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Police Ombudsman for
Northern Ireland

Memo

To: Ombudsman
From: David WOOD, Director of Investigations
CC:
Date: 14/03/01
Re: Supervision of Hamill related investigations

There have been many failures either identified or subject to investigation in respect of the murder of Robert HAMILL on 27th April 1997. The allegations and failures may be summarised as follows;

- 4 officers remained in a police Landrover who could have intervened in the attack on Robert HAMILL
- Persons were 'detained' at the scene and released who may have been involved
- Officer(s) from the Landrover did not make evidence available that they could have provided, including details of person(s) that could have been arrested immediately for the attack
- The scene was not preserved at all after the event and not forensicated for 7 hours. An officer had arrived at the scene then to see road sweeps clearing the mess! Evidential opportunities were undoubtedly missed.
- Arrests should have been made the next morning of persons identified as having been involved but were not. Considerable evidential opportunities were missed.
- The following morning Reserve Constable ATKINSON telephoned Harvey, probably one of the murderers, and told him to destroy his clothing.
- The details of this telephone call were passed by an Andrea McKEE to Detective Inspector IRWIN (the investigating officer) on the night Hamill died, 8th May 1997
- DI Irwin saw Tracey CLARKE's statement the next day implicating the murderers and confirming that Atkinson made the telephone call to Harvey
- Itemised billing was ordered the morning of 9th May in respect of Atkinson's home telephone which was to show that a call from his house to Harvey's house did take place on the morning after the assault
- DI Irwin subsequently took an alibi statement from Andrea McKee at the offices of Atkinsons solicitor in which she incongruously states that she was present in Atkinson's house when her husband made the telephone call to the Harvey household about social matters and claims that Atkinson was not present. It is difficult to perceive as to how that statement could be taken by the senior officer who must have known that she was not telling the truth
- There are no records of a great deal of these matters on the HOLMES system, nor can any form of Policy File be found that would provide some explanation for actions, or lack of actions, being taken.


- Atkinson's recorded duty time was altered in an attempt to show that he was on duty at the time the call was made. This duty sheet was not submitted for forensic examination
- Some potential exhibits were not retained, in particular CCTV tapes, despite family and community concerns that they would show the failure of the police to take action on the night.
- Tracey CLARKE provided information that could have been investigated that would have supported the murder case and assisted in the investigation against Atkinson, in particular where she purchased a distinctive jacket for Harvey which was worn on the night of the murder and subsequently destroyed. No such enquiries were made for over 3 years.
- No enquiries were made to seek to establish where Mr and Mrs McKee were on the night of the 27th April when they later falsely claim they stayed the night at the Atkinsons. When such enquiries were attempted over three and a half years later it was shown that a mini-cab had called at their own home in the early hours which indicates that they were there. Due to the lapse in time it is now difficult to substantiate this.
- A further significant telephone call was made from the Atkinson house to the Harvey house at 4pm that day which Mrs Atkinson subsequently claimed to have made. No effort was made to clarify where she was at the time although she would have normally been at work at the relevant time. Her employment involves a workstation which would have provided an audit of her use of the computer. The lapse of time has now deprived the investigators of that opportunity.
- On 9th May, two officers were providing security for an RUC builder and were with his son Timothy Jameson, when he mentioned to them that he was at the scene of the assault, had joined in and kicked a man on the ground. This may well have been Hamill. They reported that conversation to DI Irwin and DCS McBumey. Jameson had already responded to a negative questionnaire. There next appeared a statement from him naming the murderers but omitting the role that he may have played. There were no records in the system indicating what the two officers had reported.
- It is believed that there were substantial failures of disclosure to the D of PP in respect of the prosecution of Hobson and others which would have provided fertile grounds for appeal.
- A further witness statement was subsequently taken from Andrea McKee in which she states that she and her husband were not present when the phone call was made and that they had all conspired to pervert the course of justice by lying to protect Atkinson. This interview was not conducted under caution as it should have been and the D of PP was not consulted. He has since directed that she cannot be a witness until she has been dealt with under caution.

The following is a chronology of our directions regarding investigative strategy and subsequent activity since the Ombudsman involvement;

- RUC intended to arrest Michael McKee and others in the second week December 2000 but NOT Atkinson. In November we directed that he be delayed whilst we considered the case.
- On 5th December we directed that the arrest strategy should include Atkinson and all those involved in the perverting the course of justice allegation and that technical surveillance be deployed. The chief constable was seen on 6th December 2000 due to the policy implications for the RUC and could see no impediment in policy terms.
- On 13th December we directed a change of SIO. The new SIO, DCS Stewart, stated that he should be ready for technical deployment and arrests by the second half of January 2001.
- On 21st December DCS Stewart still confident of the above timescales.
- On 10th January DCS Stewart reported that the proactive strategy was developing well and that the briefing/interviewing packages would be ready in 7-10 days. He raised the problem of extraction of the equipment and stated that the arrests would occur in the beginning of February.

- On 26th January DCS Stewart stated that the proactive strategy will now take place in the second week of February and again raised retrieval as a problem.
- On 16th February DCS Stewart asked for a complete change of strategy. Wanted to arrest and charge Atkinson. He then raised concern on the deployment of technical equipment in Atkinsons house which can be summarised as follows;
 - He believes that he has been subject to surveillance
 - Remains home with some family members most of the day
 - Proficient in electronics and and computers and may discover device
 - Will be aware of techniques and frustrate deployment on the day

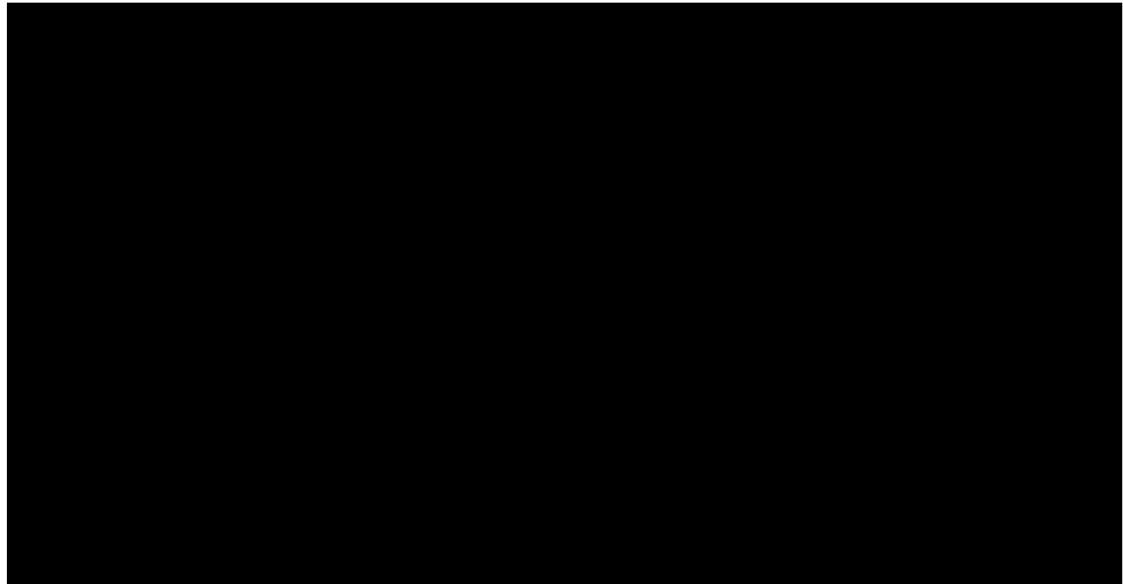
He wanted to go ahead with the arrests in 2nd week of March. Chris MAHAFFEY told him that he was not content with strategy being considered, would want the D of PP consulted re the charges and would want to consult with me. DCS Stewart stated that the RUC had insufficient technical equipment and further kit was to arrive on 25th February at which stage staff would have to be trained in its use.

- On 23rd February DCI **K** raised further concern on the arrest and proactive strategy against Atkinson. The reasons he gave were;
 - Atkinson seen as a local hero by one section of the community
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 - A real risk of compromise with Atkinson finding the equipment. This would result in;
 - One section of the community being incensed that police are devoting such resources to this particular enquiry
 - The other section incensed as to why nothing was done before, and that these 2 factors could further place him and his team at risk to attack

There is a feeling in the local police that Atkinson is being persecuted and such deployment would have severe morale implications for the police

- On 28th February meeting with Ray KITSON of the D of PP when Kitson stated that McKee could not be used as a witness before she had been dealt with for her criminal responsibility. This was the first time that he had seen her main witness statement.
- Further meeting on 28th February when DCS Stewart stated that he now wanted to delay arrests and any deployments for a few months in order to 'cleanse' McKee and be in a position to charge everyone. Chris MAHAFFEY told him that he disagreed with strategy and it was agreed he would come to NCB and present his case to me.
- On 2nd March 2001 Ombudsman and I met with chief constable and outlined our fears regarding delays, proposed strategy and DCI **K**'s personal fears
- On 6th March met with DCS Stewart and DCI **K** at NCB when he presented his strategy. The legal and operational defects in the strategy were pointed out to DCS Stewart which he accepted and then again agreed to revert to the original directed strategy. Again concerns regarding the deployment against Atkinson were raised. Problems of retrieval were again mentioned. DCI **K** was asked about his personal concerns and whilst confirming them stated he was content if he was in the

background with DCS Stewart fronting the enquiry. DCS Stewart then stated that there will be some delay to the proceedings as the RUC were still 2 pieces of technical kit short which would take several weeks to obtain and may have training implications. It was also clear that no preparation had taken place in respect of deployment, particularly if deployment was not found feasible at the time of their arrest. The following would appear not to have been undertaken;



- On evening of 6th March I telephoned chief constable and informed that progress was being delayed, as 2 pieces of kit were required. He promised to sort the problem out the next day.
- Meeting with Supt [REDACTED] on 12th March when he stated that deployment could not take place before 9th April as they were still to secure kit to be used and had to train officers. He felt that there would be no problem technically in deploying in Atkinson's house in that he was confident that he would not be able to compromise the kit. He stated that there was an RUC security package on the house and that deployment could not take place unless DCS Stewart secured the details of that package from the Organisation. Supt [REDACTED] also stated that external surveillance of the various premises was not to be conducted and appeared not to have been considered. This is highly desirable if evidential use is to be made of the surveillance product. He felt such external surveillance would be difficult in the areas.
- Further contact with Supt [REDACTED] on 13th March when he stated that he had seen the chief constable who had asked if the matter could be expedited. He was thus sending someone to England to buy it immediately. Chris MAHAFFEY was invited tomorrow morning to assist in the writing of the Part 3 Applications. He also stated that they were reviewing external surveillance opportunities.

CONCERNS

- There is a lack of appetite to tackle R/C Atkinson in a proactive way for all the reasons stated
- RUC investigators have frequently used the term, 'a sledgehammer to crack a nut' with regard to the proposed strategy. This either is indicative of an attitude, or demonstrates a complete lack of awareness of the strategic importance of the investigation.
- There has been delay after delay and the deployment is still some way off from professional deployment

- The RUC have known for 4+ months that the directed and agreed strategy was to deploy technically yet do not have the kit. When challenged by the chief constable seem to be able to buy it immediately
- Real fear of compromise – they intend using 36 officers from the local region as listeners when it is stated that there is considerable sympathy within the ranks of the RUC for Atkinson
- These failings are against a background of poor performance and in a case of considerable public importance, yet obfuscation abounds
- The delays and lack of professionalism have led us to unintentionally provide misleading information to Diane HAMILL and her solicitor. The stage must be approaching when this will damage their confidence in us. They are determined to pursue a public enquiry but understand the need to conduct a criminal investigation. They also believe that such an investigation has been extended and delayed to frustrate a public enquiry.
- We are heavily associated with this case which is pivotal to the independence and effectiveness of the Police Ombudsman. Our failure to secure the active cooperation of the RUC, publicly replayed, would serve to undermine our role and function.



David WOOD

DIRECTOR OF INVESTIGATIONS