

## STATEMENT OF WITNESS

### SECOND STATEMENT OF PAUL DONNELLY

DATED THIS sixth DAY OF OCTOBER, 2009

I, Paul Donnelly, 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 for prosecution if I have wilfully stated in it anything I know to be false or do not believe to be true.

1. I have previously made a witness statement to the Inquiry and I shall endeavour to clarify in this statement issues raised by the Inquiry.
2. I now understand that the senior RUC officers were of the view that the complaint made by Rosemary Nelson on behalf of the Robert Hamill family and referred by the RUC to the ICPC for supervision was capable of encompassing the later allegation. I was not informed in 1997 that Mr. Murnaghan and Mr. Mullan did not share that view and did not supervise the Atkinson allegation.
3. When a referral of a complaint is made even through a solicitor, the complaint is from a citizen saying "something bad has happened and I want you to look at it". Not many people would know the difference between, for example, incivility and abuse of authority or the difference between the disciplinary concept of neglect and the criminal concept of neglect of duty in public office. So my sense is that as soon as this tip-off was identified it should have automatically come under the ambit of the complaint investigation. 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.

4. I have been asked to examine the options open to the supervising member Mr. Murnaghan and the statutory powers available to the ICPC:
- a. Could Mr. Murnaghan have expanded his statutory remit without further referral? The reality of the day to day practices is that you can do anything that you are not prohibited from doing and had the supervising Commission member said that they were going to take this into the investigation, and there was no objection, then it would have just run as that. It would have been seen as the normal way to proceed in the absence of any objection from the police service.
  - b. Could Mr. Murnaghan have reported the issue to me as the Chair? He could have done so but it was not my experience of the man. I had experience of other supervising members in a number of instances where they referred issues to me, in particular in the vetting of the nominated officer. In this case, had there been a challenge to supervising the Atkinson allegation either the Chief Executive or I would have raised the issue with the police.
  - c. Could Mr. Murnaghan have reported the matter to the senior RUC complaints department officer? Normally the route for the supervising member was through the investigating officer and the local Complaints and Discipline Department officer, in this case Superintendent Anderson. The Chief Executive of the Commission would have been the usual contact with the Assistant Chief Constable Complaints and Discipline.
  - 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.

6. I explained in my first statement that Commission members were effectively autonomous practitioners who guarded their territory quite energetically. When I arrived at the Commission I provided a backdrop review of patterns and how matters were proceeded with from an arm’s length perspective. Some of the newer members would have referred cases to me in terms of seeking advice and guidance but the more established colleagues would not come to me in any of the cases they were managing. Therefore my direct involvement in referrals was mainly in reviewing cases and those referred directly to me for advice.
  
7. What I am able to say from my knowledge of the referral process is that there was flexibility in the way cases were treated, sometimes the threshold for supervision was low and not consistent with the prima facie evidence presented in the complaint. Certainly the trigger always had to be a referral from the police. There was also flexibility in merging investigations where two closely linked concerns were dealt with as two parts of the one piece.
  
8. I recall the case of Rosemary Nelson allegations as being a prime example but there were others. When the Metropolitan Police took over the Rosemary Nelson Inquiry we did agree to add associate complaints to that investigation. Sometimes a referral makes one allegation against a police officer or police officers, you carry out the investigation and you discover that there are other infringements of discipline or criminality that have been unearthed in the course of the inquiry on matters which the citizen has not complained. Therefore informal additions to an initial public

complaint were not rare and as I have explained would be taken into the initial investigation as a matter of practice.

9. When supervising a complaint allegations would come through during the investigation process it would therefore be in everyone's interest that closely linked concerns were dealt with together. Issues that came up which were not focused on the same matters would not be linked to the supervision.
10. In the Robert Hamill case, in my view, the neglect complaint could be closely linked to the Atkinson allegation because one of the motivators to be considered by the Commission had to be: did the officers stay in the Land Rover because they knew those who were attacking Robert Hamill and how would you know that? Well you would know that because Atkinson was allegedly in touch with one of those offenders. Even if that link wasn't true it would have had to be investigated and supervised by the Commission.
11. I have always wondered why a group of heavily armed police officers in an armoured jeep with access to quick reaction support if they need it chose to stay in the jeep and one of the possible reasons was that one or two or more of those officers knew the people who were attacking Robert Hamill.
12. I would like to make clear that our Commission members supervised and directed a case under investigation: giving such direction as they would see fit, for example instructing investigating officers with regard to witnesses to interview, attendance at interviews and directing you the questions to put to them, calling for forensic examinations, expert opinions etc..
13. Referral of a complaint against police was always conducted through written communication in a standard format. In a potentially high profile case the Chief Executive might get a telephone call from the Chief Constable's office or from the ACC's office and they would say the

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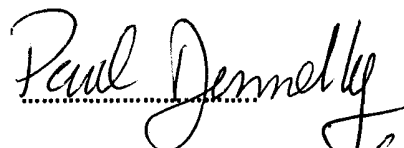
paperwork is on its way and they would invariably fax ahead of the message arriving; because the written notification is what triggers the opening of the investigation and the supervision of it.

14. I have been asked to comment on why there does not appear to have been any written record of an Article 8 referral made by the Chief Constable's office in May 1997 prior to the Rosemary Nelson neglect of duty complaint which was referred to the Commission under Article 7 on the 9 May 1997. I am bemused as to why there is no paper record of the Article 8 referral. To say the least of it, this would be a highly unusual occurrence.
15. The Chief Constable would have been correct to have referred under Article 8(1) where a death or serious injury had occurred; police officers were present and there had been public concern. That is what happened occasionally with public order issues and with a death in custody. There would have been a telephone call followed by a fax followed by a meeting. There was always a paper trail to support the initial telephone call.
16. I am aware that in June 2000 the Chief Constable referred to the Commission that the allegation against Robert Atkinson was being reinvestigated and invited the Commission to supervise the investigation. Although I accept that there is a minute on the Commission's file this minute would not constitute the referral normally. Written notification of the referral was the normal method of triggering the investigation and supervision of a case.
17. From my own experience as Chairman of the Commission I would have said that it was very unusual in the extreme for there not to be a written communication from the police in a standard format before a case was formally supervised by the Commission.
18. However I accept that the Commission from June 2000 did supervise the referral made by the Chief Constable of the investigation into the

allegation against Reserve Constable Atkinson and later handed this case over to Police Ombudsman.

19. The normal process would be for the Commission to notify the police in writing of their decision to supervise the case and agree the appointment of the investigating officer.
20. I am quite bemused as to why the documentary trail is missing and if you were to chose a file at random from any of the other closed files you would see where that paper trail begins and ends. It begins with the trigger, the documentary trigger and ends with the Certificate of Satisfaction before being passed to the DPP's office.
21. The Certificate of Satisfaction would specify that the Commission supervised a complaint against police. Where additional matters were added during the investigation the Certificate should say there was consolidation of other matters and that we were satisfied of the investigation of those consolidated matters.
22. Throughout my three years as the Chairman of the Commission it was my experience that there was flexibility to add additional complaints or issues arising from the initial complaint throughout the supervision process. I can recall Commission members pressing for additional matters to be considered and the police never resisting the consolidation. Certainly for the investigating officer it was a safeguard to have his work supervised.

SIGNED:



PAUL DONNELLY

6th October 2009