

## STATEMENT OF WITNESS

### STATEMENT OF ROBERT IVOR MOSS MORRISON

**DATED THIS 16th DAY OF SEPTEMBER 2009**

I, ROBERT IVOR MOSS MORRISON, formerly of the Department of the Director of Public Prosecutions, 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 which 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. My first involvement in any matter with which this Inquiry is concerned was when I took over the prosecution file in R v Robert Atkinson & Eleanor Atkinson & Kenneth Hanvey from Michael Matthews in October 2002. I issued directions to prosecute dated 28 March 2003. A copy of that Direction is now produced and shown to me containing the number **34127**. At that time, I was the Assistant Director in the High Court Bails and Appeals section. Due to Mr Matthews' heavy work-load, I was asked to take over the file and move forward with the prosecution. At that stage, advice had been received from Gerald Simpson QC and the decision to prosecute the three Defendants had already been made. A copy of Mr Simpson's advice, dated 30 August 2002 is now produced and shown to me containing numbers **20044-20051**. It was on the file when I took it over. My first job was to prepare the papers for committal.
3. When I prepared the committal papers, I proceeded on the basis that it would be a Preliminary Enquiry, i.e. that it would be a committal on the papers. I prepared for the committal by reading the documents and making decisions as to admissibility,

among other things. This was a lengthy process and took a considerable time. For example, because Andrea McKee had made a number of statements I had to collate her evidence into one document and have it approved and signed by her. I have been shown an unsigned statement containing pages numbered **20297-20304** I believe that this was the statement I drafted. There was considerable documentation in this case, which I had to sift through and make decisions in relation to disclosure. In respect of disclosure, I liaised with DS Wenford McDowell and Acting Detective Inspector **H** primarily. DC **J** and DCI **K** were also involved in that process.

4. The committal papers were then served on the Defendants who had the option to accept that the matter proceed as a paper committal or object and require the prosecution to call witnesses to give evidence in person. All of the Defendants objected and required that Andrea McKee and certain other witnesses be called to give evidence.
5. I have been asked my opinion as to whether all the alleged conspirators should have been dealt with at the same time. In other words, should the McKee prosecution have formed part of the case I was dealing with? In my view, the cases could only be run separately. Until Andrea was willing and able to give evidence as a prosecution witness there was no available evidence capable of providing a reasonable prospect of the conviction of the Atkinsons and Hanvey.
6. On 21 October 2003 Christine Smith, of counsel, and I attended a consultation with Andrea McKee in Wrexham. Holding consultations between counsel, DPP/PPS lawyers and a witness before he or she gives evidence is a common feature of criminal practice in Northern Ireland. Such consultations provide an opportunity to the witness to meet the lawyer who will take the witness through his or her evidence in court, help counsel and the DPP/PPS lawyer to assess how well the witness is likely to handle the process of giving evidence, and to provide

information to the witness about what to expect to happen during the court proceedings. Andrea attended the consultation in accordance with the arrangements made with her by police. Andrea participated fully in the consultation. She indicated her willingness to attend court in Craigavon and give evidence in accordance with her statement. She did tell us that due to family and study commitments (she had a two-year-old son and was studying at Wrexham College with the intention of becoming a nurse) she wished to travel over to Northern Ireland on the morning of the court and return to Wrexham that night.

7. On 27 October 2003, along with Miss Smith and police officers and witnesses I attended Craigavon Courthouse for the hearing of the committal. Andrea McKee had been brought over from Wales that morning by PSNI officers and was present in the Courthouse when I arrived. I was approached by a defence representative who informed me that, in his opinion, the committal could not proceed before the Deputy Resident Magistrate who had been allocated by the Northern Ireland Court Service to hear the matter. The prosecution was prepared, willing and able to proceed, but after argument from both sides in his room, the Deputy Resident Magistrate was persuaded that the importance of the case was such that a full-time Resident Magistrate should deal with it. He therefore adjourned the proceedings.
8. The selection of a new date to begin the committal proceedings presented problems. As well as the Court Service having to make available a full-time Resident Magistrate and a suitable courtroom for an estimated four-day hearing, Andrea, for family and study reasons did not wish to stay in Northern Ireland for more than one day. DPP and police sought at all times to accommodate her in this regard. It was eventually agreed by all parties that the committal proceedings would be held on 22,23, 29 and 30 December 2003. Through my communications with police it was my understanding that Andrea had agreed to travel over to give her evidence on 22 December and that police had made appropriate travel arrangements for her.

9. I travelled to Craigavon Courthouse on the morning of 22 December 2003 with the expectation that the committal would proceed on that day. On my arrival police informed me that Andrea had not travelled from Wales because her son was ill. I was led to understand that she had contacted DC Murphy on the previous day to tell her that her son had mumps, orchitis, which Andrea explained was swelling of the testicles, and a high temperature and that he was in danger of dying. We informed defence representatives who were openly sceptical about the truth of the information from Andrea about the child's state of health. Miss Smith gave the information about the child's illness to the court. It was agreed by the defence that if it was the case that Andrea McKee was unable to travel because of her child's illness the court should grant an adjournment, but as it was not possible at that time to provide any documentary confirmation of the child's condition, the adjournment should be conditional upon the prosecution providing satisfactory medical evidence at a later date. I refer to page **34061**. This is a short contemporary note of the proceedings that I made on a copy of the court list. I understand that this note was previously mis-identified as having been made by a police officer. The court agreed to the adjournment of the proceedings to 2 January 2004. The expectation was that medical evidence relating to the child would then be produced and the substantive hearing would begin again on 8 March 2004.
10. Following the adjournment, the PSNI, with assistance from Wrexham police, began to gather the evidence with which police and prosecution both expected would satisfy the court that Andrea's reason for not attending on 22 December was as stated by the prosecution. Police kept me informed of the progress of their inquiries and statements from doctors were faxed to me when they became available, although the manner in which police went about their inquiries was a matter for police. The first statement I received had been made on 24 December by Andrea's GP, Dr [REDACTED]. (Page **34042**). It was faxed to me by D/Sgt H [REDACTED] on 29

December 2003, the first day I would have returned to work after the Christmas break. I do not know whether I had any discussion with police about Dr [REDACTED]'s statement on the day I received it, but I would have noted that it referred to two examinations of Andrea's son. The first of these was 3 weeks before the date fixed for her to give evidence. On that occasion an ear infection and the possibility of mumps was diagnosed. The second was on the morning when Andrea should have given evidence. On that occasion an ear infection in both ears was diagnosed. Neither diagnosis referred to swollen testicles, a high temperature or the danger of fitting or referred to "ochtitis".

11. I believe that it was my assessment then, as it is now, that the content of Dr [REDACTED]'s statement of 24 December statement was not consistent with the information given to the court on 22 December and which formed the grounds for the application to adjourn. I was sure that at any hearing to confirm the basis for the application the defence would attack this evidence as an inadequate basis for an adjournment particularly having regard to the efforts of all parties in seeking a date that was convenient. From inquiry documents supplied to me (see page 54854), I believe that DC Murphy spoke to Andrea both at the beginning of December and on 19 December about her travel arrangements and that Andrea appeared to be happy about them.
12. I note from page 58455 that on 30 December police contacted Andrea in relation to the medical treatment of her son. I do not know whether I knew in advance of this contact with Andrea, but I would have expected experienced detectives to recognize that the evidence so far gathered on this issue was not consistent with the information given to the court and to continue to make relevant enquiries. I note that on 30 December Andrea informed police of two further contacts with doctors. The first of these was a home visit by Dr [REDACTED] on 11 December. Dr [REDACTED] in a statement taken by police on 30 December (page 34043) confirmed the visit and said that the child was suffering from an ear infection and the possibility of mumps. The second contact described by Andrea was with Pendine Park out of hours clinic

on 19 December. At 12.15 pm on 31 December ADI H [REDACTED] faxed to me documents (pages 34057 and 34052) which showed that the Wrexham police had made arrangements to visit Pendine Park that night with the intention of taking a statement of evidence covering the visit which was believed to have made on 19 December. The documents do not reveal any concern that it might not be possible to obtain such a statement. I note that DC [REDACTED] of Wrexham police visited Pendine Park on 31 December and recorded a statement (page 59854) from a Dr [REDACTED] who could find no record of Andrea and her son having attended there on 19 December. I note that this statement was faxed to my office by DC [REDACTED] at 6.50 pm, at the earliest, on 31 December. It is unlikely that I received it before 2 January 2004.

13. The case was mentioned at Craigavon Magistrates' Court on 2 January 2004. No medical evidence was presented and the case was further adjourned for the matter of Andrea's non-attendance to be dealt with on a future date. While I cannot now recall exactly how I analysed the position on that morning, I would have chosen not to have put the medical evidence so far gathered before the magistrate as the basis for Andrea's non-attendance on 22 December for any or all of the following reasons,
  - a. The risk that, because the evidence did not support the specifics of the information the prosecution had given the court on 22 December, i.e. mumps, swollen testicles, high temperature and danger of fitting, the magistrate would be persuaded by the defence that the adjournment had been obtained on the basis of information that was not fully accurate;
  - b. While I was aware that the police in Wrexham had so far failed to find confirmation of Andrea's alleged visit with her son to Pendine Park, it remained possible that they would do so and that such evidence might go to confirm the reasons for Andrea not attending at court;
  - c. I took the view that it would not be proper to simply rely on Dr [REDACTED]'s

statements once I was made aware of unresolved issues in relation to Pendine Park;

d. I was aware of the fact that Andrea had received a threatening letter (see paragraph 15 below). If I had obtained ratification of the adjournment, as far as I was aware this could have signaled to a terrorist organization that Andrea was committed to giving evidence despite their threat, thereby possibly compromising her safety.

14. Police continued with their inquiries into Andrea's alleged visit to Pendine Park. They kept me informed of progress and I in turn kept counsel and relevant colleagues up to date. The investigation was thorough, as the circumstances required. No evidence was ever found to confirm that the visit had taken place.
15. I note from page **58455** that it was on 23 December that Andrea informed police that she had received a threatening letter relating to her role as a witness in this case. Police advised me of this development soon afterwards and kept me informed of their enquiries, which did not uncover the source of the letter. I was kept aware that police took steps to assess and try to deal with the threat posed by the sender of the letter.
16. Following the receipt of the letter I note from DCI **K** 's journal (page **59861**) that as early as 23 December 2003 he intended to ask me to accompany police to a meeting with Andrea as soon as practicable. At this time the focus of concern was the effect of this letter upon Andrea who had not yet mentioned Pendine Park.
17. On 9 January 2004, with Ms Smith, DCI **K** and ADIH , I attended a consultation with Andrea in Wrexham Police Station. I refer to Ms Smith's letter to me (pages **33989-33990**) enclosing her typewritten notes (pages **33991-33997**). I believe that these provide an accurate account of the consultation. By this time the

consultation had to deal with the developing concerns about the details of her son's illness and treatment, particularly the visit to Pendine Park, and the effect of the threatening letter upon Andrea's willingness to give evidence. Ms Smith questioned Andrea about her son's illness. Andrea expanded upon any information we had previously been given. She seemed to attribute his condition to receiving the MMR vaccine some months previously. Among the things that she said was that her doctor had been worried by the swelling of the boy's testicles although this had not been mentioned in either statement by Dr [REDACTED]. At Pendine she said that the boy was seen by a male doctor who "felt round his neck, listened to his chest and said to keep giving him Calpol". She also said that at Pendine she was carrying her son and "Doctor opened the door – old- grey hair. Didn't see receptionist making notes she could have done. Dr didn't take any notes when we were there."

18. DCI K [REDACTED] questioned Andrea about the threatening letter. She said that she had not known to expect the letter in advance. She was concerned that her present address was known by whoever sent it. She did not now wish to give evidence unless she was moved to a different address, but would not move away from Wrexham and would be reluctant to give up contact with her friend Glyness in Portadown. I understood that the conditions she placed on a move would have made it impossible for police to place her in a witness protection scheme.
19. On 13 February 2004 I wrote to Gerald Simpson QC inviting him to a consultation with police and Ms Smith on 17 February. (See letter page 33984). The purpose of this meeting was to bring Mr Simpson up to date with developments in this case. On 26 February I attended a meeting with the Director, the Senior Assistant Director and Gerald Simpson QC at which the issues affecting Andrea were discussed. I refer to my file note (pages 33979-33980) and a page of handwritten contemporaneous notes. (33976/7) The Director at this meeting said that he had to be sure that he had taken every proper step to advance the case and he expressed the view that in all the circumstances Andrea McKee may remain credible on the main

issue. He said that it was important that he should take an informed decision on how the case may be progressed in accordance with the directing test. He requested that Mr Simpson confer with the witness and provide written advices as to whether she could be presented as a credible witness.

20. Following this meeting I telephoned both defence solicitors to advise them that at Craigavon Court where the case was listed the next day the prosecution would be requesting a further adjournment to enable Senior Counsel to consult with Andrea McKee. (See page 33974) I also spoke to police about arranging the consultation with Andrea. I appeared at Craigavon Court on 27 February to request the Resident Magistrate hearing the case to adjourn consideration of the validity of the conditional adjournment of 22 December 2003 and to take the case out of the list for 8 March when the committal proceedings proper had been due to begin, if all was in order. Despite assertions by the defence that the court had been misled on 22 December about Andrea's son's illness, the application was granted.
  
21. On 2 March 2004, I attended a consultation with Andrea McKee and Gerald Simpson Q.C. DC Murphy and DC [REDACTED] were also in attendance. There is now produced and shown to me containing page numbers 33965-33967 a copy of DC Murphy's note of that consultation. That appears to be a full and fair account of the consultation. Mr Simpson questioned Andrea again about her reasons for not attending court on 22 December 2003 and despite it being put to her that there was no record of her attendance, she maintained that her basic story was true. I believe that it was obvious that Andrea was changing the details when caught out on a lie. For example, when she said that the doctor at Pendine Park had been a grey haired man and Mr Simpson told her there had been no grey haired doctor on duty, she said, "There was a grey haired man and [REDACTED] took [REDACTED] in and I waited outside." This was not consistent with her description given at the consultation on 9 January when she said that at Pendine the boy was seen by a male doctor who "felt round his neck, listened to his chest and said to keep giving him Calpol". She also said that at

Pendine she was carrying her son and “Doctor opened the door – old- grey hair”.  
See paragraph 17 above.

22. On 16 March 2004, Gerald Simpson QC provided written advice on issues arising from the consultation. There is now produced and shown to me containing page numbers **33915-33918** a copy of that advice. While Mr Simpson in paragraph 16 of his advice mentioned suspicions surrounding the threatening letter, he states that he did not take that matter into account in coming to his decision [about calling Andrea to give evidence]. The core of his advice is contained in paragraphs 17-20 in which he states that in the circumstances which he had set out, “I am not in a position to advise that she [Andrea] can be put forward by the prosecution as a witness capable of belief”.
23. Having considered the advice, and applying my knowledge of the case at that stage, including the three consultations I had attended with Andrea, I wrote to the Director the same day. There is now produced and shown to me containing page numbers **33919-33920** a copy of my minute to the Director in which I set out my views about Andrea’s credibility and on whether the case could proceed without calling her as a witness. I also provided to the Director a “Summary of Events” dated 18 March 2004. (Pages **33909-33914**) The Director decided, having considered all of the advice given, to direct the withdrawal of the charges against the Atkinsons and Kenneth Hanvey. As per the final paragraph of my letter, the form of words used by Christine Smith to the Court was agreed with the Director. (page **33925**) and the charges were duly withdrawn at Craigavon Court on 19 March 2004.
24. I issued a Direction dated 22 March 2004 of 'no prosecution'. A copy of that Direction is now produced and shown to me containing page numbers **33891-33892**.
25. The terms in which the case was withdrawn were communicated to Mr McGrory

verbatim by letter dated 23 March 2004. A copy of that letter is now produced and shown to me containing pages numbers **33874- 33876**.

26. I have been asked if I considered compelling Michael McKee to come to court to give evidence. When I received the case the investigation had been built around Andrea's willingness to give evidence. I understood that police had taken an opportunity which they perceived existed in the case of Andrea. I note that in a minute (page **19957**) of 16 May 2002, ADI **H** informed Mr Matthews that on 15 May 2002 he and another detective had visited Michael McKee in prison. He [Michael] was invited to make a written statement as a witness to the events surrounding his plea of guilty to perverting the course of justice. He declined stating that he wanted to put the matter behind him. I do not recollect giving the matter any particular thought during the preparation of the directions and proofs of evidence for the committal, but on reflection I do not consider that there was any merit in seeking to compel someone who had not made a witness statement and had stated his unwillingness to give evidence.
27. I have been asked if I consider that Andrea's evidence about the conspiracy between herself and her husband and the Atkinsons as set out in her statement of evidence prepared for the committal proceedings is credible and if so, could we not have proceeded with her as a witness despite the strong belief that she was lying about Pendine Park. Clearly at the time that I directed the prosecution of the Atkinsons and Hanvey I considered that her evidence was credible and furthermore that, as far as I could ascertain she could be presented as a witness who was capable of giving that evidence to a court in a credible manner. Resulting from the outcome of the investigations into Pendine Park, it was my view that the prosecution could not present her as a credible witness because I cannot conceive of circumstances where, as a prosecutor, I would seek to rely on the evidence of a witness whom -\*I knew would deliberately lie to the court on a disputed issue. Having seen Andrea change details of her story when challenged, it was my judgment that, if called as a

witness, there was a reasonable prospect that she would not restrict her untruths to any particular part of her evidence. There was a risk that could not be ignored that her whole evidence would have been contaminated by her propensity to tell lies. It was my considered view that the defence would have exploited her capacity to alter her story to meet changing circumstances to the extent that any jury would have entertained reasonable doubts about her evidence and that thereby the test for prosecution was not met.

28. The suggestion that I or the Department of Public Prosecutions felt some embarrassment about the prosecution of Robert Atkinson and because of that took the opportunity to sabotage Andrea's ability to give credible evidence by inquiring much more deeply than was necessary into her alleged attendance at Pendine Park is untrue. As I have indicated, the investigation of the Pendine Park issue followed a natural course flowing from the information given to police by Andrea. PPS and police were not working in a vacuum. All information disclosed to the defence about Andrea's child's illness would have been subjected to the closest scrutiny by the defence who considered that the statements of Dr [REDACTED] which had been disclosed prior to 27 February did not support the information on the child's illness which had been given to the court on 22 December. In handling this case, not only were my colleagues and I aware that all matters connected with the death of Mr Hamill were likely to be the subject of a public inquiry, but I had no dealings with any aspect of the Hamill prosecution prior to taking over this case. If any colleagues felt embarrassment about any aspect of the case I was not made aware of it and at the time of making this statement I still have no reason to believe that any such embarrassment was felt. Furthermore, to deliberately damage the case would have been contrary to the principles I applied in 31 years as a prosecutor and 33 years as a member of the Bar.

SIGNED:



ROBERT IVOR MOSS MORRISON

DATED:

16 September 2009.