to his interview with Constable P20. It seems that he had been with Constable G when the information concerning Timothy Jameson was provided to DI Michael Irwin.*

*Constable P20 had previously provided information to Irwin concerning ... Right, marked similarity in that Andrea McKee's status could be considered to be that of a suspect. The reason I had a clear indication that she was regarded by DI Irwin as a witness, DCI K also pointed to the fact that it was DI Irwin who had taken all alibi statements from the Atkinsons, McKees and Hanveys. As above I instructed K he should make no further inquiries."*

16. From my memory DCS McBurney came into the meeting and said, "Yes, I'm aware what's going on, of what's happened here." And more or less said, "You've got to do whatever you have got to do." He wasn't in any way agitated or obstructive, he just simply said, "Yes fine I've read it." I suppose there were a level of acceptance that he understood where we were now coming from and the whole question of how he dealt with Andrea McKee as a witness from the outset. I recorded in my action log page **28076**

*"DCS McBurney acknowledged this and expressed his understanding in the light of what was contained within the G statement was the need for an independent investigation."*

17. That's probably a little bit strong, but I think he's more or less said, "You've got to do what you've got to do". He tried to contact ACC Raymond White, who was sick. He had therefore informed DCS [REDACTED] who would await direction from the Chief Constable and the Ombudsman.
18. I returned to the office and discussed the issues through with David Wood and on the 13 December 2000 we went to see Sir Ronnie Flanagan. After discussing the issues surrounding the handling of the two witnesses Mr. Wood proposed that DCS McBurney could no longer continue as the SIO. It was agreed with the

Chief Constable that we would conduct an investigation using our powers under section 55[6] of the act into the handling of Timothy Jameson and Andrea McKee whilst continuing to supervise the investigation into Reserve Constable Atkinson. The Ombudsman inquiry was a misconduct investigation until such time that we discovered that any of the officers had committed a criminal offence. No criminal offences were uncovered as part of the investigation.

19. On 14 December 2000 DCS McBurney was replaced as the SIO by Detective Chief Superintendent Colville Stewart. I met with DCS Stewart on 15 December 2000 and wrote to him, page **14882** in which I confirmed our proposed strategy to be adopted and that the Ombudsman would be investigating the handling of the two witnesses. On 20 December 2000 discipline notice forms [OMB3] were served on DCS McBurney and also on DI Irwin, DC Honeyford and DC McAteer. The four officers involved with the handling of the two witnesses.
20. DCS McBurney retired from the Police Service on 2 February 2001. David Wood and I had discussed his pending retirement and we came to the conclusion that there was nothing to recommend to the Chief Constable that the retirement should be deferred. DCS McBurney was not suspended and the offences we were investigating were not criminal and therefore we did not make any objection to his retirement because we thought it would not impact on our investigation.
21. DCS McBurney, DI Irwin and DC Honeyford were interviewed and they all answered questions and placed no obstacles in the way of the investigation. DC McAteer had left the force and never appeared for interview.
22. The investigation into the handling of the two witnesses took three years to complete and my report, [pages **26884 to 26926**], is the product of that investigation. The RUC/PSNI was very helpful during the investigation and DCI **K** was extremely open and candid. Of the officers involved I was disappointed that ex DCI **P39** and ex DC McAteer did not consent to help our investigation.

23. I saw P39 on 28 February 2001 with DCI K, [page 14622], at her home address and she was very helpful but when I tried to formalise this by statement she refused to assist. This was probably because of a fault on my part by sending a letter to a wrong address which raised security issues for her and she felt unable to assist the investigation thereafter.
24. In my report at page 26925 [para.15.08] I am critical of DCS McBurney in that he kept no record for policy decisions. He did not produce any policy documents for the three elements of the Hamill inquiry he had been in charge of, namely; the murder investigation; the complaint against the four officers in the Land Rover; and the Atkinson investigation.
25. When I interviewed DCS McBurney he had prepared hand written notes and he referred to those in interview and were notes specifically for that interview. He had said in interview that he had deliberately not made notes and especially so of his policy.
26. DCI P39 had commenced a policy file from 9 to 30 May 1997 but when she left the investigation no other decision was recorded.
27. DCS McBurney had the opportunity to have used secret sensitive files, that although ultimately the subject of disclosure and PII application, would have maintained a record of his strategy in dealing with the witnesses and Andrea McKee. If he had done so it would have assisted Michael Irwin in the difficult position he later found himself in.
28. DCI P39's policy file like that of DCI K could have been entered onto HOLMES and a secret sensitive file could have been maintained in hard copy with a reference to it in HOLMES but not the content.
29. I did question DCS McBurney, DC Honeyford and DI Irwin in light of the evidence from Reserve Constable G and P20 why Timothy Jameson was never treated as a suspect when it was alleged that he had 'put the boot in'. DC

Honeyford raised in my view a valid point by saying 'what on earth was to be gained in not treating him as a suspect if indeed he was a suspect'. During my investigation nothing was uncovered to suggest that Timothy Jameson received any form of protection or favour.

30. Ultimately Reserve Constable **G** did not hear what **P20** had said to the senior officers when they went to Portadown Police station and sadly **P20** because of medical problems was unable to ever recollect telling them anything. McBurney, Irwin and Honeyford all said in interview what was to be gained by not treating Jameson as a suspect and I think to a degree I accept what they say.
31. The handling of Andrea McKee and this part of the investigation does cause concern. McBurney's explanation does not make much sense and Irwin in interview expresses his own disbelief in being asked to do what he was asked to do. Irwin was told by McBurney 'just go and get it, don't challenge it, if she starts to make any admissions take the appropriate action.'
32. I don't think Andrea McKee should have been allowed to make her statement on 29 October 1997; there should have been a separate officer or team to investigate the false alibi evidence. I think McBurney's thinking around this whole issue was flawed.
33. Why Andrea McKee was interviewed and a witness statement taken from her on 20 June 2000 I cannot understand. I was shocked that McBurney had gone down that path without seeking any advice whatsoever. I say that understanding the position of the DPP at that time where advice would only be given upon the receipt of a file of evidence. After the delays involved I am certain a report could have been submitted to have obtained some form of advice.
34. I do not believe that Mr. McBurney should have been the SIO on all the elements involved in the Hamill case. I was unable to find any evidence of control of the investigations by senior officers within the RUC by way of direction or support. The only area where we did find some senior input is with the Chief Constable Sir Ronnie Flanagan. Barra McGrory had questioned the

Chief Constable as to why it had taken so long to re-start everything. I met Mr. McGrory and he showed me correspondence which showed that he had been putting pressure on at very high political levels to try and drive the investigation forward and it was his view that because of that McBurney identified his so called strategy regarding the McKee's. I asked Sir Ronnie by letter, page 14379, what was the influence and he replied, page 14378, that McBurney had come to him and said, 'there is a window of opportunity here following the separation of the McKee's to go for this again'.

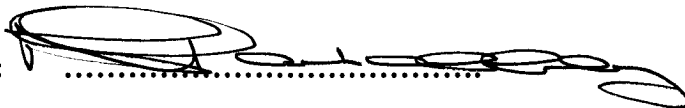
35. When you put dates around this strategy it just doesn't make any sense at all. The McKee's had separated in September 1999 and although Michael was in the South of Ireland Andrea was available in Wales. How could he be certain in 1997 that the McKee's would split up? McBurney waited a huge length of time before taking any action in the hope that the false alibi would be exposed during the inquest and the Hobson trial. My view is that McBurney was wholly incompetent at conducting this type of inquiry with so many contentious strands to it. I also believed the murder investigation was poorly resourced. Until DCI K was appointed and put new impetus into the inquiry it would not have gone anywhere.
36. In the final part of my report, there are no recommendations. If Mr. McBurney had still been serving there would have been misconduct recommendations regarding his handling of the investigation for neglect of duty, primarily lack of supervision and failing to keep records.
37. Michael Irwin had not been a Detective Inspector for very long and he made every earnest effort to investigate the murder of Robert Hamill. He went to great lengths to secure evidence and identify those who had assaulted Robert Hamill. I felt that Irwin found himself in an extremely difficult position and uncomfortable about what he was being asked to do and just felt he had to do so, in respect of Andrea McKee, because he was given an order. I did not think there was sufficient evidence to discipline him.

38. DC Honeyford came across as a genuine individual in the action he took by being firm and positive.
39. DC McAteer never became involved in the investigation.
40. The supervision of the allegations against Reserve Constable Atkinson went ahead and regular meetings were held with the new SIO, Mr. Stewart and his deputy DCI K. Mr. Stewart carried out a review of the murder investigation and from that he produced a report for the Chief Constable into initial failings at the scene and in debriefing the officers.
41. The Ombudsman agreed to supervise an internal investigation by the Complaints and Discipline Department of the issues raised by Mr. Stewart. This investigation was supervised by me with the investigator initially being Superintendent McGregor but he quickly retired and Superintendent Kennedy undertook the investigation.
42. I had regular meetings with Karen Kennedy and her deputy Chief Inspector Jackson. We discussed the formation of interviews and the recommendations in her report before it was finalised. I agree with the contents of the Kennedy report and its recommendations.
43. The Atkinson investigation was well managed by DCI K and I had regular meetings with him and Mr. Stewart to discuss progress and strategy. These meetings are recorded in my action log. On 16 February 2001 I met with K and Stewart to review the evidence available, [page 71948], at that meeting Colville Stewart expressed concern about the deployment of intrusive surveillance at the home of Atkinson because of the officer's belief that he was already the subject of surveillance. It was however decided to continue with the agreed strategy. Arrests were anticipated for early March 2001. It was agreed at that meeting that Timothy Jameson would be dealt with at a later date.
44. On 29 February 2001, page 71955; I attended a presentation by DCI K on the evidence available together with Mr. Kitson from the DPP. It was proposed at

this meeting to deal with Andrea McKee through the courts and how she could be used as a witness was fully discussed.

45. The PSNI encountered difficulties mounting the surveillance operation and this in turn delayed the arrest phase of the operation. Mr. Wood spoke to the Chief Constable about this issue.
46. Arrests were made on 10 April 2001 and Ombudsman officers were involved in the interview process. The surveillance operation was compromised after a very short period. I never found out why it had been compromised. I did discuss with David Wood whether we should investigate any possible leak but with over 50 officers involved it was an impossible task.
47. The investigation progressed with regular meetings and discussions between the SIO his deputy and me which are recorded in my action log. Andrea and Michael McKee admitted their parts in the conspiracy; they were later convicted and sentenced. A decision was reached by the DPP on 18 October 2002 to prosecute Robert Atkinson, Eleanor Atkinson and Kenneth Hanvey. The investigation was a thorough inquiry managed by DCI K. Unfortunately the case did not proceed to trial because of the decision by DPP and Counsel not to use Andrea McKee as a witness of truth following her non attendance at a preliminary hearing.
48. The allegations against Timothy Jameson were explored by DCI K and a file submitted but as I have previously said the evidence against him was very limited because of P20 being unable to recall what happened in 1997 and G not being present when P20 briefed DCS McBurney and DCI P39.

SIGNED: .....



**CHRISTOPHER MAHAFFEY**

DATED: .....

22/7/09.....