

STATUTORY REPORT

Public statement by the Police Ombudsman in accordance with Section 62 of the Police (Northern Ireland) Act 1988.

THE CIRCUMSTANCES OF THE
MURDER OF DAMIEN WALSH AT
THE DAIRY FARM COMPLEX ON
25 MARCH 1993

Executive Summary

On 25 March 1993, Damien Walsh was 17 years old and working in the 'Coal Bunker' unit of the Dairy Farm Complex, Stewartstown Road, West Belfast, when he was murdered by UDA/UFF gunmen believed to have been associated with 'C' company of that organisation.

The gunmen fled the scene of the attack in a stolen Vauxhall Astra Estate car which was later found abandoned in Slieveban Drive, off the Andersonstown Road, in West Belfast.

A murder investigation was commenced by the Royal Ulster Constabulary. The investigation included a post mortem examination, witness statements, house to house enquiries, and forensic examinations of the murder scene and abandoned Vauxhall Astra. A reconstruction of the events was also conducted.

In early May 1993, police received information indicating that three individuals were involved in Damien's murder. These were the two gunmen and the driver of their vehicle. The murder investigation team was made aware of this information on 9 July 1993. However, only one of the three individuals identified was subsequently arrested and interviewed about Damien's murder.

No one has ever been charged with Damien's murder.

In June 1994, the murder weapon, a 9mm self-loading handgun which discharged three rounds at the scene of Damien's murder, was recovered by police in East Belfast. A forensic examination linked this weapon to Damien's murder and a previous murder in 1991, also claimed by the UDA/UFF.

In February 2004, Mrs Marian Walsh, Damien's mother, made a complaint to the former Police Ombudsman, Nuala O'Loan, regarding the police investigation of her son's murder. She also complained of collusion in the murder.

The Police Ombudsman's investigation believes that the handgun used to murder Damien originated from a consignment of firearms imported to Northern Ireland by loyalist paramilitaries in December 1987. Weapons from this consignment have been linked with a number of other murders committed by loyalist paramilitaries.

The Police Ombudsman's investigation has established that the security forces had the Dairy Farm under observation on 25 March 1993. The investigation also established that military personnel noted the gunmen's vehicle enter the Dairy Farm, discharge their firearms, and leave the Dairy Farm. For the purposes of this public statement I shall refer to this period of observation as a surveillance operation.

The existence of this surveillance operation on the Dairy Farm was not shared with the Senior Investigating Officer (SIO) investigating Damien's murder.

The Police Ombudsman's investigation has established that, in March 1993, members of 'C' Company of UDA/UFF had been under surveillance which had significantly disrupted their activities. This surveillance was stopped on 22 March 1993, three days prior to Damien's murder, to focus surveillance on the Dairy Farm, where intelligence had indicated that Provisional Irish Republican Army were storing fertiliser for use in making explosives.

Surveillance of UDA/UFF recommenced on 30 March 1993. The Police Ombudsman investigation has established that between 22 March, when surveillance was suspended, and 30 March when surveillance recommenced, the UDA/UFF were responsible for two murders and two attempted murders.

Conclusion

I am of the view that the attack at the Dairy Farm by the UDA/UFF was a planned and targeted attack. However, I am of the view that Damien Walsh was not the intended target. My investigation has not found evidence to link Damien Walsh to the recovery of fertiliser from a unit at the Dairy Farm.

I have found no documented reason for the failure to notify the murder investigation team of the existence of a surveillance operation at the Dairy Farm at the time of Damien's murder. This failure denied the murder investigation team the opportunity to obtain statements from witnesses which may have assisted the investigation.

I am of the view that there were a number of other key pieces of intelligence in the possession of police which may have been of value to the murder investigation team, but were not disseminated to the Senior Investigating Officer.

Although the Senior Investigating Officer had received information which named several suspects, I have identified significant investigative failures on his part. These include, the failure to reconvene an identification parade of suspects and a failure to question all suspects about Damien's murder.

I have also identified inadequacies in the murder investigation team's forensic strategy including: the failure to forensically examine the home of the owner of the stolen Vauxhall Astra for evidence which may have identified the murderers. There was also a failure to examine items found in the stolen vehicle which did not belong to the vehicle's owner and a failure to examine the home addresses of any of the individuals who were suspected of involvement in Damien's murder.

I am of the view that no police or security force personnel involved in the surveillance operation could have stopped Damien's murder when the gunmen arrived at the Dairy Farm.

I am also of the view that there was an opportunity to intercept the murderers after they left the Dairy Farm but that this opportunity was impeded by the circulation of inaccurate information about the make and model of the vehicle used by the murderers.

I am of the view that Damien Walsh was the innocent victim of loyalist paramilitaries and that the UDA/UFF, alone, were responsible for Damien's murder. However, Damien and his family were failed by police due to a series of investigative failures and collusive behaviours which are outlined in this statement.

1 Introduction

- 1.1 In 1993, there were 90 sectarian murders attributed to the ‘Troubles’ in Northern Ireland, 12 of them in March of that year. The Provisional Irish Republican Army (PIRA) claimed responsibility for five, with loyalist paramilitaries claiming responsibility for the remaining seven. The murder of Damien Walsh on Thursday 25 March 1993 followed the deaths of four Catholic workmen at Castlerock earlier that day and the murder of Peter Gallagher in Belfast the day before. The former Police Ombudsman, Nuala O’Loan, received a complaint from Mrs Marian Walsh, Damien’s mother, in February 2004 raising concerns over the circumstances of her son’s death and the subsequent police investigation.
- 1.2 This document is a public statement detailing my reasons for actions, decisions, and determinations in respect of this complaint. The investigation conducted by my Office into the allegations of police misconduct connected with the death of Damien Walsh is also outlined in this statement.
- 1.3 It is acknowledged that the Ulster Defence Association (UDA), using the pseudonym of the Ulster Freedom Fighters (UFF),¹ were responsible for Damien’s murder. In this statement I will refer to this organisation as the UDA/UFF. I have also investigated linked incidents where police misconduct was suspected and the relevant details are included in this public statement.

¹ Whenever it carried out a terrorist attack, the UDA used the cover name Ulster Freedom Fighters (UFF) when claiming responsibility. The UFF were outlawed in November 1973 but the UDA itself was not proscribed as a terrorist organisation until August 1992. I consider that the UDA and UFF were the same organisation. For the purposes of this public statement, it shall be referred to as the UDA/UFF.

- 1.4 My investigation has found no evidence that Damien was the intended target of this UDA attack. Royal Ulster Constabulary (RUC) conference notes, dated 27 March 1993, stated *'it is not suspected that he was the target'* and this was confirmed in later intelligence obtained by police. Police Officer 2, the Deputy Senior Investigation Officer (DSIO) investigating Damien's murder, also told my investigators that, in his opinion, the attack was purely sectarian. He did not believe that Damien was linked to any paramilitary group. The Chief Constable at the time, Sir Ronnie Flanagan stated, "*the reason was sectarian, there were no threats against the premises and the deceased was not involved in the paramilitaries and was completely innocent.*"
- 1.5 My investigation focused primarily on police actions relating to Damien's murder. In undertaking my investigation it was necessary to obtain generic information about the activities of 'C' Company, West Belfast UDA/UFF, throughout February and March 1993.² This information informed necessary investigative decisions and actions taken by my Office in relation to police conduct. I have detailed much of this information as it demonstrated the heightened threat posed by the UDA/UFF and, in particular, 'C' Company at that time and the police response to their activities.
- 1.6 My investigation generated over 260 investigative actions, many of which were complex. My investigators made efforts to engage with 57 police officers. A number of these either declined or were unable to assist my enquiries. However, 26 police officers co-operated and provided accounts as to their roles, decisions, and actions during relevant police investigations. I thank those who took the time to assist.
- 1.7 At the conclusion of this investigation my predecessor, Dr Michael Maguire, considered whether or not it was necessary to submit a file to the Director of Public Prosecutions (DPP). As there was no evidence to recommend that

² 'C' Company was a sub-unit of the UDA's West Belfast Brigade, based on the Lower Shankill Road.

any identifiable officer may have committed a criminal offence, Dr Maguire decided that a file would not be submitted. I am unable to consider the question of disciplinary proceedings relating to any potential misconduct as all of the relevant police officers are now retired. In this public statement I have criticised the actions of a number of RUC officers serving at the time. However, given the passage of time, it has not been possible to identify all of those responsible for actions or omissions criticised by me. I have provided an opportunity for any identifiable officer, subject to criticism, to respond. I have considered these responses and incorporated them into this public statement, where I consider it appropriate.

1.8 Prior to its release, this public statement was also forwarded in full to the Police Service of Northern Ireland (PSNI) and relevant sections were provided to Ministry of Defence (MOD). Responses were received from both which again I have reflected, where I consider it appropriate, in this public statement.

1.9 In line with the presumptive policy to neither confirm nor deny the status of any informant³, I have not recorded which agencies managed any particular informants mentioned in this public statement. Throughout this and other public statements, references were and will be made to *'informants.'* Any such references should not be automatically regarded as informants which were managed solely by the RUC.

³ Informants are now known as Covert Human Intelligence Sources (CHIS)

2 The Circumstances of Damien Walsh's Murder

- 2.1 At approximately 7:35pm on 25 March 1993 two masked men, one armed with a handgun, entered the home of Witness 1, in the Lower Shankill Road area of Belfast. They forced him to hand over the keys to his car, a Vauxhall Astra Estate, which they then stole. Witness 1, now deceased, reported the theft to police a short time later.
- 2.2 That evening, Damien was working at the 'Coal Bunker', Unit 6, Dairy Farm Complex, Stewartstown Road, West Belfast with his manager, Witness 2.
- 2.3 I have been told that Damien swapped his shift at short notice with a colleague so that he, Damien, could take his girlfriend to the cinema the following evening. Ambulance Control at Purdysburn received a '999' call at 8:08pm to report a shooting at the Dairy Farm. An ambulance was dispatched from the Broadway Depot at 8:09pm. Uniform police were first made aware of the shooting at 8:10pm via Woodbourne RUC Communications Room. Police attended at 8:11pm and a Serious Crime Log was opened at 8:15pm.
- 2.4 Damien and Witness 2 were sitting in the Coal Bunker's office awaiting close of business. There were no others present. Witness 2 stated that he heard the front door bang, before observing two masked men walk past the window serving hatch towards the office door. Damien jumped up from his seat and Witness 2 heard a shot. He stated that Damien fell on top of him. Witness 2 stated that he heard further shots and sustained gunshot injuries to his legs. The handgun being fired at them then appeared to jam and the masked men fled from the office. Witness 2 moved Damien to one side before lifting a stool and running after the gunmen. He watched them get into a maroon coloured

Vauxhall Astra which then drove away towards the rear gate of the Dairy Farm.

2.5 Both Witness 2 and Damien received emergency medical treatment at the scene before being taken by ambulance to Belfast City Hospital where, despite further treatment, Damien sadly died from his injuries.

2.6 While attending the scene of the murder police recovered a large quantity of fertiliser from a nearby unit of the Dairy Farm. The discovery of a suspicious bag outside this unit had led to a controlled explosion. This damaged the shutter of Unit 4 exposing the fertiliser stored inside.

2.7 At 10:15pm that same evening, the UFF contacted the British Broadcasting Corporation (BBC) using a recognised code word to claim responsibility for Damien's murder.

2.8 At approximately 10:40pm, a Vauxhall Astra was reported abandoned in Slieveban Drive, off the Andersonstown Road, in West Belfast. This vehicle was later confirmed as the one stolen from Witness 1. It is believed that this was the car used in the murder.

2.9 No individuals have been made amenable for this murder.

Aerial view of the Dairy Farm



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3 The Complaint and Scope of the Police Ombudsman Investigation

3.1 In February 2004, Mrs Walsh made a number of allegations to this Office in respect of police actions before and after her son's murder. These allegations are set out in full later in this public statement, However, in summary, they are concerned with the following issues:

- I. That the RUC failed to keep the family updated about the investigation into Damien's murder;
- II. That a police officer failed to assist in administering first aid to Damien at the scene;
- III. That there was a security force presence at, or near to, the Dairy Farm at the time of the shooting, including surveillance;
- IV. That the RUC forensic strategy, including ballistic evidence, was of a poor quality;
- V. That the quality of the RUC suspect strategy was not suitably robust to secure prosecutions; and
- VI. Collusion

3.2 Mrs Walsh's complaint was accepted for investigation under section 56 of the Police (Northern Ireland) Act 1998 (the 1998 Act). I have examined the RUC investigation in accordance with the Terms of Reference set out below:

- I. Establish whether a member of the RUC or agent of the RUC may have been culpable in this murder including the supply of information, withholding evidence, assisting offenders or other obstruction, whether passive or direct interference, of related police investigations;

- II. Establish if the RUC were in possession of intelligence which, if acted on, may have prevented the murder;
- III. Establish if the police investigation of the murder or other linked incidents were adversely impacted by the non-dissemination of intelligence or otherwise obstructed;
- IV. Establish if all reasonable lines of enquiry were pursued in respect of the dissemination of intelligence and, if not, assess the quality of the wider RUC investigation with a particular emphasis on suspect strategies, intelligence, and forensic (including ballistic dimensions) opportunities;
- V. Establish if the RUC had agents in positions of leadership within the UDA/UFF and/or other paramilitary groups linked to that organization, who may have influenced or had knowledge of the activities of the West Belfast UDA/UFF or had access to information relevant to their activities;
- VI. Establish if the RUC had access to intelligence from other agencies relating to the activities of the West Belfast UDA/UFF and/or other paramilitary groups linked to that organisation, on which it failed to act;
- VII. Identify missed investigative opportunities by the RUC, including strategic linking of murders and other relevant incidents, that may have impacted on the continued operation of the West Belfast UDA/UFF and paramilitary organisations linked to that group, and whether if such opportunities had been acted on subsequent murders may have been prevented; and
- VIII. If criminality, serious misconduct or other failings are identified by members of the RUC, identify individual accountability, extending to RUC senior management, where such conduct was of a repeated, serious or widespread nature.

3.3 My investigation sought to address Mrs Walsh's complaints and the Terms of Reference. The original RUC investigation papers were secured during the investigation and are retained by my Office.

- 3.4 My investigation has also sought to establish what was known about the firearms used in this attack, with a view to establishing their origins.
- 3.5 Mrs Walsh has alleged that there was collusion in respect of police actions relating to Damien’s murder. In order to properly address this issue, I have considered the various definitions of collusion provided by a number of tribunals and inquiries, and former Police Ombudsmen. There is no universally agreed definition of collusion. It has been described as ‘*having many faces,*’ in the context of investigating complaints about state collusion during the ‘Troubles.’ The term has been described as being anything from deliberate and wilful actions to a more passive ‘*wait and see*’ attitude (or looking the other way and keeping a discrete if not malicious silence.)⁴
- 3.6 A number of independent inquiries and investigations have sought to define or describe what constitutes collusion. In his April 2003 report into alleged collusion between paramilitaries and state security forces, Sir John Stevens stated that collusion could be evidenced in many ways ranging ‘*from the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, through to the extreme of agents being involved in murder.*’⁵
- 3.7 He further stated that ‘*the failure to keep records or the existence of contradictory accounts can often be perceived as evidence of concealment or malpractice. It limits the opportunity to rebut serious allegations. The absence of accountability allows the acts or omissions to go undetected. The withholding of information impedes the prevention of crime and the arrest of suspects. The unlawful involvement of agents in murder implies that the security forces sanction killings.*’⁶

⁴ Doctor Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts* (Oxford & Portland Oregon, 2017), 196.

⁵ Stevens Enquiry: Overview and Recommendations, April 2003, at Para 1.3

⁶ Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.

- 3.8 *'The co-ordination, dissemination and sharing of intelligence were poor. Informants and agents were allowed to operate without effective control and to participate in terrorist crimes.'*⁷
- 3.9 *'Nationalists were known to be targeted but were not properly warned or protected. Crucial information was withheld from Senior Investigating Officers. Important evidence was neither exploited nor preserved.'*⁸
- 3.10 Canadian Judge Peter Cory was asked to investigate allegations of collusion by members of the British and Irish security forces in Northern Ireland, and to report on his recommendations for any further action, such as whether a public inquiry was warranted. Judge Cory's investigation was carried out in the context of six particular cases, one of which related to the murders of two RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan in March 1989. In his report, published in October 2003, he stated *'How should collusion be defined? Synonyms that are frequently given for the verb to collude include: to conspire; to connive; to collaborate; to plot; to scheme; The verb connive is defined as to deliberately ignore; to overlook; to disregard; to pass over; to take no notice of; to turn a blind eye; to wink; to excuse; to condone; to look the other way; to let something ride...'*⁹
- 3.11 Judge Cory investigated allegations of collusion in the context of a number of other murders, to determine if there was sufficient evidence to warrant public inquiries into the deaths. In his 2004 report into the murder of Patrick Finucane, Judge Cory reprised his earlier definition of collusion, adding that there must be public confidence in government agencies and there can be no such confidence when those agencies *'are guilty of collusion and connivance.'*¹⁰ For these reasons, he was of the view that any definition of collusion must be *'reasonably broad'*. He stated *'Army and police forces*

⁷ Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.

⁸ Stevens Enquiry: Overview and Recommendations, April 2003, Paras 4.7-4.9.

⁹ Cory Collusion Inquiry Report: Chief Superintendent Breen and Superintendent Buchanan (October 2003), Paras 2.55-2.56.

¹⁰ Cory Collusion Inquiry Report: Patrick Finucane (London: The Stationery Office, 2004), Para 1.39.

*must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents. Supplying information to assist them in their wrongful acts or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thereby shattering all public confidence in these important agencies.*¹¹

3.12 In his report into the murder of Robert Hamill, also published in 2004, Judge Cory applied a definition ‘...substantially the same as that set out in the *Finucane* case. The only difference is that in the *Finucane* case more than one Government agency was involved while in this case only one agency, the police force, was involved.’¹²

3.13 He further stated ‘*In the narrower case how should collusion be defined for the purposes of the Robert Hamill case? At the outset it should be recognised that members of the public must have confidence in the actions of Government agencies, particularly those of the police force. There cannot be public confidence in a Government agency that is guilty of collusion or connivance in serious crimes. Because of the necessity of public confidence in the police, the definition of collusion must be reasonably broad when it is applied to police actions. That is to say that police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their officers or of their servants and agents. Nor can the police act collusively by supplying information to assist those committing wrongful acts or by encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning, or even encouraging, state involvement in crimes, thereby shattering all public confidence in important Government agencies.*’

3.14 Judge Cory then turned to considering whether the action or inaction of police either directly or indirectly contributed to the death of Mr Hamill. He stated ‘*In this regard it is necessary to examine collusive acts which may*

¹¹ Ibid, Para 1.39.

¹² Cory Collusion Inquiry Report: Robert Hamill (London: The Stationery Office, 2004), Paras 2.222.

have indirectly contributed to the killing by generally facilitating or encouraging or turning a blind eye...That is the evidence may reveal a pattern of behaviour by a Government agency that comes within the definition of collusion. This evidence may add to or form part of the cumulative effect which emerges from a reading of the documents. Both perspectives will be considered in determining whether the evidence indicates that there may have been acts of collusion by the police. However the aspect of a direct contribution by the police will have a greater significance in my consideration of what may constitute collusive acts in this case.'

3.15 *'The vital importance of the police force to the community as a whole and to the administration of justice cannot be over emphasised. The first contact members of a community have with the justice system is through police officers. As members of the justice system, police officers must act judiciously. They must always strive to enforce and apply the law fairly, evenly, without bias or discrimination. It can never be forgotten that the role of the police is to serve and protect the entire community not just one segment of it.'*¹³

3.16 The Smithwick Tribunal into the murders of Chief Superintendent Breen and Superintendent Buchanan was headed by Judge Peter Smithwick and was prompted by the recommendations of Judge Cory in his 2003 report on the murders. At the first public sitting of the Tribunal on 16 March 2006, Judge Smithwick offered the following definition of collusion: *'The issue of collusion will be considered in the broadest sense of the word. While it generally means the commission of an act, I am of the view that it should also be considered in terms of an omission or failure to act. In the active sense, collusion has amongst its meanings to conspire, connive or collaborate. In addition I intend to examine whether anybody deliberately ignored a matter,*

¹³ Ibid, Paras 2.226-2.228.

*turned a blind eye to it or pretended or unawareness of something that one ought morally, legally or officially to oppose.*¹⁴

3.17 In her book, *'The Use of Force and Article 2 of the ECHR in Light of European Conflicts, and Suspicious Deaths'*,¹⁵ Dr Hannah Russell offered Sir Desmond De Silva's definition of collusion from his report into the murder of Patrick Finucane as the preferred definition:

- I. 'Agreements, arrangements or actions, intended to achieve improper, fraudulent or underhand objectives', and
- II. deliberately turning a blind eye or deliberately ignoring improper or unlawful activity.'

3.18 Previous Police Ombudsmen have relied on the Judge Cory and Judge Smithwick definitions of collusion when applying them to the facts of particular murders during the 'Troubles.' Former Police Ombudsman, Al Hutchinson, described collusion as something which may or may not involve a criminal act. I broadly concur with their views.

3.19 I have carefully considered each of the definitions, aware that there are areas of overlap and also differing emphasis. While these definitions are useful, I recognise that there is no agreed definition of collusion. I have identified a number of common features, as follows:

- I. Collusion is context and fact specific;
- II. It must be evidenced but is often difficult to establish;
- III. Collusion can be a wilful act or omission;

¹⁴ Report of the Tribunal of Inquiry into Suggestions that Members of An Garda Síochána or other Members of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan on 20th March 1989 (Dublin: The Stationery Office, 2013), Para 1.7.7.

¹⁵ Doctor Hannah Russell, *The Use of Force and Article 2 of the ECHR in Light of European Conflicts* (Portland: Hart Publishing, 2017)

- IV. It can be active or passive (tacit). Active collusion involves deliberate acts and decisions. Passive or tacit collusion involves turning a blind eye, or letting things happen without interference;
- V. Collusion by its nature involves an improper or unethical motive;
- VI. Collusion, if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession); and
- VII. Corrupt behaviour may constitute collusion.

3.20 In the context of my role as Police Ombudsman I am mindful that different Ombudsmen have applied varying definitions of collusion to the facts of each complaint or case. I do not intend to rehearse all of these definitions but I am in favour of broad definitions encompassing collusive behaviours reflecting the views of Lord Stevens and Judge Cory. This applies to acts and omissions which can encompass collaboration, agreements, or connivances. It can also include the more passive *‘turning a blind eye.’*

3.21 In June 2016, my predecessor, Dr Maguire, applying the Smithwick definition, found that collusion played a significant role in respect of police actions concerning the murders of six men at the Heights Bar, Loughinisland, on 18 June 1994.

3.22 His public statement was challenged as being *‘ultra vires’*¹⁶ by the Northern Ireland Retired Police Officers Association (NIRPOA). Following prolonged legal proceedings, on 18 June 2020 the Northern Ireland Court of Appeal delivered a ruling on the Police Ombudsman’s role as provided for in Part VII of the 1998 Act. The Court ruled that the Ombudsman’s role was investigatory and not adjudicatory in nature. Decisions as to whether a police officer’s actions amounted to criminality or misconduct were for other forums such as a criminal court or disciplinary panel.

¹⁶ A legal term meaning to act beyond the power or authority of the body.

3.23 Paragraph 40 of the Court of Appeal judgment stated, *'It is clear that the principal role of the Ombudsman is investigatory. The complaint defines the contours of the investigation and in this case informed the terms of reference about which no complaint has been made. There is no power or duty created by the statute for the Ombudsman to assert a conclusion in respect of criminal offences or disciplinary misconduct by police officers. The Ombudsman is required to provide recommendations to the DPP if he considers that a criminal offence may have been committed. Such a recommendation is a decision which could form part of a PS [Public Statement]. Once he makes such a recommendation he has no role thereafter apart from supplying information on request.'*

3.24 The Court, in explaining the legal framework in the 1998 Act, outlined at paragraph 43, *'That framework specifically excluded any adjudicative power for the Ombudsman in the determination of criminal matters or disciplinary matters. The confidence of the public and police force was to be secured by way of the independence, efficiency and effectiveness of the investigation coupled with an adherence to the requirements of the criminal law before any finding of a criminal offence could be made against a police officer and the conduct of a disciplinary hearing with all the protections afforded within that system before disciplinary misconduct could be established. The thrust of the appellants' case is that the statutory scheme would be undermined if the Ombudsman was entitled to use section 62 as a vehicle for the making of such findings. We agree that the legislative steer is firmly away from the Ombudsman having power to make determinations of the commission of criminal offences or disciplinary misconduct but will address later how this affects the content of a PS.'*

3.25 At paragraph 55, the Court outlined the powers of the Police Ombudsman in respect of officers, where there was a question of criminality and/or misconduct, should a police officer have resigned or retired. *'There may well be circumstances, of which this appeal may be an example, where a police*

officer will have resigned as a result of which the officer would no longer be subject to any disciplinary process. By virtue of section 63(1) (e) of the 1998 Act the Ombudsman has limited powers in a PS to identify a person to whom information relates if it is necessary in the public interest. That is a strict test. We accept that a person can be identified by inference, a so-called jigsaw identification. We do not consider that the power to make a PS provides the Ombudsman with the power to make determinations in respect of retired officers. We accept, however, that the statutory scheme does enable the Ombudsman in respect of such officers to indicate what recommendations might have been made, what reasons there were for the making of such recommendations and whether disciplinary proceedings would have been appropriate.'

3.26 In relation to the Police Ombudsman's role in deciding on a case where there was a complaint of collusion, the Court clarified at paragraph 63 as follows: *'Apart from the passages set out at paragraph 4.200, 9.9 and 9.40 the nine chapters of the substantive PS provide what the Ombudsman stated at paragraph 1.12, namely as comprehensive a narrative as possible. The determinations he made in the three offending paragraphs were not in our view decisions or determinations to which section 62 applied and overstepped the mark by amounting to findings of criminal offences by members of the police force. The remaining paragraphs were part of the narrative. We do, however, accept that in light of the families' complaint in the context of Article 2 it would have been appropriate for the Ombudsman to acknowledge the matters uncovered by him were very largely what families claimed constituted collusive behaviour.'*

3.27 My interpretation of this judgment is that, in the absence of determinations of criminality or misconduct by the appropriate authority, my role is limited to commenting on the matters raised in a complaint. My investigation having established the detailed narrative based on the complaint, I can conclude whether the evidence identifies collusive behaviours on the part of police, as alleged. In arriving at my conclusions on indicators of collusive behaviour I

am mindful of the broad definitions of collusion provided by Lord Stevens and Judge Cory.

3.28 My views in respect of Mrs Walsh's complaint are outlined later in this public statement.

4 The Weapons Used in the Attack

- 4.1 The RUC investigation established that two handguns were used in the attack.

Weapon 1

- 4.2 The first handgun (Weapon 1) was identified as a 9mm self-loading pistol which discharged three rounds at the scene. This handgun was linked to a previous murder in 1991, also claimed by the UDA/UFF.
- 4.3 On 17 June 1994, a 9mm Browning self-loading pistol was recovered by police in East Belfast. A forensic examination of this handgun revealed it was used in Damien's murder and the 1991 attack.
- 4.4 This handgun was destroyed by police on 14 June 1995 in accordance with '*The Firearms Northern Ireland Order 1981 – Section 53(4)*.' The appropriate RUC form, '*Order for Disposal of Firearms / Ammunition*' was signed by Police Officer 13.
- 4.5 In June 2016 my predecessor, Dr Maguire, released a public statement into the murders at the Heights Bar, Loughinisland, on 18 June 1994. This included details of a loyalist arms importation into Northern Ireland in late 1987. Police recovered 47 Browning pistols, which formed part of this importation. These handguns had serial numbers ranging between 44651 and 46995, all of which were prefixed by the letter 'L'. The serial number of the Browning handgun used in Damien's murder, L46971, falls within this sequence. Handguns with serial numbers 46970, 46974, and 46976,

believed to have been part of the importation, were recovered by the security forces in Belfast in February 1988.

- 4.6 I am therefore of the view that Weapon 1 was part of the 1987 loyalist arms importation.

Weapon 2

- 4.7 The second weapon (Weapon 2) was identified as a star-type self-loading pistol which discharged one round at the scene. It had previously been used in a 1990 murder attributed to the UDA/UFF and three attempted murders between 1991 and 1993.
- 4.8 The second weapon has never been recovered and no further details are known about it.

5 Surveillance Operation at the Dairy Farm

- 5.1. A major line of enquiry for my investigation was to establish whether or not there was a security force surveillance operation at, or in the vicinity of, the Dairy Farm at the time of Damien's murder, as alleged by Mrs Walsh. This strand of the investigation was significant in assessing issues relating to the preventability and detection of the murder, in addition to informing other lines of enquiry.
- 5.2. My investigation established that a surveillance operation was in place at the time of the murder. Security force personnel were observing the storage and movement of a quantity of fertiliser being stored at Unit 4 of the Dairy Farm . It was part of a joint RUC and military operation in response to intelligence regarding PIRA activity at the Dairy Farm. The intelligence indicated that the fertiliser was to be used as a component in bomb-making.
- 5.3. It has been challenging for my investigation to establish the exact nature and role of security force personnel involved in this surveillance operation. This was due to a lack of RUC Tactical Co-ordinating Group (TCG) records and the poor recollection of relevant witnesses.
- 5.4. In his report on the murder of Patrick Finucane, The Rt Hon Sir Desmond de Silva QC stated, *'The Tasking and Co-ordinating Group (TCG) was a permanent unit under SB [Special Branch] command and formed part of the SB regional structure. The focus of the TCG was the exploitation of intelligence to frustrate terrorist groups. They brought together the RUC SB intelligence and operational resources from the RUC and the Army to mount counter-terrorism operations. This included, for example, exploiting intelligence by means of covert surveillance or the use of overt Army or police units. The TCG received information from all three organisations*

*involved in intelligence gathering in Northern Ireland and from a variety of technical sources. They made decisions on the prioritisation of covert resources to exploit intelligence and the manner in which such resources would be deployed. Unlike the other relevant bodies, which kept minutes of meetings and deliberations, statements to the Stevens investigation by officers working in the TCG suggested that their records were generally destroyed after a short time.*¹⁷

- 5.5. This description of the role of the TCG is consistent with evidence gathered by my Office.
- 5.6. My Office engaged with the MOD on a number of occasions during this investigation in an effort to obtain relevant information regarding this matter. In March 2006, the MOD stated that there was covert surveillance on the Dairy Farm between 12 and 13 March 1993. This was, however, then removed and none was being carried out on 25 March 1993. In June 2008, it confirmed that it held no records to indicate that surveillance was taking place on the date of Damien's murder. It is apparent that, if records did exist documenting the military role in this operation, they either no longer exist or could not be located.
- 5.7. In June 2016, my investigators met with the MOD after PSNI clarified there had been a military Observation Post (OP) conducting surveillance on the Dairy Farm on 25 March 1993. The MOD carried out a further search of their records and informed my Office in July 2016 that, *'the records they have definitely do not indicate army activity on the day in question, at the location.'* Surveillance of the location took place in the period prior to the murder but ceased some days before, due to a *'sudden and unexpected requirement to oversee a number of other locations in the wider area, and the decision was taken to reallocate personnel who had been engaged in monitoring the Dairy Farm, to these other locations.'*

¹⁷ The Report of the Patrick Finucane Review (London: The Stationery Office, 2012), Paras 3.34-3.35.

- 5.8. The MOD could not explain how the initial report of the shooting was made by military personnel. It suggested the following possibilities: *'The location in question was under observation remotely, or that a unit was slightly out of where it should have been and would therefore have been close enough to have observed the shooting.'*
- 5.9. A further fact checking exercise was undertaken by the MOD as part of the process of concluding this public statement. The MOD acknowledged in March 2021 that, having reviewed police accounts, it would be a *'reasonable inference'* to conclude that a Parachute Regiment Close Observation Platoon (COP) had the Dairy Farm under observation on 25 March 1993. This followed the earlier withdrawal of a specialist military unit which had been positioned at an unknown, but remote, location. This would have been consistent with the tasking and area of operations for this sub-unit, although no documentary records or witnesses had been located to confirm it.
- 5.10. The MOD added *'some corroboration can be found from the information provided by a number of former RUC officers to your investigation...although we would observe that these personal accounts may in some respects rely upon supposition rather than direct personal knowledge.'*
- 5.11. My investigation has been unable to establish where the relevant military observation post was located. Therefore, I am unable to conclude whether the events that were documented were based on short or long range surveillance observations.
- 5.12. In an effort to establish the full details of this operation my investigators identified and made efforts to interview 57 retired and serving police officers. These enquiries identified two police officers who had been 'live stream' monitoring military radio transmissions between the relevant

observation post and its base on 25 March 1993. One of these police officers is deceased.

5.13. A statement was recorded from the other police officer who provided a detailed account of overhearing military personnel describing the shooting at the Dairy Farm. I am satisfied, based on this officer's account, that military personnel were 'live stream' reporting on the events at the time of Damien's murder. My investigators obtained a police document, detailed below, containing an account of the relevant transmissions. My investigation has been unable to identify the author of this document, other than it may have been a Special Branch officer, or the military personnel who made the transmissions.

5.14. The police document for the evening of 25 March 1993 detailed the following:

- *'2009 hrs - the COP OP ¹⁸reported a red Volvo 240 pulling up at the front of the Coal Bunker premises, Unit 1. Two armed and masked men alighted from the vehicle and started shooting into the building. Comment: 2-6 shots heard and a man was seen staggering out of the Coal Bunker after the gunmen left.'*
- *2011 hrs - Volvo vehicle mobile from the complex and out Gate 2 onto the Stewartstown Rd. Comment: TCG directed lift off.¹⁹ There was nothing significant noted at the target premises Unit 4 during the covering period.'*

5.15. I am satisfied that this report related to the murder of Damien and the attempted murder of Witness 2. In relation to the comment '*TCG directed lift off,*' the identities of the individual who issued this instruction, and those personnel who were told to '*lift off*', are not known. Conflicting accounts have been obtained from police officers involved in the surveillance operation. Some stated they were told to '*lift off*' and return to base

¹⁸ COP OP – is an abbreviated term for 'Close Observation Platoon Observation Point.'

¹⁹ 'lift off' – To immediately cease activities and return to base.

immediately, while others indicated they were tasked to locate the 'Volvo' getaway car. It would later become apparent that the getaway car was a Vauxhall Astra and the original information transmitted was inaccurate.

- 5.16. A RUC Command and Control (C&C) log was commenced at 8:11pm in response to a '999' call from Dairy Farm security staff reporting a shooting at the complex. The log included a communication between 8:20 - 8:23pm *'from SB Red Volvo 240 no VRM believed 2 x males on board heading towards The Cutts at Dunmurray (sic). Circulated all stations by BRC.'*²⁰
- 5.17. My investigators identified and interviewed the two police officers who generated and updated the relevant C&C log. They stated that any information emanating from Special Branch would have been relayed to them by telephone. It would have been usual for the caller to say, *"this is the Branch"*, or *"this is from TCG."* The caller would not provide a name and they would have updated the log with the information that was relayed to them.

²⁰ BRC – Belfast Regional Control.

Photographs of the Vauxhall Astra

5.18. The car used in the murder was a Vauxhall Astra and is pictured below.



Photographs of Volvo 240 as described in the C&C Serial

- 5.19. Set out below are photographs of a Volvo 240 from around the period in question. The military observation team described the vehicle as a Volvo 240.



- 5.20. The information on the C&C log suggested that the getaway car was headed in the direction of The Cutts area of Dunmurry, almost two miles away from the Dairy Farm. Although the log indicated that the car was initially driven in this direction it appears to have changed its route at some

point, given where it was subsequently abandoned in Slieveban Drive in West Belfast.

- 5.21. When security forces attended the scene of the shooting, a suspicious bag was located at the foot of the shutters to Unit 4. An Ammunitions Technical Officer (ATO) attended and carried out a controlled explosion. This caused damage to the shutters, revealing a quantity of fertiliser inside the unit.
- 5.22. My investigators interviewed a Belfast TCG Detective Inspector, Police Officer 3. He stated that there was a surveillance operation being carried out at the time, possibly by the military, on a fertiliser store at the Dairy Farm. He added that records indicated a police surveillance operation on the UDA/UFF was suspended some time before 25 March 1993 and those resources diverted to the Dairy Farm. This may have been due to the limited surveillance resources available being deployed to deal with what was viewed as the more imminent threat with greater potential for harm.
- 5.23. Police Officer 3 was unable to confirm if the surveillance teams followed any individual(s) to the Dairy Farm and could not recall viewing surveillance logs for the operation. He described managing the information, resources, and workload at the time as *'like juggling water.'* My investigation recovered documentation that indicated new tenants were due to lease Unit 4, the week commencing 29 March 1993. Police were aware of this and that PIRA intended to move the fertiliser inside the unit by this date. On 20 March 1993, police searched two premises in the Greater Belfast area, recovering a quantity of fertiliser which they believed originated from Unit 4 at the Dairy Farm.
- 5.24. My investigation has established that surveillance on 'C' Company UDA/UFF ceased at approximately 4:30pm on 22 March 1993 and did not recommence until 30 March 1993. In the intervening period, 'C' Company were involved in two attempted murders and the murders of Peter Gallagher and Damien.

- 5.25. The existence of surveillance on the Dairy Farm was not shared with the Senior Investigation Officer (SIO) investigating Damien's murder. Therefore, the opportunity to interview key witnesses was lost. My investigators spoke with both the SIO and DSIO, Police Officers 1 and 2, who stated that they were not aware there was an ongoing surveillance operation at the time of Damien's murder.
- 5.26. Police Officer 4, a Belfast TCG Inspector, informed my investigators that he could not locate any records indicating detectives investigating Damien's murder had been made aware of the existence of this surveillance. My investigators spoke with the police officer leading the investigation into the fertiliser find. He also stated that he was unaware of the surveillance. Police Officer 5, a leader of the one of the surveillance teams, stated that he had no contact with the murder investigation team and thought detectives were probably unaware of the surveillance operation.
- 5.27. Due to the absence of any records, my investigation sought to identify and interview those police officers who were involved in the surveillance. Below are a number of accounts obtained as a result of these enquiries. Some officers chose not to co-operate. Others were not on duty at the relevant time but had been involved in the surveillance operation prior to the murder. These latter accounts have been recorded to provide context for my investigation.

Police Officer 4 – Detective Superintendent - Regional Control Group

- 5.28. In response to a request for information, correspondence was received from Police Officer 4. He responded that Unit 4 at the Dairy Farm was under police and military surveillance on 25 March 1993 and '*from the few available records at the time of the shooting incident the complex was under surveillance from a static military observation point some distance away.*' He added that he had made enquiries with the military who stated it held no records from 1993 regarding an operation of this nature. There

were no records held at Regional Control Group (RCG) of police checkpoints near to the Dairy Farm at the time of the murder. He could not locate records to indicate whether police investigating Damien's murder were made aware of the surveillance on the Dairy Farm.

Police Officer 5 – Detective Inspector – Surveillance Team

- 5.29. Police Officer 5 led one of two mobile police surveillance teams involved and was responsible for monitoring activity to and from the Dairy Farm. He explained that, due to its location, his surveillance officers were not in close proximity to the complex but were deployed on standby, some distance away. This location allowed officers to respond if the fertiliser was moved.
- 5.30. Police Officer 5 stated that the military had sight of Unit 4 from an observation post some distance away. He believed this post was physically occupied and contained the latest camera equipment. Police were in radio contact with the observation post and military personnel made radio transmissions at the time of the shooting.
- 5.31. After the shooting, Police Officer 5 directed surveillance officers under his control to cover loyalist areas. He stated that if a mobile surveillance operator observed the suspect vehicle, they would have followed it. A Headquarters Mobile Support Unit (HMSU) would have been tasked to intercept. He added that his surveillance officers did not have the capability to intercept suspects.
- 5.32. Police Officer 5 had no contact with the murder investigation team and believed detectives would probably have been unaware of the existence of the surveillance operation.

Police Officer 6 – Detective Constable – Surveillance Team

- 5.33. Police Officer 6, a Detective Constable, recalled working on the day of Damien's murder. He stated he was deployed in the area of the Dairy Farm at some point during '*the hours of darkness*' on 25 March 1993.
- 5.34. He recalled hearing a radio transmission from his Sergeant, now deceased, regarding significant movement towards the Dairy Farm. Shortly afterwards, he heard a further transmission that shots had been fired and almost immediately he and other police surveillance officers were instructed to '*lift off*.' This instruction meant they were to leave the area immediately for their own safety.
- 5.35. He could not recall when the order was given to '*lift off*' but he remembered returning to his station.

Police Officer 7 – Detective Constable – Surveillance Team

- 5.36. Police Officer 7 told my investigators that he could only vaguely recall the surveillance operation at the Dairy Farm. He stated that in an area such as that, a police surveillance team would not have been positioned in the immediate vicinity. His recollection was that the military had an observation post but he could not say whether it was physically occupied or maintained by camera. He did not know where this observation post was located.
- 5.37. He continued that if overnight surveillance had been required it would have been carried out by police officers and not the military. He was unable to say how a surveillance camera could have captured the colour of the getaway vehicle after 8:00pm on a March evening and thought this information must have originated from someone at the scene. He stated that he was never contacted by members of the murder investigation team.

Police Officer 8 – Detective Constable – Surveillance Team

- 5.38. Police Officer 8 stated that he only had a vague recollection of the incident, stating *'we were just covering explosives, that's all.'* He was not on duty at the time of the shooting, having finished his shift at 7:00pm. He was asked what he knew about the attack and replied that he was unsure as to whether the army had an occupied observation post or were watching via a camera. He believed the army had noted a vehicle entering the complex, *'long arms'* had been identified, and the occupants of the vehicle had then opened fire.
- 5.39. He continued that in the event of any movement to or from the Dairy Farm only police officers would have been tasked to follow the target. Communications with the observation post were maintained by radio with the police 'Control Desk' located at a police station in Belfast. It was from the control desk that all operational decisions were made.
- 5.40. My investigators asked Police Officer 8 about the immediate police response to the shooting. He stated that his surveillance team would have been in plain clothes and may have been unaware of other security force operations in the area. It was not their role to respond to incidents of this nature.
- 5.41. He reiterated that it would have been outside the remit of his surveillance team to stop a getaway vehicle by way of intercept or hard stop following an incident of this nature. He was unaware of any HMSU or uniformed response. My investigation has established that, at the time, a HMSU unit were on standby at Dunmurry Police Station should the surveillance operation have required arrests to be made.
- 5.42. Even if there had been an intention to follow the getaway vehicle, it was his understanding that the incident happened too quickly for any surveillance team to react. There had been no expectation that a vehicle containing gunmen would arrive at the premises. Their role was to monitor

vehicles that may be moving the fertiliser. An attack of this nature had never been anticipated. It happened too quickly for the surveillance team to react.

Police Officer 9 – Detective Constable – Surveillance Team

- 5.43. Police Officer 9 was on duty at the time of the murder. He stated that he worked from 7:00am until 11:00pm on 25 March 1993 at the Control Desk with his Sergeant, now deceased. He recalled that surveillance was being conducted at the Dairy Farm on an *'IRA bomb making factory.'* The surveillance was being jointly run by the RUC and military, with police having primacy in these circumstances.
- 5.44. He stated that the area surrounding the Dairy Farm was a dangerous environment for the security forces. Given this, surveillance would have been from some distance away.
- 5.45. Police Officer 9 explained that the process for relaying information was for the military personnel in place to make a radio transmission to Palace Barracks, Hollywood. He monitored these transmissions and recalled hearing information to the effect, *"That's a car pulled up at the complex. That's 2 out. That's a shooting. That's them away."* He said that his Sergeant also heard this transmission, before relaying it to police call signs in the area.²¹ Police Officer 9 then tasked other police officers to assist with the response to the incident. He stated that it was normal for call signs to rest periodically while surveillance was continued by other units.
- 5.46. He stated that, despite trying to find the getaway car used by the gunmen, it could not be located by police surveillance officers. During surveillance operations such as that conducted on the Dairy Farm, the area would have usually been placed *'out of bounds.'* He was unable to state with certainty if this was the case on 25 March 1993. The placing of an area *'out of bounds'* was in order to prevent the inadvertent compromise of an

²¹ A police call sign is how a police officer is identified while they are patrolling on foot or in police vehicles. For example each vehicle on patrol is allocated a unique call sign, usually their station code followed by a number.

operation. My investigation has been unable to establish if the area surrounding the Dairy Farm was '*out of bounds*'²² at the time of Damien's murder.

- 5.47. Police Officer 9 stated that he believed the military would have been observing the unit from a distance using powerful visual aids. He recalled that relevant radio transmissions by military personnel appeared whispered. This reinforced his belief that personnel were out in the open as opposed to situated inside premises watching pictures being relayed from a camera.
- 5.48. He stated that if a camera had been recording he would have expected a feed to his desk so that police could also have monitored it, but this did not occur. Police Officer 9 recalled that the Parachute Regiment attended the scene following the attack.

Police Officer 10 – Constable - HMSU

- 5.49. Police Officer 10 was a member of the HMSU who were on standby to deploy solely for the arrest phase of the surveillance operation, if required. He believed that they were positioned at Dunmurry Police Station and there were 12 officers in four cars, three in each car.
- 5.50. He stated that he was not aware of any of the details relating to the surveillance of the Dairy Farm, including those who were involved. He stated that as soon as they heard about the shooting the HMSU were stood down and instructed to return to their base, which he believed was at Ladas Drive.
- 5.51. The TCG Superintendent in charge of the operation was identified as Police Officer 14. During a telephone conversation with an investigator

²² The term 'out of bounds' referred to a specified area security force patrols were to avoid for a designated period of time. This usually was due to ongoing covert police and/or military operations which regular patrols may have inadvertently compromised if in the area.

from my Office he stated he could not recall the incident. He declined to meet with my investigators.

Summary

- 5.52. My investigation has not identified the security force personnel who witnessed the gunmen arrive at the Dairy Farm. Neither have my enquiries been able to establish the exact location of the military observation post. Police surveillance units involved in the operation were located some distance from the Dairy Farm at the time of the attack.
- 5.53. In March 2006, the MOD informed my Office that the Dairy Farm was not under military observation on 25 March 1993. In June 2008, it confirmed that it held no records to indicate otherwise. It clarified this in July 2016, stating that military personnel may have been involved in remote observations or that a unit in the area on an unrelated task may have heard gunfire and attended the complex in time to observe the gunmen fleeing the scene.
- 5.54. It later informed my Office in March 2021 that it was a *'reasonable inference'* that a Parachute Regiment COP were observing the Dairy Farm at the time of the attack, following the earlier withdrawal of another specialist military unit. My investigation has not been able to establish the full extent of military involvement. However, based on the information provided by both police and the MOD, I am of the view that the Dairy Farm was subject of a surveillance operation at the time of Damien's murder.
- 5.55. Police Officer 9 recalled hearing "*whispered*" messages when monitoring radio transmissions made by military personnel. Based on this, he believed that they were out in the open rather than inside premises watching images being relayed to them from a camera. This opinion is consistent with other information gathered during the course of my investigation.

- 5.56. It is my view that the shooting happened quickly and that there was no opportunity for police in the area to stop Damien's murder.
- 5.57. My investigation reviewed police documentation indicating that the getaway car, initially inaccurately described as a red Volvo 240, exited the Dairy Farm onto the Stewartstown Road. The relevant C&C log contained information from an unidentified Special Branch officer stating that a red Volvo 240 was headed towards the Cutts area in Dunmurry. This indicated that police believed the car turned left when it exited the Dairy Farm Complex.
- 5.58. The car, however, was subsequently found in Slieveban Drive, off the Andersonstown Road, in West Belfast. To arrive at this location, the most direct route would have been to turn right, instead of left, when leaving the Dairy Farm. It is unusual that loyalist gunmen would have abandoned a vehicle used in a murder in a nationalist area.
- 5.59. My investigators have viewed intelligence indicating that the gunmen became lost upon leaving the Dairy Farm, hence the car being abandoned in Slieveban Drive. In conclusion, I have been unable to establish the route taken by the gunmen which brought them from the scene of the murder to where the Vauxhall Astra was abandoned.
- 5.60. There are conflicting accounts, from police officers involved in the surveillance operation, as to their instructions and subsequent actions following the attack. The relevant police documentation contained an instruction from TCG that units were to *'lift off'*, meaning to return to base immediately. Some of the police witnesses interviewed by my investigators agreed with this sequence of events, but others stated they made unsuccessful efforts to locate the getaway car. If successful in doing so, they then would have relied upon HMSU colleagues to stop the vehicle and make arrests.

- 5.61. The details of the murder were circulated to all uniformed call signs in the area immediately after the attack. In spite of this, the murderers were able to abandon the getaway car and escape detection.
- 5.62. While this was a sudden attack, I am of the view that an opportunity existed for police to apprehend the gunmen after the attack. This opportunity was impeded by inaccurate information being circulated as to the make and model of the getaway car. My investigation has been unable to establish why this inaccurate information was circulated.
- 5.63. There is no record of the murder investigation team being informed of the existence of a covert surveillance operation. Police Officers 1 and 2 stated that they were not informed of the surveillance operation. Based on the evidence, I am of the view that the SIO was denied the opportunity to speak to potentially significant witnesses. Those witnesses may have included individuals who witnessed Damien's murder. The SIO ought, in my view, to have been informed and given the opportunity to assess the value of this witness evidence.

6 Intelligence Available Prior to and Post Damien's Murder

- 6.1. My investigation examined intelligence received by police prior to, and following, Damien's murder. This was to establish whether information existed which, if acted upon, could have prevented the murder and/or assisted the subsequent police investigation. It is important to clarify that intelligence is not evidence. Intelligence is information that has been assessed and graded as to its relevance and quality, before a decision is taken as to how it can best be utilised. It can allow the SIO to initiate and develop lines of enquiry which are capable of progressing the overall investigative strategy. These lines of enquiry may, in turn, generate evidential opportunities.
- 6.2. In early February 1993, police were in receipt of intelligence from a number of sources indicating that Person A was frustrated that his attempts to mount terrorist attacks in West Belfast were being prevented by a heightened police presence. In February 1993, Persons A, B, and C were stopped by police in the Ardoyne area. It is believed that they were *'targeting.'* There was a sighting in late February 1993 of Persons A, D, and G together in Upper Dunmurry Lane, just over one mile from the Dairy Farm. All these individuals were regarded by police as active members of 'C' Company UDA/UFF.
- 6.3. In early March 1993, police received information that indicated Persons A, D, and G had been targeting in the Upper Dunmurry Lane area when stopped by police. The intelligence indicated that, as a result of being stopped by police, the UDA/UFF had decided to postpone an attack they

had been planning. Throughout the early part of 1993, Person A and his associates were the subject of a police surveillance operation.

- 6.4. During the same period, intelligence continued to be received concerning Person A's intentions to mount attacks on the nationalist community. Police responded to this intelligence and arrested Person A under Prevention of Terrorism legislation²³ and a number of properties were also searched. No weapons were recovered during these searches and Person A was released without charge. Person A's team had also been linked to the attempted murder of a Catholic man in mid-March.
- 6.5. In the days prior to Damien's murder, intelligence indicated that Person A had taken possession of two handguns which were being stored at an unknown location. Intelligence also detailed that the UDA/UFF continued to be frustrated by the police presence in the Shankill area.
- 6.6. On 22 March 1993, police initiated surveillance on Person C at 12:00pm, having received intelligence suggesting he was planning an attack ordered by Person A. No obvious targets were identified during the period of surveillance and it ended at approximately 4:30pm. This was due to a lack of air support and the need to attend a debriefing relating to surveillance at the Dairy Farm. At no point was the Dairy Farm or the Westlink Enterprise Centre visited by Person C while he was under surveillance on this date. Surveillance did not resume again on 'C' Company members until 30 March 1993, a gap of eight days.
- 6.7. On 24 March 1993, the UDA/UFF claimed responsibility for a grenade attack on the home of Person P in North Belfast.
- 6.8. On 24 March 1993, Peter Gallagher was murdered at the Westlink Enterprise Centre. The UFF, using a recognised code word, claimed

²³ Prevention of Terrorism (Temporary Provisions) Act 1989.

responsibility. Ballistic evidence linked this murder to the attempted murder of Person O on 17 March 1993. Mr. Gallagher was shot multiple times with a handgun from behind a fence. A number of discharged cartridge cases were found on waste ground adjacent to the fence. It is believed a lone gunman fled the scene on a stolen bicycle which was abandoned near Roden Street. He then made his escape in a waiting motorcycle or car. A Browning pistol and balaclava were discarded nearby.

- 6.9. Later that same day, police received intelligence indicating that Person A's team carried out Mr Gallagher's murder , in addition to the earlier attack on Person P's home. Person D was named as the gunman and my enquiries established that detectives investigating the Gallagher murder conducted research on this individual on 25 March 1993.
- 6.10. Police were in receipt of intelligence on 24 March indicating that, on the evening of 22 March 1993, Person A had personally targeted premises where two shops had been converted into one. The premises were believed to be numbered 6 and 7, one of which had shutters on the front. The corresponding intelligence document was typed on 30 March 1993. This document also included a handwritten note linking it to the Dairy Farm.
- 6.11. My investigation has confirmed that there are no Units 6 and 7 at the Dairy Farm that had been converted in this manner. Mr Gallagher, however, was murdered at the Westlink Enterprise Centre outside Units 6 and 7. They had previously been converted into a single storage space with shutters. I am of the view, therefore, that this intelligence related to the murder of Mr Gallagher and not Damien. However, the intelligence was not disseminated to detectives investigating either murder.
- 6.12. The same intelligence also stated that Person A was out targeting in the early hours on 23 March 1993 in the Lower Falls area.

- 6.13. On 24 March 1993 a CID message form, detailing house to house enquiries in the vicinity of Mr. Gallagher's murder, reported that Witness 9 had observed a black Mark 2 Ford Fiesta, with two men on board, at approximately 11:00am on 23 March 1993. The vehicle registration number was also provided to police. The two men were aged 24-28 years old and were believed to be strangers to the area. They walked from the car into Wauchope Court. Witness 9 described one of them as having ginger hair. They left the area after 20 minutes.
- 6.14. Police subsequently linked this vehicle to Person G and seized it on 26 March 1993 for forensic examination. Person G was not arrested, despite his vehicle having been seized. Police were also in receipt of sightings of this vehicle at 4:10pm on 23 March 1993 being driven by Person AA with Person H as a passenger. There was a further sighting at 5:15pm, which noted that Persons D and G were in the vehicle.
- 6.15. Minutes made during a Special Branch meeting also recorded that Person A had an attack planned for 24 March 1993. No further details were noted. This document also noted that Person A had to postpone two attacks which were planned for 20 and 23 March 1993.
- 6.16. Special Branch informed detectives investigating Mr Gallagher's murder on 25 March 1993 that it had received a report of Person A being left hiding in a hedge by UDA/UFF volunteers who did not return for him. The target and location were unknown. Special Branch passed this information to detectives investigating the murder in the belief that it might have been the same location where the Browning handgun and balaclava were discarded after the murder.
- 6.17. Further UDA/UFF activities continued into the early hours of 25 March 1993, when they attacked the home of Person U, throwing a blast grenade through a bedroom window. This attack was claimed by the UFF.

- 6.18. Police documentation detailed that police were in receipt of intelligence on 25 March 1993 that Person A had another attack planned for later that evening. I accept that police could not have known in advance that this related to the murder of Damien. However, I am of the view that this ought to have been shared with the SIO investigating Damien's murder when it was later known to be relevant.
- 6.19. My investigators did not view any intelligence that specifically indicated that Damien, the Dairy Farm, or any individual associated with either was at risk from a UDA/UFF attack. There was, however, general intelligence that indicated members of 'C' Company were intent on a campaign of violence against the nationalist community in West Belfast in the period prior to Damien's murder.
- 6.20. The pre-incident intelligence discussed above gives a clear indication of the threat posed by the UDA/UFF in West Belfast which police attempted to disrupt through overt and covert tactics.

Summary

- 6.21. From early February 1993, there was an emerging intelligence picture indicating that the UDA/UFF in West Belfast were becoming frustrated by police. They were either unable to mount attacks on nationalist members of the community or were forced to postpone their plans. Intelligence in early March 1993 indicated that they had to call off a planned attack due to concerns that it could be compromised.
- 6.22. I am of the view, however, that none of the pre-incident intelligence could have forewarned of Damien's murder.

Post Murder Intelligence

- 6.23. Following Damien's murder, police received nine pieces of intelligence or that related to his death.
- 6.24. The first was received by Special Branch on 29 March 1993, stating that an unidentified member of Person A's team was involved. There is no indication as to whether or not this was passed to the murder investigation team.
- 6.25. In early April 1993, the SIO received information detailing how the gunmen fled the area after the murder. This was specific and sufficiently detailed to allow the SIO to initiate investigative lines of enquiry which may have assisted in identifying the murderers. However, my investigation has not viewed any actions raised by the SIO as a result of this information.
- 6.26. During the same period, police received intelligence that Persons E, F, and G were involved in the murder. All three individuals were regarded as members of 'C' Company. This intelligence was passed to the investigation team two days later and, although an action was raised to research these individuals, they were not arrested. The message form containing this information stated that these individuals were part of Person D's team. Person D was also not arrested, although my investigation did not recover any intelligence that specifically implicated this individual in Damien's murder.
- 6.27. In late April 1993, police received intelligence that referred to them being 'puzzled' regarding the accuracy of UDA/UFF targeting. The intelligence indicated that the UDA/UFF had received targeting information directly from 'British Intelligence.' There were no further details regarding the origin

of this information. It was not passed to the SIO investigating Damien's murder.

- 6.28. In early May 1993, police received intelligence that Persons B, H, and I were involved in Damien's murder. This stated that Person H was the driver and Persons B and I were the gunmen. The murder investigation team were made aware of this intelligence and all three were arrested under terrorist legislation. However, only Person I was questioned about Damien's murder.
- 6.29. Police received further intelligence in mid-May 1993 stating that Person J was involved in the murder. This intelligence was promptly passed to the murder investigation team. Although an action was raised to research this individual, he was not arrested.
- 6.30. Intelligence was received at the end of June 1993 indicating that an individual was providing information to police about individuals from the West Belfast area which was then being passed to loyalists. Two incidents were referred to, one of which was Damien's murder. No further details were given about those 'police' who were allegedly providing the information. This intelligence was not shared with the SIO investigating Damien's murder. My investigation could therefore not progress any lines of enquiry relating to this information.
- 6.31. Intelligence also suggested that Damien was not the intended target of the attack on 25 March 1993.
- 6.32. In addition to the above intelligence, police received information the following year that Person D was using a house in West Belfast to hold meetings with UDA/UFF associates before attacks. Within hours of Damien's murder, five men gathered at this address. It was believed this was in connection with the murder. The identity of these individuals was not known. Based on the available information I am of the view that Person

D was one of them. My investigation found no evidence that this information was passed to the murder investigation team.

Delays in Police Ombudsman Investigation

- 6.33. In addition to the protracted legal proceedings which I have discussed in Chapter 3 of this report completion of my investigation and publication of this public statement was delayed a failure in the disclosure process by the PSNI. In February 2019 my predecessor, Dr Maguire, announced that significant sensitive information, some of which related to covert policing operations, was disclosed by police as part of pending civil proceedings in a separate matter. My Office had not previously been aware of the existence of this information.
- 6.34. Following a request from my Office, police released the material which my investigators assessed to determine its relevance to a number of ongoing historical investigations. Police also identified a computer system which they stated had not been properly searched when responding to previous information requests from my Office. Several pieces of information were identified that were relevant to my investigation and previously unknown to my investigation. A number of these facilitated our understanding of certain intelligence related issues. Other pieces of intelligence previously unknown to me detailed that Person A was planning an attack on 24 March 1993 as reflected at paragraph 6.16 and a further piece of intelligence reflected at paragraph 6.31 which revealed that a police officer was disclosing information to loyalists. Further intelligence was also received which was relevant to the loyalist arms importation in 1987.
- 6.35. As a result of the above, PSNI conducted an internal review of its processes, in addition to Criminal Justice Inspection Northern Ireland (CJINI) initiating a review of police disclosure methods. In October 2019, the Chief Constable informed me that further information had been discovered on a newly established police database. Again, my

investigators had to assess this information regarding its relevance to ongoing historical investigations.

- 6.36. The above issues have unfortunately delayed my investigations into a number of historical matters, including the circumstances surrounding Damien's murder. This has been necessary to allow the additional information to be properly assessed, complete relevant lines of enquiry, and ensure an effective and efficient investigation.

7 The RUC Investigation

Initial Police Action

- 7.1. A C&C log was commenced by police at 8:11pm, in response to the initial '999' call made at 8:08pm to Ambulance Control. Details of the shooting were circulated to all police units, including surveillance operatives in the area. A scene log was opened at 8:15pm, indicating that police attended the scene within minutes of the attack taking place. Police cordoned off Units 4 and 6.
- 7.2. At the scene, a suspicious object was located at the rear of Unit 4 which resulted in a controlled explosion, revealing fertiliser was being stored inside that unit.
- 7.3. All necessary agencies including Mapping, Photography, and Scenes of Crime Officers (SOCO) attended the scene. Full forensic examinations were conducted at Units 4 and 6.
- 7.4. At approximately 10:40pm on 25 March 1993, Witness 8 reported a suspicious vehicle in Slieveban Drive, off the Andersonstown Road, in West Belfast. The vehicle was Witness 1's Vauxhall Astra. Witness 8 did not see the vehicle being parked or any suspicious individuals in its vicinity.

House-to-House Enquiries

- 7.5. My investigators reviewed all available documentation relating to house-to-house enquiries carried out by police the following day. These were

concentrated in the Lower Shankill Road area, where the Vauxhall Astra was stolen, and Slieveban Drive, where it was later found abandoned.

- 7.6. Police visited addresses in these areas. However, no witnesses were identified that could assist the investigation.

Post Mortem

- 7.7. A post mortem examination was conducted and it concluded that the cause of death was '*bullet wounds of trunk.*' Damien had been shot three times.

Reconstruction

- 7.8. On 1 April 1993, a week after Damien's murder, police revisited the Dairy Farm to conduct a reconstruction. This took place between 7:30pm and 8:30pm. Leaflets were distributed and a number of witnesses were identified and interviewed by police. Police also set up a Vehicle Checkpoint (VCP)²⁴ in Slieveban Drive where the Vauxhall Astra had been abandoned and conducted a similar exercise to trace witnesses.
- 7.9. The Vauxhall Astra linked to the murder was also on display, allowing potential witnesses the opportunity to view it. A number of witnesses had differing opinions as to whether or not the car at the reconstruction was the same as the one used in the murder.
- 7.10. Given this, police considered the possibility that a second Vauxhall Astra had been at the Dairy Farm around the time of the murder. Nothing of any evidential value was obtained, however, during additional enquiries to test this hypothesis.

²⁴ Vehicle Checkpoint.

Police Communication with the Family

- 7.11. It was a feature of murder investigations conducted by the RUC that Family Liaison Officers (FLOs) were not allocated to the investigation. The FLO role did not exist within the RUC at the time of Damien's murder. I will address this issue in greater detail later in this public statement.
- 7.12. A review of the original RUC documentation revealed that Damien's family were contacted seven times by Police Officer 2 between 26 March 1993 and 2 October 1997. These records indicated that Mrs Walsh was updated on the progress of the investigation and arrests.

CCTV

- 7.13. Police did not recover any CCTV to assist the murder investigation. My investigators confirmed that there was no CCTV footage available at the Dairy Farm in 1993. The murder investigation team liaised with the military to ascertain if it held any information regarding the movements of the car used in the attack, but this enquiry proved negative.

The Weapons Used in the Attack

- 7.14. The scene examination revealed that two 9mm calibre handguns were discharged during the attack. They fired 1 and 3 rounds respectively.
- 7.15. On 17 June 1994, a 9mm Browning self-loading pistol was recovered by police in East Belfast. It was established that this was one of the handguns used to murder Damien. It was subsequently destroyed by police on 14 June 1995 in accordance with '*The Firearms Northern Ireland Order 1981 – Section 53(4)*.' The appropriate RUC Form 30/28 '*Order for Disposal of Firearms / Ammunition*' was signed by Police Officer 13.

- 7.16. The second handgun has never been recovered and no further details are known about it.

The RUC Approach to Witnesses

- 7.17. A total of 61 witness statements were recorded during the course of the police investigation. These included accounts from members of the public, medical staff, and police officers. Only those statements of significance to my investigation are summarised below.

Witness 1

- 7.18. At 7:35pm Witness 1, now deceased, was at home when he heard banging on his front door. He went into the hall and saw two masked men standing there, one armed with a handgun.
- 7.19. Witness 1 was ordered to hand over the keys to his car. He complied and was told not to contact police until 8:00pm as there was someone watching his house. One of the masked men pulled the telephone plug from the wall before leaving. However, Witness 1 reported this incident to police between 7:45-7:50pm.
- 7.20. He saw his car being driven away and noted that a blue Ford Escort appeared to be following it. He described the masked men as follows:
- I. Male 1, who was carrying the handgun, was 5'6" or 5'7" tall, light build, and approximately 20 years old. He was wearing a black balaclava and scarf which covered his mouth, a beige/grey coloured coat, and black woollen gloves. Witness 1 could not provide any other details but stated the handgun he was carrying was a pistol, not a revolver.

- II. Male 2 was approximately 5' 9" tall, stocky build, and aged between 20-30 years old. He was wearing a black balaclava, black fabric bomber jacket, black woollen gloves, black trousers, and black boots.

Witness 2

- 7.21. Witness 2 stated that on the evening of 25 March 1993, he worked a late shift at the Coal Bunker with Damien. At approximately 8:10pm they were sitting in the office area watching television, waiting for the close of business.
- 7.22. He saw two masked men walk towards the office door and recalled Damien jumping up from his chair. He then heard a shot, following which Damien fell on top of him. Witness 2 heard further shots and felt them hitting his own legs. He stated the handgun being discharged at them then failed to fire.
- 7.23. He managed to get up and ran after the gunmen who were fleeing from the scene. He witnessed them driving away in the direction of the back gate in a maroon coloured Vauxhall Astra. He was given first aid by a soldier at the scene, then conveyed to hospital.
- 7.24. In addition to the above statement, Witness 2 also provided a more detailed account of the attack to my investigators. He stated that Witness 5 informed him that Witness 7 said she encountered a man in civilian clothes with an English accent in a kneeling position close to her shop just after the shooting. My investigators traced Witness 7 who confirmed that she did not see this individual but was recounting what someone else had told her. She stated she did not tell Witness 5 that the individual had an English accent and could not recall who informed her.

7.25. Witness 2 also stated that after the shooting he spoke with Witness 5, now deceased, who told him that police arrived at the scene very quickly and were followed by two cars containing men in suits. Witness 5 stated to him that these men directed police and took control of the situation. Witness 5 also told him that one of the men immediately made his way to the rear of the units where the Coal Bunker was located. He then quickly returned to the front of the premises, stating that the back door of the adjoining unit had a suspect device attached to it. This was quickly followed by the back door of the unit being opened by way of a controlled explosion. A large consignment of 'explosives' were discovered.

Witness 3

7.26. At the time of the shooting Witness 3 was parked near to Unit 6. At approximately 8:05pm or 8:10pm she heard what she thought were six shots. She noticed a dark coloured hatchback with a man leaning into it working with a gun. She watched him walk back towards the Coal Bunker while still working with the gun. He had only taken two or three steps when he returned again to the car. She then saw him pointing the gun at a taxi driver and heard a shot. The gunman continued to pull on the trigger as if he was shooting. A short time later, the same car drove out of the bottom gate and onto the Stewartstown Road. She described the gunman as being well built, 5'7" – 5'8" tall, wearing a dark balaclava, dark bomber jacket, and dark trousers.

Witness 4

7.27. Witness 4 was parked at the rear of the Dairy Farm. He saw his wife run towards their car, saying something about a robbery. He then heard a rattling sound but did not identify it as being gunfire. He got out of his car and saw a man wearing a balaclava type ski mask standing in the middle of the car park. The man had a gun in his right hand and appeared to be making his way towards a red Vauxhall Astra. He believed that someone

from the taxi rank threw a stone at the man who then fired once towards the taxi rank. Witness 4 said he caught a glimpse of the Vauxhall Estate's driver who had short, dark ginger coloured hair and a moustache.

Witness 5

- 7.28. In his statement to police in 1993, Witness 5 stated that he was working at the Dairy Farm when he was told that two men had been shot. He ran towards the Coal Bunker where he saw Witness 2 with injuries to his legs. When he entered the Coal Bunker he saw Damien had been shot, was unconscious, and was being tended to by a woman who said she was a nurse. A police officer then arrived and provided a bandage before the ambulance arrived.
- 7.29. In his deposition to the Coroner, Witness 5 stated that it was a soldier who provided the bandage, not a police officer. Witness 5 made no reference to the comments attributed to him by Witness 2 in his original statement to police, his deposition to the Coroner, or his account to my Office.

Witness 6

- 7.30. Witness 6 was getting out of his car at 8:10pm when he heard five or six shots. He saw a masked man with a handgun, describing him as 6' tall, well-built, and wearing a mask. The man walked towards a Vauxhall Astra which was pink/maroon/red in colour. He then heard another three or four shots. He ran into the nearby Westside Stores and told a security guard to call for an ambulance and police. When he went back outside the gunman and the Vauxhall Astra had left.
- 7.31. He went into the Coal Bunker where he saw Damien. He checked his pulse which he described as still strong. He was joined by a woman who said she was a nurse. He applied pressure to wounds on Damien's back.

A police officer came in and asked if Damien had been shot, which he confirmed. The police officer then left and a soldier entered with a bandage pack, prior to ambulance staff arriving.

Witness 7

- 7.32. Witness 7 was working at the Dairy Farm on 25 March 1993. She stated that at approximately 8:15pm, a woman opened the door to her shop and shouted “*there’s a shot.*” Witness 7 then ran out of the shop and saw Witness 2 sitting on a coal bag. She asked him if he was alright and he told her to check on Damien. She went into the Coal Bunker and saw four other people with Damien. She did not see any gunmen, masked men, or vehicles.

Other Potential Witnesses

- 7.33. There was surveillance on the Dairy Farm at the time of the murder and some of those security force personnel involved witnessed the gunmen. The details of these witnesses, however, were not disclosed to the murder investigation team. They were, therefore, never spoken to as part of the investigation into Damien’s murder.

The RUC Suspect Strategy

- 7.34. Police received intelligence that Persons B, H, and, I were involved in the murder. They were arrested under Prevention of Terrorism legislation²⁵ on 18 and 19 May 1993. All three were interviewed by police under PACE²⁶ legislation on a number of occasions about a range of terrorist incidents. The available interview notes indicated that only Person I was questioned about Damien’s murder. He denied being involved in the murder or knowing anything about it. He was not asked to account for his

²⁵ Prevention of Terrorism (Temporary Provisions) Act 1989.

²⁶ Police and Criminal Evidence (Northern Ireland) Order 1989.

movements on 25 March 1993 and whether these could be corroborated by an alibi.

- 7.35. An identification parade was to be held for Person I on 24 May 1993 in relation to the murder of Damien and another attack. Police contacted seven witnesses but they were all either unavailable or declined to participate in the parade. There is no record of an attempt being made to reschedule the identification parade for those witnesses who were unavailable.
- 7.36. Persons B, H, and I provided hair samples that were compared to those recovered from the Vauxhall Astra linked to Damien's murder. These comparisons proved negative.
- 7.37. There was a lack of evidence to link Persons B, H, and I to the murder. Their arrests, however, ought to have afforded the murder investigation team the opportunity to search their home addresses in an effort to gather all available evidence. This would have included seizing clothing and footwear to establish if suspects could be forensically linked to the murder scene, the Vauxhall Astra, or other items recovered during the course of the police investigation. Clothing could also have been examined for gunshot residue. My investigation has found no evidence that searches took place.
- 7.38. Police received intelligence from Special Branch that Persons E, F, G, and J were involved in the murder. These individuals were researched before Police Officer 1 recorded that he did not have sufficient reasonable suspicion to justify their arrests. In addition to significant sightings prior to Damien's murder, Person G's Ford Fiesta was also sighted on two occasions in April 1993 parked near the address of Witness 1, whose Vauxhall Astra was linked to the attack.

- 7.39. When Person Q was stopped by police on 17 June 1994, he was in possession of two handguns and ammunition. One of the handguns was forensically linked to Damien's murder. Person Q denied any involvement in the murder and told police he had been asked by Person R to store the weapons.
- 7.40. No forensic samples were taken from Person Q for comparison against forensic evidence secured by police investigating Damien's murder. Person Q was later convicted of firearms offences and sentenced to five years in prison.
- 7.41. Although forensic samples were not taken from Person Q, hair samples were obtained from Persons B, H, and I. Person Q, however, was found in possession of the murder weapon. This was strong evidence, as opposed to the single strand intelligence linking the other three suspects to the murder.
- 7.42. Person R was arrested on 22 August 1994 in respect of the weapons found in the possession of Person Q. He denied any knowledge of the weapons and there are no records indicating that he was questioned about Damien's murder. As with Person Q, no forensic samples were taken from him for comparison against forensic evidence secured during the investigation into Damien's murder. Person R was subsequently released without charge.
- 7.43. In addition to the information known about persons Q and R, police were also in receipt of intelligence indicating Person Y gave the weapon to Person Q. My investigation found no records to indicate that the murder investigation team were made aware of this intelligence.

7.44. The lack of arrest and interview strategies combined with missed opportunities to link suspects to the murder weapon, the vehicle used, and the scene of the murder, in my view, amounted to a wholly inadequate suspect strategy.

RUC Suspect Strategy: Vehicles

7.45. Prior to Damien's murder, Witness 1 reported to police that his car, a maroon Vauxhall Astra, had been stolen from his home address by masked men. Witnesses stated that a similar make and model of car was used in the attack. The stolen Vauxhall Astra was found abandoned in Slieveban Drive, later that evening. In addition to this car, two other vehicles were of interest to the murder investigation team.

I. The Blue Ford Escort

7.46. Witness 1 stated that a blue Ford Escort followed his stolen car when leaving his address. Police made enquiries to establish which, if any, known loyalists had access to a similar vehicle. There was one significant match in respect of Person S, a known associate of Person A. He had access to a blue Ford Escort, although it was not registered to him. Sightings of Person S in this car commenced in April 1992, continuing until 19 March 1993. There were no enquiries conducted with Person S or the owner of the relevant Ford Escort. His car was never sighted near the Dairy Farm.

7.47. My investigators discovered a document, reporting a sighting of Person G on 31 March 1993. This stated '*[Person G] driving blue Escort HIB 9:50pm Clifton Street. [Person D] passenger. [Person G] claimed had borrowed the car from [Person T].*' Another significant sighting of this vehicle was on 27 March 1993, when it was being driven by Person D with Persons H and AA as passengers. Intelligence available to the police investigation team indicated that Person D's team were responsible for Damien's

murder. Person H was specifically named as one of those directly involved.

- 7.48. Despite the murder investigation team being in receipt of the above information there were no police actions raised in respect of Person T. It would have been prudent to establish if Person T had loaned the car to anyone on 25 March 1993, given that a number of suspects were subsequently sighted in it. Of further relevance is the fact that it was the same make, model, and colour as the blue Ford Escort Witness 1 saw leaving his property. I am of the view that this ought to have been a significant line of police enquiry.

II. The Volvo 240

- 7.49. The C&C log referred to a Volvo 240 being linked to the murder. This appears to have been inaccurate information and a number of witnesses at the Coal Bunker scene identified the car used by the gunmen as being a Vauxhall Astra. The Vauxhall Astra stolen from Witness 1 was subsequently linked to the murder. Despite this, there were no enquiries made by the murder investigation team to either confirm or rule out the involvement of a Volvo 240.

RUC Suspect Strategy: Identification Parade

- 7.50. Person I was to take part in an identification parade in respect of Damien's murder and another attack. However, the relevant witnesses, for various reasons including other commitments, failed to engage with the identification process. The identification parade consequently did not take place and was not rescheduled.

The RUC Forensic Strategy

- 7.51. There were a number of scenes which were evidentially important in the investigation of Damien's murder.

The Coal Bunker, Dairy Farm

- 7.52. A SOCO attended the Dairy Farm and conducted an examination of the scene. He recovered ballistic evidence, in the form of spent bullets and discharged cartridge cases, from both inside the premises and the adjacent car park.
- 7.53. Examination of a forklift truck recovered in the vicinity of Unit 6 was forensically linked to the fertiliser found in Unit 4.

The Vauxhall Astra

- 7.54. This vehicle was stolen from Witness 1 on the evening of 25 March 1993, prior to the murder. It was later abandoned in Slieveban Drive, off the Andersonstown Road, in West Belfast, and was linked to the murder at an early stage of the police investigation.
- 7.55. A SOCO attended Slieveban Drive where the vehicle was photographed, before being taken to Tennent Street Police Station. The SOCO took tape lifts²⁷ from the car's interior carpets and seat covers. A fingerprint examination was also carried out. One 9mm bullet was recovered from the footwell of the front passenger seat and a further two 9mm bullets were located in the rear passenger seat footwell.

²⁷ The use of tapes to recover trace evidence from a surface is referred to as 'tape lifting.' Transparent adhesive tape is used to secure evidence such as fibres, hairs, and other small particles that may not be easy to identify or see.

- 7.56. A number of other items were found inside the car, most significantly two balaclavas and two pairs of gloves. They were all submitted to NIFSL on 26 March 1993 for forensic examination. Not all of the items were examined, including an overcoat, denim jacket, rug, and gloves.
- 7.57. The bullets recovered from the vehicle were examined by a Forensic Scientist who reported that two of them were damaged as a result of having been pushed back down into the cartridge case.
- 7.58. Three hairs were located on one of the balaclavas recovered from the front passenger seat footwell, and two hairs from the second balaclava recovered from the rear passenger seat foot well. A further ten hairs were found on tape lifts recovered from the rear seat. These were compared against hair samples taken from Persons B, H, and I but there were no matches.

The Home of Witness 1

- 7.59. Considering the significance of events at this location, it is surprising that no forensic examination was conducted at this address. Although the Vauxhall Astra was examined following its recovery and witnesses described the suspects as wearing masks and gloves, this did not discount the possibility that fibres, hairs, or other trace evidence could have been left at the address.

Post Mortem Examination

- 7.60. Damien's clothing was recovered at the post mortem and examined for traces of fertiliser in relation to the large find in Unit 4 at the Dairy Farm. Forensic tests on the clothing proved negative for traces of fertiliser.

Deoxyribonucleic Acid (DNA)

- 7.61. Persons B, H, and I were arrested in May 1993 under terrorist legislation. Head hair samples were taken from each of them and compared microscopically to those recovered during the murder investigation with negative results.
- 7.62. In 2006 my Office asked HET to ascertain if these head hair samples had been examined for DNA. This resulted in FSNi conducting further forensic examination which obtained weak partial/mixed DNA profiles being obtained. Although these were not suitable for uploading onto the police DNA database, a search of the Northern Ireland and UK databases was carried out on the main profile. No matches were obtained.

8 Mrs Walsh's Complaints and Concerns

- 8.1. Mrs Walsh made a statement of complaint to the former Police Ombudsman, Nuala O'Loan, expressing her dissatisfaction with the standard of the police investigation into Damien's murder. She raised a number of questions and concerns regarding the police investigation. These were as follows:

Mrs Walsh stated 'I understand that on the day after the murder Police Officers 1 and 2 met with me and briefed me fully. I do not recall that meeting and would like to know if that meeting was ever recorded in or on any official document. I would also like to know if a record was kept of any meetings the police state that took place with myself or my family to keep us apprised of any progress being made in the investigation.'

- 8.2. It should be noted that it was not police who initially informed Mrs Walsh of the shooting at the Coal Bunker. At 8:25pm Mrs Walsh was told by two members of the public that Damien had been shot in the leg during an incident at the Dairy Farm. When Mrs Walsh attended the hospital, she was informed by a doctor that Damien had died from his injuries. Mrs Walsh's brother identified Damien's body to Police Officer 11 at Forster Green Mortuary at 12:40am on 26 March 1993. A review of the available police documentation evidenced a degree of contact between police and other family members at the hospital.
- 8.3. My investigation reviewed documentation, dated 27 October 1998, written by Police Officer 2. He stated that he spoke to Mrs Walsh on 26 March 1993, accompanied by Police Officer 1. He detailed 'we spoke to Mrs.

Walsh and she was advised as to what was known about the incident and she was told that any significant developments would be reported to her.'

8.4. Recorded within the same police documentation were six further updates with the Walsh family on the following dates:

- I. 1 April 1993 - (telephone call) apprised Mrs Walsh of the proposed witness strategy.
- II. 21 June 1993 - (telephone call) advised Mrs Walsh that suspects had been arrested but released without charge. Invited Mrs. Walsh to a face-to-face meeting. She told Police Officer 2 she would meet him when she felt stronger.
- III. 14 January 1994 - (telephone call) Police Officer 2 does not recall who he spoke to on this occasion but stated '*I updated them on the investigation, unfortunately no-one had been charged to date.*'
- IV. 27 July 1994 - Police Officer 2 spoke to Mrs Walsh and her brother at Belfast Coroners Court following an inquest hearing. Mrs Walsh was upset and suggested that witnesses be re-interviewed. Police Officer 2 explained that none of the witnesses could identify anyone and further explained that suspects had been interviewed and released without charge due to lack of evidence. Police Officer 2 detailed '*she queried why soldiers who provided first aid were not called. I explained the procedure for Coroners Courts in NI as to their function and their responsibilities for the summoning of witnesses.*'

The same documentation detailed that Police Officer 2 transferred to another policing division in 1995.

- V. 1 October 1997 - Police Officer 2 attempted to contact Mrs Walsh by telephone following a message that she had tried to contact him. He telephoned her home but she was not available so advised her daughter that there had been no developments.

He left his new telephone number in the event that she wished to contact him. She did not.

- VI. 2 October 1997 - Police Officer 2 phoned Mrs Walsh but she was not at home. Police Officer 2 believed it was her daughter he spoke to and reiterated that there was no new evidence and no individuals had been made amenable.

8.5. In the past, Family Liaison was significantly different to the current service provided to bereaved families. It was the responsibility of the SIO to engage with the family at an early stage of the investigation. However, after this there was no structured contact system in place unless a significant development occurred. No formal guidance or bespoke training existed. This changed following the murder of Stephen Lawrence in London on 22 April 1993. A public inquiry into Stephen's death highlighted significant failings in the police investigation, including the manner in which police communicated with the Lawrence family.

8.6. The inquiry, headed by Sir William MacPherson, stated *'That Police Services should ensure that at a local level there are readily available designated and trained Family Liaison Officers.'*²⁸ He added that, where possible, such officers should be dedicated primarily, if not exclusively, to the role.

8.7. The MacPherson recommendations laid the foundations for modern-day Family Liaison which nowadays lies at the core of any SIO Investigation Strategy. The deployment of specialist trained officers to bereaved families is an important investigative tool as well as ensuring that the SIO can communicate effectively with them and provide, as well as acquire, information, in a timely, accurate, and empathetic manner.

²⁸ The Stephen Lawrence Inquiry (1999), 378.

- 8.8. During a case conference at 10:30am on 26 March 1993, the SIO noted that the media had reported that police did not inform the Walsh family of Damien's murder. He stated that this was incorrect as Police Officers 11 and 12 spoke to the family via telephone and made arrangements for Mrs Walsh's brother to meet police at Belfast City Hospital on 26 March 1993 to identify the body. At the time of this telephone call the Walsh family were already aware that Damien had been shot.

Mrs. Walsh stated 'I would like to know who attended at the scene of Damien's murder. In particular I have been told that a police officer refused to hand over a field dressing to someone attending to Damien's wounds, also that one of the British soldiers who arrived at the scene assisted a student nurse to help Damien. I would like to know if there is accuracy in either of these aspects of the incident, and if so, was any of this corroborated by any other witness.'

- 8.9. Police records indicate that over 30 security force personnel and paramedics attended the scene, including Police Officer 1.
- 8.10. Witness 5 recounted the events of 25 March 1993 on three separate occasions. In his statement to police, dated 26 March 1993, he said a *'police man gave him a bandage and he tried to put it round Dee's [Damien's] back.'* My investigation established that RUC officers did not carry first aid kits on their persons in 1993. The deposition of Witness 5 for the Coroner's Inquest stated that a soldier provided the bandage. This is corroborated by Witness 6 who stated that a bandage was provided by a soldier.
- 8.11. Witness 5 later provided an account to my investigators where he stated that he asked a police officer for a field dressing. The police officer *'sarcastically'* replied that the dressing *'was stuck.'* This was not mentioned by Witness 5 in his two previous accounts. It is my view, given the available evidence that Damien was provided with medical assistance while waiting for ambulance staff to arrive. There is no corroborative

evidence to support the allegation that a police officer refused to hand over a field dressing. It has not been possible to determine which police officer Witness 5 had dealings with at the scene.

- 8.12. Witnesses stated a nurse tended to Damien following the attack. Others stated a member of the military assisted in providing first aid. The nurse was not identified during the police investigation and, therefore, no statement was recorded from her. My investigators succeeded in tracing her but she declined to assist with my investigation. To date, this witness has provided no evidence to either police or my Office.

Mrs. Walsh stated *'I have been told that the police went to a unit that 'backs onto the unit' that Damien was in, where they recovered in excess of 5 metric tonnes of fertiliser. I would like to know exactly where this unit was, as it is my belief that there is no unit that backs onto the one in which Damien was killed'*.

- 8.13. Mrs. Walsh is correct in her understanding that no other unit backed on to Unit 6. This is a split level unit with access to the lower level at the rear of the building. Units 1-6 were all of the same design.

- 8.14. A controlled explosion was carried out on a suspicious object located at the rear shutter of Unit 4. This explosion damaged the shutter, revealing the fertiliser inside.

Mrs Walsh stated *'I would like to know, was there any security force surveillance in or near to the complex at the time of the shooting. Was there any police or military vehicle checkpoint on the Stewartstown Rd at the time or immediately prior to the incident. If the answer to any of this is yes I would like to know why they were present and what was their response to what took place. If a vehicle check-point was in place was the vehicle in which the gunmen were travelling stop-checked at any stage.'*

- 8.15. I have detailed that surveillance was in place on the Dairy Farm at the time of Damien's murder in Chapter 5 of this public statement. The surveillance operation was solely in relation to the fertiliser stored inside Unit 4 and was not connected to any other premises or activities at the Dairy Farm.
- 8.16. A schedule of VCPs was viewed for the relevant time period on 25 March 1993. These are summarised as follows:
- I. 1810-1825hrs – Crimea St, Sydney St, Oldpark Road.
 - II. 1835-1935hrs – Foot patrol – 'snap' VCPs.
 - III. 1845-1900hrs – Woodvale Road, West Circular Road.
 - IV. 1915-1930hrs – Crumlin Road, Forthriver Road.
 - V. 1950-2005hrs – Crumlin Road, Antrim Road, Oldpark Road.
 - VI. 2020-2035hrs – Crumlin Road, Cavehill Road.

There is no evidence that a VCP was in position on the Stewartstown Road at, or around, the time of Damien's murder.

- 8.17. My investigation established that on 24 and 25 March 1993, there were a number of military VCPs in the Greater Belfast area, but none in the vicinity of the Dairy Farm. Witness 13 provided a statement to Relatives For Justice (RFJ) stating that he journeyed from the Dairy Farm onto the Andersonstown Road on the afternoon of 25 March 1993. He stated that it took a considerable time to get there due to several RUC and military checkpoints on the Andersonstown Road and Stewartstown Road. However, a SDLP Councillor for the area made a statement in which he said he queried, via the media at the time, why police road blocks were not present in the area given there had been a number of recent sectarian murders.

8.18. My investigation has established that when a location, such as the Dairy Farm, was the subject of an ongoing surveillance operation the surrounding area would often be placed 'out of bounds' so as not to compromise that operation. However, a check of RUC daily log books for the area on that date do not indicate that the area had been placed 'out of bounds.'

Mrs Walsh stated 'It is my understanding that the vehicle used by the gunmen was recovered by the police shortly after the incident and that items of clothing were recovered from it which did not belong to the owner of the vehicle. If this true, I would like to know if any forensic examination was ever carried out on that clothing. If so, what was the result?'

8.19. My investigation reviewed all the available documentation regarding the forensic examination of the Vauxhall Astra linked to the attack. It was initially examined by a SOCO and 20 items seized and submitted to NIFSL for further examination. These items included balaclavas, gloves, bullets, a rug, an overcoat, a denim jacket, and tape lifts.

8.20. The only items that were examined were the bullets, balaclavas, and tape lifts. There is no indication that any other items were examined by NIFSL, or any explanation recorded as to why this was the case.

8.21. NIFSL compared hair samples recovered from the balaclavas and tape lifts with samples obtained from Persons B, H, and I which all proved negative. DNA has since been recovered from a hair sample found on a balaclava. The HET reported that this DNA profile was sufficient for searching on the Northern Ireland and UK National Databases. However, no matches were obtained.

8.22. Witness 1, provided a statement to police on 27 March 1993, where he identified items in the car belonging to him. These included a patterned rug and a blue overcoat. NIFSL records confirmed that a patterned rug

and blue overcoat were seized from the car by the SOCO and submitted to NIFSL. My investigators recorded a statement from Witness 1 who stated, *'I heard off the police that my car had been found but I didn't get it back for a long time. In fact I was lucky that a relative was able to loan me a silver car until my own was returned. I never at any time took any property back from the car until it was formally restored to me. When my car was returned things had been taken off my car but it's too long ago to give details.'* The Vauxhall Astra was returned to him on 23 April 1993.

Mrs. Walsh stated 'I would like to know if a security operation was in progress at the Dairy Farm in the weeks before Damien's death, if so was anyone arrested as a result.'

- 8.23. A surveillance operation, focused on Unit 4 at the Dairy Farm Complex, had been in place in the period prior to Damien's murder.
- 8.24. My investigation established that police recovered fertiliser at a number of addresses in the Belfast area before Damien's murder which were traced to Unit 4 at the Dairy Farm. From the available documentation, it is clear that a number of people were arrested and interviewed in respect of these finds.
- 8.25. One man was arrested on 4 June 1993 in respect of the fertiliser recovered at Unit 4. He was interviewed on eight separate occasions about his links to the fertiliser, PIRA membership, and involvement in bomb making. He remained silent throughout these interviews and was released without charge on 5 June 1993.

Mrs Walsh stated 'I have been told that a number of suspects were arrested and questioned in connection with Damien's murder. I would like to know on what evidence the suspicions about these men were based. Why was it insufficient for a prosecution? Were any forensic tests carried out on these men? Were any tests carried

out that may link these men with the clothing recovered from the gunmen's car?'

- 8.26. Police intelligence indicated the involvement of seven named individuals. This was intelligence and not evidence. None of these individuals were arrested specifically in connection with Damien's murder. Persons B, H, and I were arrested under Prevention of Terrorism legislation but only Person I was questioned about Damien's murder. Persons E, F, G, and J, were also named in intelligence as being connected to the murder, but were not arrested.
- 8.27. Head hair samples were taken from Persons B, H, and I. These were submitted to NIFSL and compared against other samples recovered by police during the course of the murder investigation. No matches were obtained.
- 8.28. On 17 June 1994, Person Q was arrested in possession of a number of firearms. One of these was forensically linked to Damien's murder. Person Q was interviewed in respect of the murder but denied any involvement, stating that the weapons were given to him by Person R. Person Q was convicted of firearms offences and sentenced to five years imprisonment. Person R was arrested on 22 August 1994. He denied any knowledge of the weapons and was not questioned about Damien's murder.

Mrs. Walsh stated 'I have been told that the weapon used to murder my son was in the possession of the UVF and or the UDA. Also that it was recovered from the back of a milk float in East Belfast in June 1994, and that a man was arrested and subsequently convicted in connection with the recovery. Did this weapon ever undergo a full ballistics examination? Were any tests done to establish any link between the arrested man and the clothing recovered from the vehicle used by the gunmen? Was it ever established where the paramilitaries obtained the weapon from? I understand that the weapon was used in other incidents. If that is so was anyone ever

prosecuted in connection with any of those incidents and can they be forensically linked to Damien's murder?

- 8.29. Two weapons were used in the shooting. Both were 9mm calibre handguns. One was recovered from Person Q when he was stopped by police on 17 June 1994. It was subject to a full forensic examination and linked to another murder in 1991. The second weapon has never been recovered.
- 8.30. The SIO requested that all items be examined for fingerprints and compared against items recovered from the getaway car linked to the murder. All relevant forensic examinations were carried out in respect of the weapon used in Damien's murder. No samples or clothing pertaining to Persons Q and R were submitted to NIFSL for comparison against other items obtained during the course of the police investigation. Person Y, who was linked by intelligence to the weapon, was never arrested by police.
- 8.31. The weapon recovered from Person Q was photographed and later destroyed on the instructions of Police Officer 13, who signed the documentation on behalf of the Chief Constable on 25 July 1995. My investigation did not identify any attempt by police to link Damien's murder with the 1991 attack. Given its serial number, I believe that the handgun was part of the loyalist arms importation into Northern Ireland in late 1987.

Mrs. Walsh stated 'I have been given to understand that the gunmen took the car that they used to travel to the Dairy Farm from a person living in Tennent St. Was that person interviewed at the time? Has he been interviewed since, and will he now be re-interviewed?'

- 8.32. The car linked to the murder was a Vauxhall Astra stolen from the home address of Witness 1. On 25 and 27 March 1993, Witness 1 made two separate statements to police. He also provided a statement to my investigators on 28 May 2009. Witness 1 is now deceased.

- 8.33. On 25 March 1993, Witness 1 made the first of his statements to police. Another family member also made a statement that was consistent with the account provided by Witness 1. He stated that at approximately 7:35pm he heard someone banging on his front door. As he made his way from the kitchen, he saw two masked men standing in the hallway. One of them had a handgun. He was asked for his car key which he gave to them. He was told not to phone police until 8:00pm. He phoned them at approximately 7:45 – 7:50pm as he did not want to wait any longer in case someone got hurt.
- 8.34. On 27 March 1993, Witness 1 made a second statement to police. In this account he provided descriptions of the two men who took his car. These mostly related to clothing as both were wearing balaclavas. He also stated that he observed a blue Ford Escort drive off after his vehicle. He could not see how many people were in the Escort, but this suggested a possible link between it and the men who stole his car.
- 8.35. Witness 1 was interviewed by my investigators on 28 May 2009 and provided a similar account to the one he had previously provided police in 1993. He added, however, that he had a nervous condition at the time which affected his speech, especially when agitated. Because of this, when he first called police to report the theft an officer told him '*to put the phone down or they would come and lift me.*' His wife then phoned police a short time later to report the incident. He added that when police attended his home following the murder they did not, to his knowledge, carry out any fingerprint examination at the address. He confirmed that none of the items in his car that belonged to him were returned until the car was returned. He believed this was a long time after the murder.

- 8.36. A review of the available police documentation revealed there were no investigative actions raised in respect of Witness 1 or his property. Based on the available evidence I believe that Witness 1 was an innocent victim.

Mrs Walsh stated ‘shortly after Damien’s murder the press reported that a cache of explosives was found beside his body. The implication here is that Damien was connected to this and I know that this is not true. I would like to know how the police informed the press about the incident and can I obtain a copy of the press release.’

- 8.37. My investigators reviewed numerous press articles about Damien’s murder. I have been unable, however, to obtain a copy of the original police press release. Contained within some of the articles was reference to the recovery of fertiliser close to where Damien was murdered. Although none of these indicated a direct link between the murder and the fertiliser, it is understandable that Mrs Walsh arrived at this conclusion upon reading them.

- 8.38. As referenced previously, a forensic examination of Damien’s clothing and footwear did not link him to the fertiliser.

Mrs. Walsh stated ‘It is my understanding that the police were using a number of informers in the area at the time. Was [Person W] one of these?’

- 8.39. I have applied to the facts of this case, the general presumptive policy that she will neither confirm nor deny (NCND) whether any individual was an informant. The Police Ombudsman will not depart from this NCND policy in this instance.

Mrs. Walsh stated ‘A BBC programme about informers implicated previous owners of the Coal Bunker in IRA activities and these same men were also named in the House of Commons just a few months before Damien’s murder. Did these allegations have any bearing on police operations in the area of the Dairy Farm Complex? Can the BBC and the MP be held accountable by the authorities now for putting people’s lives in danger as a result of speculation on their part at that time in 1992/1993?’

8.40. My investigators conducted enquiries into this allegation and viewed a number of relevant television documentaries. These included Panorama, aired on 24 January 1992, Counterpoint (14 January 1993), and Spotlight (12 November 1996). None of them made any reference to the Coal Bunker. Further enquiries established that the Honourable Peter Bottomley, then Member of Parliament (MP) for Eltham, referred to Person V in the House of Commons in July 1996, three years after Damien’s murder. Person V was believed to have had business connections to the Coal Bunker. I am, however, satisfied that the security force surveillance on 25 March 1993 was an intelligence-initiated operation. There is no evidence that any comments made in a television documentary or during a parliamentary debate contributed to surveillance being commenced or the attack at the Dairy Farm.

Mrs. Walsh stated ‘I am aware that surveillance equipment was discovered by local people. I would like to know if this was found in an area directly facing the Dairy Farm Complex. If this is true who did the equipment belong to? Was it placed there by the security forces? If so what information concerning the shooting was relayed to their base?’

- 8.41. My investigators made enquiries in respect of the above concern. The British Irish Rights Watch²⁹ (BIRW) reported that a Sinn Fein Councillor, later identified as Witness 14, was said to have been provided with what was believed to have been surveillance equipment. This equipment was purportedly found at the Dairy Farm. Witness 14 was traced and interviewed as part of my investigation. She had no knowledge of being handed any camera equipment and did not recall Mrs Walsh ever mentioning it to her.
- 8.42. I shall address Mrs Walsh's allegation of collusion in respect of police actions relating to Damien's murder in Chapter 11 of this public statement.

²⁹ British Irish Rights Watch (BIRW) was an independent non-governmental organisation that monitored the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. In 2013, the organisation rebranded as Rights Watch UK.

9 Relevant Rules and Standards

- 9.1. The Association of Chief Police Officers (ACPO) first published a *'Murder Investigation Manual'* in September 1998. This set out a framework for murder investigations and is designed to aid and guide the SIO throughout the investigation process. However, this was not in place at the time of Damien's murder.
- 9.2. The RUC implemented the *'Major Investigation Incident Room Standardised Administrative Procedures'* (MIRSAP)³⁰ on 1 January 1984. This formalised management structures and processes within major incident rooms, acknowledging that it was essential for major investigations to have a structure of management which was immediately recognisable and understood by all police officers.
- 9.3. MIRSAP was designed to provide the SIO with *'an accurate record of all relevant information relating to the investigation, together with the enquiries made and results obtained.'* The system was also responsible for *'recording and linking all information...so that it may be readily retrieved to aid the SIO and their team to establish priorities. This will ensure that all enquiries are made efficiently, and the results analysed.'*
- 9.4. The recording of information entering Major Incident Rooms was undertaken by a standardised manual procedure known as MIRIAM (Major Incident Room Indexing and Action Management). In March 1988, the RUC introduced a computerised system known as HOLMES (Home Office Large Major Enquiry System), for the investigation of serious crimes.

³⁰ Major Incident Room Standardised Administrative Procedures (MIRSAP), 17.

- 9.5. My investigators established that these procedures were implemented during the investigation into Damien's murder. An SIO and DSIO were appointed and a HOLMES Major Incident Room set up. Investigative actions were raised and allocated to individual officers.
- 9.6. The Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988 applied at the time of this investigation. These regulations detailed that Offence 4 – 'Neglect of Duty' was committed where a police officer without good and sufficient cause:
- I. Neglects or omits to attend to or carry out with due promptitude and diligence anything which it is his duty as a member to attend to or carry out;*
 - II. Fails to work his beat in accordance with orders, or leaves the place of duty to which he has been ordered, or having left his place of duty for an authorised purpose fails to return thereto without undue delay;*
 - III. Is absent without leave from, or is late for, any duty;*
 - IV. Fails properly to account for, or to make a prompt and true return of, any money or property received by him in the course of his duty.*
- 9.7. At the time of the murder in 1993 there was no RUC Code of Ethics in place for police officers however, the overarching duty of police was, and remains, to protect life and property. When considering matters of police conduct in this public statement, I have applied the relevant standards of the time.

10 Procedural Fairness

Introduction

- 10.1. In concluding this public statement, I am mindful of the need to ensure procedural fairness to those who may be affected by its content. Mr Justice McCloskey (as then) in the High Court in *Re Hawthorne & White*³¹ provided guidance to this Office as to what was generally required. In particular I have considered relevant passages from that judgment which I outline here for ease of reference, highlighting the requirements of procedural fairness in this context:

[113] In my judgment, it matters not that the police officers thus condemned are not identified. There is no suggestion that they would be incapable of being identified. Further, and in any event, as a matter of law it suffices that the officers condemned by the Police Ombudsman have identified themselves as the subjects of the various condemnations. Procedural fairness, in this kind of context, cannot in my view depend upon, or vary according to, the size of the readership audience. If there is any defect in this analysis it is of no consequence given that the overarching purpose of the conjoined challenge of the second Applicant, Mr White, belongs to the broader panorama of establishing that reports of the Police Ombudsman couched in the terms considered exhaustively in this judgment are unlawful as they lie outwith the Ombudsman's statutory powers.

[114] The somewhat different challenge brought by Mr White, imbued by corporate and broader ingredients, gives rise to the following conclusion, declaratory in nature. Where the Police Ombudsman, acting within the confines of his statutory powers, proposes to promulgate a "public statement" which is critical of or otherwise adverse to certain persons our fundamental requirements, rooted in common law fairness, must be observed. First, all passages of the draft report impinging directly or indirectly on the affected individuals must be disclosed to them,

³¹ [2018] NIQB 5

accompanied by an invitation to make representations. Second, a reasonable period for making such representations must be permitted. Third, any representations received must be the product of conscientious consideration on the part of the Police Ombudsman, entailing an open mind and a genuine willingness to alter and/or augment the draft report. Finally, the response of the individual concerned must be fairly and accurately portrayed in the report which enters the public domain.'

10.2. This process, sometimes called 'Maxwellisation', involves four fundamental requirements as outlined by Mr Justice McCloskey:

- I. That all passages of the draft public statement impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations;
- II. A reasonable period for making such representations must be permitted;
- III. Any representations received must be conscientiously considered, entailing an open mind and a genuine willingness to alter and/or augment the draft report; and
- IV. The response of the individual concerned must be fairly and accurately portrayed in the statement that is published.

The 'Maxwellisation' Process

10.3. In order to give the officers concerned a fair opportunity to respond to any proposed criticisms in this public statement, correspondence was forwarded on 2 June 2021 from this Office to Police Officers 1, 2, 13, and 14 along with extracts from the draft public statement that impinged directly or indirectly on them, seeking their comments. As is standard practice in my Office, a period of 30 days from receipt of that correspondence was provided in order for the individuals to respond.

10.4. Police Officers 1 and 2 forwarded written responses to my Office, dated 15 June 2021 and 20 June 2021 respectively, raising a number of issues and concerns. No responses were received from Police Officers 13 and 14. The contents of the correspondence from Police Officers 1 and 2 were the subject of careful and conscientious consideration by me. Prior to the publication of this statement I responded in writing to their issues and concerns.

Police Officer 1

10.5. Police Officer 1 stated that he had no recollection of the events as described in my draft public statement. He added that he was surprised failings in the police investigation had been identified as he prided himself on his attention to detail. He was at a loss to explain these and could not accept that certain enquiries had been overlooked. He stated that he was a meticulous investigator and did not accept that he had failed to carry out a thorough investigation.

Response to Police Officer 1

10.6. I have carefully considered these comments. I believe that the contents of this public statement accurately reflect the police investigation into Damien's murder. The views I have expressed in relation to the police investigation are based on evidence and other information, including intelligence, gathered during the course of my investigation.

Police Officer 2 – General Complaints

10.7. Police Officer 2 made a number of general complaints and comments. He stated that:

- I. The Police Ombudsman is not entitled to make evaluative judgments or publish an opinion regarding his conduct as a police officer;

- II. The Police Ombudsman intended to publish defamatory material concerning him;
- III. He had concerns about jigsaw identification;
- IV. He had been provided with inadequate information were he intending to respond to the matters raised; the information provided was both partial and lacked context;
- V. The Police Ombudsman had taken little, if any, cognisance of the findings and practical implications of the Hawthorne and White judgment;
- VI. Allowing him only 30 days to respond to my initial correspondence of 2 June 2021 was wholly unacceptable;
- VII. This public statement had the potential to breach his rights under Articles 6 (Right to a Fair Trial) and 8 (Right to Privacy) of the European Convention of Human Rights; and
- VIII. Section 62 of the Police (Northern Ireland) Act 1998 does not permit the Police Ombudsman to make a determination which amounts to a public finding of guilt.

10.8. I have carefully considered the above concerns raised by Police Officer 2 and I responded in writing to these. In broad terms, that correspondence addressed the issues of whether or not the Police Ombudsman's process had been conducted in accordance with the 1998 Act, the Convention, and the Hawthorne and White judgment. In short, I do not concede that by publishing this statement I am acting beyond my legal authority. Neither do I concede any procedural unfairness given the steps taken to provide both PSNI and the relevant retired officers with an opportunity to comment on my draft public statement.

10.9. In relation to the complaint from Police Officer 2 about lack of information and only being permitted 30 days to make a response, I am satisfied that he was provided sufficient information and time to respond to the matters outlined in my 2 June 2021 correspondence.

Police Officer 2 – Specific Complaint

10.10 In response to the relevant extracts from my draft public statement, the following specific complaint was made by Police Officer 2 as follows:

- I. He accepted that any review of a pressurised police enquiry during the ‘Troubles’ should identify areas where those leading the enquiry might have done better. He did not accept, however, the catalogue of innuendo whereby accepted procedures at the time were presented as ‘*significant shortcomings.*’ This demonstrated a woeful failure on the part of my investigators to understand relevant procedures at the time and the sound reasons for them.

10.11 I have carefully considered these comments. At every stage I have sought to engage with former police officers in order to understand the environment within which they investigated serious crime. I accept that former RUC officers faced significant challenges and pressures. I have also sought to obtain and review the relevant legislation, standards, and guidance that existed in order to understand policing procedures and policies. I believe that this has resulted in a fair and impartial investigation, underpinned by evidence-based conclusions.

11 Conclusions

The Role of the Police Ombudsman

- 11.1. My role as Police Ombudsman is set out clearly in Part VII of the 1998 Act. In the Court of Appeal judgment in *Re Hawthorne and White's application*³² in respect of a Judicial Review about the Loughinisland public statement of Dr Maguire, the Court ruled that the Police Ombudsman has no role in adjudicating on a complaint of criminality or misconduct. The decisions and determinations of these issues are matters for the Public Prosecution Service (PPS) and criminal courts in relation to allegations of criminality. In this instance there was no evidence to justify a recommendation to the PPS that criminal proceedings be brought against any police officer. The main purpose of this public statement, therefore, is to address the complaints and concerns raised by Mrs Walsh.
- 11.2. In accordance with my statutory functions, I am also obliged to consider the question of disciplinary proceedings. However, due to the relevant police officers being retired, a misconduct investigation was not possible. This would normally include a misconduct interview where the relevant officers would be asked to account for their decisions and actions after a misconduct caution. As stated by the Court of Appeal, it is not my role to determine whether or not police officers are guilty of misconduct. That is a matter for PSNI's Professional Standards Department (PSD) and the relevant police disciplinary panel in respect of serving police officers.
- 11.3. The investigation of complaints about historical matters is a challenge due to the passage of time and also unavailability of relevant witnesses and documentation. However, in this investigation, considerable evidence was gathered. This included witness statements, police documentation, and other material within the public domain. I am unable to compel retired police

³² *Re Hawthorne and White's Application for Judicial Review*. [2020] NICA 33.

officers to assist investigations in a witness capacity. However, a number of former police officers co-operated with my investigation. I am grateful for their assistance.

11.4. I am mindful of the context within which the original police investigation was conducted and the rules and standards that existed in 1993, particularly relating to covert surveillance and the use of intelligence. These differed greatly from what is in place today. There are now a range of legal instruments governing police actions and decisions including the Human Rights Act 1998, Regulation of Investigatory Powers Act 2000 (as repealed in part by the Investigatory Powers Act 2016), and Data Protection Acts (1998 and 2018). Most significantly in terms of policing structures and practices, PSNI's Crime Operations Department was established in 2004. PSNI have stated *'this department is led by a single Assistant Chief Constable thereby ensuring consistency, transparency, and accountability across all investigative and intelligence functions within PSNI.'* The PSNI Code of Ethics was introduced in 2003 and amended in 2008.

11.5. At the time of Damien's murder, there was a less developed regulatory framework governing policing practices, in particular surveillance activity. Since 1993, dramatic changes have taken place within the political environment, legal frameworks governing policing in Northern Ireland, and police accountability mechanisms. Those changes include:

- I. The Good Friday Agreement 1998;
- II. The Human Rights Act 1998;
- III. The Patten Report 1999, which resulted in the creation of the PSNI;
- IV. The Regulation of Investigatory Powers Act 2000 (repealed in part by the Investigatory Powers Act 2016);
- V. The creation of the Office of the Police Ombudsman for Northern Ireland in 2000;

- VI. The creation of the Northern Ireland Policing Board (NIPB) in 2001;
- VII. The formation of PSNI's Crime Operations Department in 2004; and
- VIII. The PSNI's Code of Ethics, launched in 2003 and amended in 2008.

The Loyalist Arms Importation and Weapons Used

- 11.6. Given the serial number of the recovered handgun used to murder Damien, I believe that it originated from a consignment of firearms imported into Northern Ireland by loyalist paramilitaries in December 1987. As reported by my predecessor, Dr Maguire,³³ those responsible included senior members of the UDA, Ulster Volunteer Force (UVF), and Ulster Resistance. The latter organisation first came to public attention in November 1986 at an anti-Anglo-Irish Agreement rally at the Ulster Hall, Belfast.
- 11.7. As a result of a multifaceted intelligence and surveillance operation, police were successful in recovering a large quantity of these weapons at Mahon Road, Portadown, on 8 January 1988. Subsequent events have, however, demonstrated that a significant number of the imported weapons found their way to the aforementioned paramilitary organisations.
- 11.8. Accounts from a number of former police officers who performed operational roles in this surveillance operation, although at the time they were junior in rank, demonstrated that not all the weapons were recovered. This was because of intelligence gaps and failings in the police surveillance operation. Other more senior police officers who were responsible for directing the security operation, and/or would have been in a more informed

³³ Public Statement by the Police Ombudsman Relating to a complaint by the victims and survivors of the Murders at the Heights Bar, Loughinisland on 18 June 1994.

position as to its conduct, are either deceased or declined to assist with the former Ombudsman's investigation.

11.9. The inability of my Office to compel police or other witnesses to assist my enquiries, added to the routine destruction of TCG records, impeded my investigation. This made it more difficult to establish the circumstances whereby loyalist paramilitaries acquired weapons subsequently used in the murders of Damien and numerous other citizens.

11.10. Similar challenges faced my predecessor, Dr Maguire, in accounting for the absence of a concerted investigative effort to bring those responsible for the weapons importation to justice. In accordance with my predecessor's views on this, I am mindful that the senior police officer tasked with investigating the three men arrested in possession of the weapons recovered on 8 January 1988 stated that he was not provided with the intelligence background to the surveillance operation. This included, for example, the identities of senior paramilitary figures who met in Portadown on the evening of 7 January 1988 to discuss the distribution of the weapons.

11.11. I cannot conclude that Damien's murder would not have occurred had police prevented loyalist paramilitaries from taking possession of these weapons, given the intervening five year period and the UDA's access to other weapons. It is also true that the security forces were subsequently successful in obstructing attempts by loyalist paramilitaries to procure further weapons. There is no doubt, however, that the firearms that entered Northern Ireland in late 1987 significantly enhanced the capability of the UDA/UFF and other loyalist paramilitary organisations to mount attacks.

11.12. The Browning handgun used in Damien's murder was recovered by police on 17 June 1994. It was destroyed the following year on the authority of Police Officer 13. There are, therefore, no further evidential opportunities in respect of this weapon. PSNI have stated that '*...all forensic procedures had been completed for the weapon*' and that '*...relevant legislation, PACE*

(NI) Order 1989 and The Firearms (NI) Order 1981, would have been considered. The fact that the weapon was not being used as evidence in a trial and that a full forensic examination had been completed were material considerations in the decision to destroy the weapon, considerations that fundamentally alter the interpretation of the decision.' The disposal of a weapon used in an undetected murder, in my view, ought not to have occurred. I am critical of this apparent blanket policy approach to the destruction of weapons used in unsolved murders.

Preventability of Damien's Murder

- 11.13. Documentation viewed by my investigators indicated that in the weeks prior to Damien's murder, police surveillance and disruption tactics had been largely successful in curtailing the terrorist activities of 'C' Company. There was intelligence that Person A was becoming increasingly frustrated at the level of police activity hindering his efforts to mount attacks on the nationalist community of West Belfast. His activities, and those of his associates, had been subject to a period of covert police surveillance.
- 11.14. On 22 March 1993, police withdrew this surveillance. Police have advised my Office that this was in order to concentrate resources on two other operations. The first was the surveillance operation at the Dairy Farm. This operation was focused on the PIRA storage and distribution of fertiliser which could be used in the construction of explosive devices. The second operation was similarly concerned with PIRA activities.
- 11.15. Police records indicated that one of the reasons surveillance resources were diverted from 'C' Company at that time was due to intelligence indicating PIRA were about to move the fertiliser stored at the Dairy Farm. Police records also referred to increasing hostility towards police officers in the Shankill Road area and Person A's heightened level of surveillance awareness.

- 11.16. Police received further intelligence in the days prior to Damien's murder that Person A had received two handguns which were stored at an unknown location. This, and the intelligence concerning his personal involvement in 'targeting', indicated the pivotal role he performed in planning attacks by 'C' Company.
- 11.17. Police responded to intelligence received on 22 March 1993 suggesting that Person C, a close associate of Person A, was intending to engage in 'targeting.' Police conducted surveillance on Person C for approximately two and a half hours on that date. Records indicated he did not visit either the Dairy Farm or Enterprise Centre during this period. Following this, surveillance on the UDA/UFF was '*stood down*' and did not resume again until 30 March 1993. Intelligence indicated that Person A resumed 'targeting' activities shortly after the surveillance ended on 22 March 1993.
- 11.18. On 24 March 1993, Peter Gallagher was murdered at the Enterprise Centre in West Belfast. On the same day, police received intelligence which supported a claim of responsibility to the media that 'C' Company had committed the murder.
- 11.19. On the same date police received further intelligence that Person A had personally been engaged in 'targeting' on the evenings of 22 and 23 March 1993 and had several '*pending operations.*' A police document also noted that Person A had an attack planned for 24 March 1993.
- 11.20. On 25 March 1993, additional intelligence was received that Person A had an attack planned for later that evening.
- 11.21. My investigation has not identified intelligence of a specific threat to Damien Walsh, or any other individual associated with the Coal Bunker, on 25 March 1993. It is my view, however, that the intelligence received regarding the activities and intentions of Person A between 22 and 25 March 1993 demonstrated that he was actively targeting members of the nationalist

community in West Belfast. This culminated in the murders of Damien and Peter Gallagher.

11.22. In light of the developing intelligence picture, I am of the view that police ought to have considered resuming the surveillance tactics that had previously been successful in frustrating the activities of Person A and his associates. I am also of the view that disruption was an operational tactic available to police. I have found no evidence that a re-consideration of the emerging risk to the lives of nationalists in West Belfast was considered by police during the eight day period between 22 March and 30 March 1993.

11.23. I have considered whether Damien's murder was a random or targeted sectarian murder. The Dairy Farm is located in a nationalist area of West Belfast. I am of the view that the targeted nature of the attack, near to where Unit 4 contained a quantity of PIRA fertiliser for use in bomb-making, suggested that the gunmen had prior knowledge of PIRA activities at the Dairy Farm.

11.24. My investigation also viewed intelligence obtained by police, following the murder, stating that the UDA/UFF were provided with information by a police officer and '*British Intelligence*' which informed their attack at the Dairy Farm. This intelligence did not identify any police officer or member of the security forces who was providing the information. Therefore, it has not been possible for me to progress my enquiries any further on this matter.

11.25. In light of the above, I am of the view that the attack at the Dairy Farm by 'C' Company was planned. However there was no evidence that Damien was specifically targeted.

11.26. The witness accounts gathered by my investigation about the surveillance operation at the Dairy Farm are inconsistent. The unavailability of relevant TCG records has impeded my enquiries. I am satisfied, however, given the

evidence gathered, that a surveillance operation focussing on activity around Unit 4 was ongoing. This involved a military observation post and mobile police surveillance teams. This surveillance was aimed at covertly observing the movement of the fertiliser to location(s) where it would be used to construct explosive devices. The security force operation resulted in arrests and the recovery of fertilizer. This operation is most likely to have prevented death, serious injury, and the destruction of property.

11.27. Given the logistics of the surveillance operation and the sudden nature of the attack, I do not believe that an opportunity existed for police to stop the murder of Damien Walsh.

11.28. Following the attack, there were also inconsistent witness accounts as to whether covert policing units in the area withdrew or attempted to locate the suspects as they fled. Based on the available evidence I am of the view that some surveillance officers unsuccessfully attempted to locate the suspect vehicle. These officers were, in my view, given inaccurate information about the make and model of the getaway car. My investigation has been unable to establish the route taken by the murderers on exiting the Dairy Farm. The initial information relayed to the police surveillance teams is also likely to have hindered their understanding as to the gunmen's actual direction of travel.

Non Dissemination of Intelligence and other Sensitive Information

11.29. The existence of a surveillance operation at the Dairy Farm at the time of Damien's murder was not communicated to the SIO who led the murder investigation. There were no enquiries, therefore, with members of the security forces who witnessed the attack. They may have been able to provide full or partial descriptions of the attackers which would have been of value to the police investigation. My investigation did not identify any rationale for this decision. Whatever statutory scheme existed at the time governing the use of covert surveillance, there was no legal reason why

this information could not have been shared, even if it needed to be subject to handling conditions to protect the origins of the intelligence.

11.30. There are a number of other key pieces of intelligence that I consider may have been of value to the murder investigation but which were not disseminated to the SIO. This included intelligence that Person A was planning an attack for the evening of 25 March 1993, the date of Damien's murder. He was not made aware of intelligence received on 29 March 1993 that an unidentified member of Person A's team was involved in the attack. In 1994, intelligence about Person Y supplying the handgun used in the murder to Person Q was not shared with the SIO.

11.31. The SIO may have been able to generate lines of enquiry, if aware of such intelligence, which could have been developed into evidential opportunities. The same applied to information that Person A had been targeting premises described as Units 6 & 8 knocked into one, with a shutter. It appears that police incorrectly linked this intelligence to the Dairy Farm, when it more likely referred to the Enterprise Centre, the scene of Peter Gallagher's murder. I am of the view, however, that this information ought to have been shared with the SIO investigating Damien's murder.

11.32. My investigation identified unexplained delays in the Special Branch dissemination of intelligence relating to suspects. Intelligence received in early May 1993 named a number of individuals as being involved in the murder. This was not disseminated by Special Branch to the SIO until early July 1993.

11.33. Police were in receipt of information that detailed the movement of five men to a house in the hours following the murder. Person D had access to this address. This information was received in 1994 by CID and, in my view, ought to have been disseminated to the SIO dealing with Damien's murder. PSNI have stated that this information would have been available on the relevant police database. However, I am of the view that the SIO ought to

have been made aware of its existence in order to assess its value to his investigation.

Investigative Failings - The RUC Suspect Strategy

11.34. The SIO was in receipt of information linking a number of individuals to the murder. These were known associates of Person D who was, in turn, a leading member of 'C' Company and a close associate of Person A. Descriptions of the driver of the car which conveyed the attackers to and from the scene of the murder were similar to that of Person D. Further, the description of one of *'two strangers'* seen in the vicinity of the Enterprise Centre the day before Peter Gallagher's murder was similar to Person D. He was also named in intelligence as being the gunman in Mr Gallagher's murder. Person D was not arrested in connection with either murder.

11.35. Person G was detailed in security force sighting documents contained within the investigation papers relating to Damien's murder. Sightings throughout February and March 1993 pointed towards his close and regular contact with Person D, who was implicated in numerous sectarian murders. The witness who described the *'two strangers'* the day before the murder of Peter Gallagher stated that they were in a car of similar description to that belonging to Person G. His vehicle was later seized by police and forensically examined. Person G, however, was not arrested in connection with either murder.

11.36. The Ford Fiesta belonging to Person G was sighted on a number of occasions throughout April 1993 near the location where the Vauxhall Astra, linked to Damien's murder, was stolen.

11.37. Police records indicated that Persons D and H were sighted on 27 March 1993 in a blue Ford Escort belonging to Person T. Person G was stopped by police in the same car on 31 March 1993. Person S also had access to a Ford Escort in March 1993. Persons D, G, H, and S all had connections

to 'C' Company and intelligence linked Persons D, G, and H to Damien's murder.

11.38. Despite Witness 1 stating that a blue Ford Escort followed his Vauxhall Astra after it was stolen, no related enquiries were made by police. These enquiries ought, in my view, to have reasonably included whether Persons D, G, H, S, and T had access to Ford Escort cars at the time of Damien's murder.

11.39. In my view, the connections between intelligence and suspects in both Damien's murder and the murder of Peter Gallagher, together with the proximity of timing and location of the attacks, ought to have resulted in police linking the two. This did not occur. There was a fragmented investigative approach by police, which undermined Damien's murder investigation. The family of Mr. Gallagher have made a separate complaint to my Office which will be investigated in due course.

11.40. The SIO received information naming Persons B, H, and I as suspects in Damien's murder. They were arrested under Prevention of Terrorism legislation and head hair samples taken. These were compared by NIFSL against hair samples recovered from the Vauxhall Astra linked to the murder with negative results. The arrested individuals were interviewed by police about a number of terrorist offences. However, only Person I was questioned about Damien's murder. My investigation has been unable to establish why the other suspects were not questioned about his murder.

11.41. Police intended to conduct an identification parade in respect of Person I on 24 May 1993 in relation to Damien's murder and that of another individual. Seven witnesses were invited to attend. However, they were either unavailable or declined to assist. There is no record of police rescheduling the identification parade for the witnesses who were unavailable.

11.42. The SIO was in receipt of information about how the murderers fled the scene. This was sufficiently detailed to have provided the SIO with investigative lines of enquiry, However, none were pursued.

Investigative Failings - The RUC Forensic Strategy

11.43. Based on the available information and evidence, I am satisfied that the forensic strategy was inadequate as follows:

- I. There is no evidence that the home addresses of any of the suspects were searched for items that may have provided a forensic link to the murder. This would have been expected in an effective police investigation at the time;
- II. There was no forensic examination at the home of Witness 1, from whom the car used in the attack was stolen;
- III. There were items in the stolen Vauxhall Astra that were not subject to forensic testing. These included items that did not belong to Witness 1 and may, therefore, have been linked to the murderers; and
- IV. No forensic examination was undertaken in relation to Person R and Q, following the recovery of one of the murder weapons on 17 June 1994.

The Police Ombudsman's Powers

11.44. I must act lawfully and fairly in the exercise of my functions as provided for under Part VII of the 1998 Act. The Court of Appeal in *re Hawthorne and White*³⁴ has unanimously ruled on the powers of the Police Ombudsman

³⁴ [2020] NICA 33

under that legislation. This includes how the Ombudsman will address complaints generally and, more particularly, in relation to complaints about the actions of retired RUC officers concerning allegations of collusion. As stated by the Court of Appeal, my role is limited to acknowledging whether the matters ‘*uncovered*’ by an investigation are ‘*very largely*’ what the families claimed constituted ‘*collusive behaviour*.’

11.45. In that context, I have considered the complaints and concerns raised by Mrs Walsh. These were the failure of police to keep the family updated, actions at the scene of Damien’s murder, the surveillance operation, and investigative failings in the forensic and suspect strategies. I have also considered her complaint of collusion in respect of police actions relating to Damien’s murder.

Overall Conclusion

11.46. In light of the above, I have carefully considered the evidence and other information gathered during my investigation. It is my view that there were significant failings in the police investigation into Damien’s murder at the Dairy Farm on 25 March 1993. The evidence uncovered during my investigation supports a number of Mrs Walsh’s complaints and concerns. I shall now detail these under a series of headings. This will also address her allegation that there was collusion in respect of police actions relating to Damien’s murder.

That the RUC failed to keep the family updated about the investigation into Damien’s murder

11.47. In relation to the complaint of lack of family contact and engagement, I am not critical of police actions. My investigation viewed documentation indicating that Police Officer 2 updated, or attempted to update, Mrs Walsh on seven occasions. As I have stated earlier in this public statement, there was no structured contact system in place between police and bereaved

families until the MacPherson recommendations were adopted. This followed a public inquiry into the murder of Stephen Lawrence. These recommendations laid the foundations for modern-day Family Liaison as it exists today.

That a police officer failed to assist in administering first aid to Damien at the scene

11.48. Witness 5 initially informed police on 26 March 1993 that a *'police man gave him a bandage and he tried to put it round Dee's [Damien's] back.'* He subsequently provided different accounts to both the Coroner and my Office. In his deposition to the Coroner's Inquest he stated that a soldier provided the bandage. This version of events was corroborated by Witness 6.

11.49. Witness 5 informed my investigators that he asked a police officer for a field dressing who *'sarcastically'* replied that it *'was stuck.'* He did not mention this in the previous accounts he provided to police and the Coroner. My investigation has established that RUC officers did not carry first aid kits on their persons in 1993.

11.50. It is my view, given the available evidence, that Damien was provided with medical care at the scene of the shooting prior to being taken to hospital. It has not been possible to determine which police officer Witness 5 had dealings with at the scene. My investigators made efforts to interview a nurse who tended to Damien at the scene but she chose not to assist with my enquiries. Therefore, I have been unable to conclude whether any police officer refused to provide a field dressing at the scene.

11.1 **That there was a security force presence at, or near to, the Dairy Farm at the time of the shooting, including surveillance**

- 11.51. I have established that there was security force surveillance of the Dairy Farm at the time of Damien's murder. This consisted of a military observation post and mobile police surveillance units. My enquiries were unable to establish the exact location of the military observation post. Police surveillance units involved in the operation were located some distance from the Dairy Farm at the time of the attack.
- 11.52. My investigation has not identified the military personnel who witnessed the gunmen arrive at the Dairy Farm. My investigators did, however, interview a number of former RUC officers who were involved in the surveillance operation. Their accounts greatly assisted me in my enquiries.
- 11.53. It is my view, given the available evidence, that the attack happened with such speed that there was no opportunity for police in the area to stop Damien's murder.
- 11.54. Despite it being a sudden attack, I believe that an opportunity existed for police to apprehend the gunmen after the attack. However, this opportunity was most likely impeded by the inaccuracy of information initially circulated to police about the make and model of the getaway vehicle. My investigation has been unable to establish why this inaccurate information was provided. I am mindful of the similarities between a Volvo 240 Estate and a Vauxhall Astra Estate at the time. I also acknowledge that the attack happened in the hours of darkness and the vehicle was observed from some distance. These issues may have been a factor in the communication of incorrect information.
- 11.55. My investigation has been unable to establish the route taken by the gunmen on exiting the Dairy Farm. The initial information communicated to the police surveillance officers is also likely to have hindered their understanding as to the direction of travel of the gunmen.

That the RUC forensic strategy, including ballistic evidence, was of a poor quality

11.56. My investigation identified a number of failings regarding the RUC forensic strategy, as detailed previously in this public statement. The house of Witness 1 was not forensically examined, nor were the addresses of identified suspects. A number of items recovered from the abandoned Vauxhall Astra were not forensically examined.

11.57. Persons R and Q, both connected to one of the weapons used in Damien's murder, were arrested but forensic opportunities that may have linked them to the murder scene or stolen Vauxhall Astra were not pursued. A thorough forensic examination may have identified important evidence that could have been used by police to link suspects to the attack and develop other lines of enquiry. It is my view that these may have resulted in those responsible for Damien's murder being brought to justice.

11.2 **That the quality of the RUC suspect strategy was not suitably robust to secure prosecutions**

11.58. My investigation has identified a number of failings regarding the RUC suspect strategy, as detailed previously in this public statement. Persons D and G were not arrested despite intelligence and other information linking them to Damien's murder. Enquiries were not fully pursued in relation to blue Ford Escort cars to which Persons S and T had access, which matched the vehicle Witness 1 stated he saw when his Vauxhall Astra was stolen. This included sightings of Persons D, G, and H in the car belonging to Person T in the days following Damien's murder.

11.59. Persons B, H, and I were arrested but only Person I was questioned about Damien's murder, despite all three being linked to it by intelligence. A postponed identification parade, involving Person I, was not rescheduled.

A police informant was linked to Damien's murder but not treated as a suspect.

Allegation of Collusion

11.60. Mrs Walsh further alleged that there was collusion in respect of police actions relating to Damien's murder. In Chapter 3 of this public statement I carefully considered the various definitions of collusion offered by Lord Stevens, Judge Peter Cory, Judge Peter Smithwick, Sir Desmond de Silva, and a number of former Police Ombudsmen. While these definitions are informative, I acknowledge that there is no universally agreed definition of collusion. I have, however, identified a number of common features which I summarise as follows:

- I. Collusion is context and fact specific;
- II. It must be evidenced but is often difficult to establish;
- III. Collusion can be a wilful act or omission;
- IV. It can be active or passive (tacit). Active collusion involves deliberate acts and decisions. Passive or tacit collusion involves turning a blind eye, or letting things happen without interference;
- V. Collusion by its nature involves an improper or unethical motive;
- VI. Collusion, if proven, can constitute criminality or improper conduct (amounting to a breach of the ethical Code of the relevant profession); and
- VII. Corrupt behaviour may constitute collusion.

11.61. I am mindful of the comments made by Judge Cory in his report into the murder of Robert Hamill. He stated that the public must have confidence in the police. Police must act judiciously and always strive to apply the law

fairly, evenly and without bias or discrimination. Their role is to serve and protect the entire community.

11.62. My investigation found no evidence of criminality on the part of any police officer. Those officers who performed significant roles in the investigation are now retired. I was, therefore, unable to conduct a misconduct investigation to further examine the failings I have identified.

11.63. I have taken into account the limitation on my powers to decide on a complaint of '*collusion*' (as outlined in the Court of Appeal judgment). I am of the view that, considering all the circumstances of this case, my investigation into Mrs Walsh's complaint has identified the following collusive behaviours on the part of police.

The weapon used to kill Damien was part of a 1987 loyalist arms importation.

11.64. I believe that the recovered handgun used to murder Damien originated from a consignment of weapons imported into Northern Ireland by loyalist paramilitaries in December 1987. Police recovered a large number of these weapons but a significant number found their way to the UDA, UVF, and Ulster Resistance. This occurred because of intelligence gaps and failings in the police operation put in place at the time to intercept the importation and arrest those involved.

11.65. While intercepting all the weapons may not have prevented Damien's murder, those that did elude seizure significantly enhanced the capability of loyalist paramilitaries to mount attacks. There was a lack of a concerted investigative effort to bring those responsible for the importation to justice. Detectives investigating seizures of weapons linked to the importation were not provided with relevant intelligence. I have been unable to establish why this intelligence was not shared. I concur with Dr Maguire's findings that the failure to do so directly impeded subsequent police investigations seeking

to bring those responsible for the weapons importation to justice. It is my view, however, that the failure to share these pieces of intelligence was a deliberate decision indicative of collusive behaviours on the part of police.

The removal of surveillance.

- 11.66. As detailed previously in this public statement, police had been successful in frustrating attacks planned by 'C' Company in early 1993 through overt and covert disruption tactics. Intelligence indicated that Person A was becoming increasingly frustrated at his inability to launch attacks against the nationalist community of West Belfast. On 22 March 1993, however, surveillance was removed on 'C' Company in order to concentrate resources on two other PIRA operations one of which related to PIRA activities at the Dairy Farm.
- 11.67. Over the next three days, Damien and Peter Gallagher were murdered and a number of other sectarian attacks were carried out. These were all attributed to 'C' Company. From 22 March onwards, police were in receipt of multiple pieces of intelligence indicating that Person A and 'C' Company were targeting and planning to attack members of the nationalist community.
- 11.68. I am of the view that police ought to have considered resuming the surveillance operation during this three day period given the developing intelligence picture, the attacks that were taking place, and risk of further attacks on the nationalist community. I have found no evidence that a risk assessment took place or that any consideration of these heightened risks was undertaken. This related to both the three day period prior to Damien's murder or following it when the security force operation at the Dairy Farm had concluded, therefore freeing police surveillance resources to be

deployed elsewhere. Surveillance on 'C' Company did not resume until 30 March 1993.

11.69. The reason given by police for the removal of surveillance on 22 March 1993 was to concentrate the available resources on two PIRA operations. There is no evidence, however, of police reassessing the risks and realigning resources in the West Belfast area to address the increased risk to the nationalist community, at any time between 22 and 30 March 1993. I am of the view that the failure to do so allowed 'C' Company greater scope to mount terrorist attacks on the nationalist community, culminating in the murders of Peter Gallagher and Damien.

11.70. Although the decision to remove surveillance cannot be causally linked to Damien's murder, I am of the view that it indirectly contributed to it by creating an environment whereby 'C' Company could operate without the levels of constraint previously placed on them by police. I believe that a failure to pro-actively address the identified threat posed by 'C' Company to potential victims during this period disregarded the threat. In my view, this amounted to a deliberate decision that constituted collusive behaviour on the part of police.

The failure to inform the SIO of the surveillance operation at the Dairy Farm

11.71. The existence of the surveillance operation at the Dairy Farm was not disclosed to the SIO investigating Damien's murder. This deprived him of the opportunity to interview security force personnel who witnessed the attack. My investigation found no documented reason why this information was not disclosed. There was no legal impediment to disclosure which I believe could and should have taken place, even if handling conditions were necessary in order to protect the location of the observation post or any techniques and methodology deployed. I am of the view that this was

a deliberate decision that directly impeded the police investigation and constituted collusive behaviour on the part of police.

The failure to disseminate relevant intelligence to the SIO in charge of the investigation

- 11.72. Key pieces of intelligence relevant to Damien's murder were either not shared with the SIO or their dissemination delayed, diminishing their potential value. Lines of enquiry could have been developed and evidence gathered which may have resulted in arrests and convictions.
- 11.73. My investigation was unable to identify the reasons for the above information and intelligence not being shared. I am of the view that these failures arose from internal police policies designed to safeguard sources of information. The investigation of Damien's murder was, consequently, impeded. I am of the view that the failure to share, or not share in a timely manner, these pieces of intelligence, were deliberate decisions that constituted collusive behaviour on the part of police.
- 11.74. Police received intelligence in late April 1993 that the UDA were receiving targeting information directly from *'British Intelligence.'* In late June 1993, further intelligence was received that unidentified *'police'* were providing information to loyalists about individuals in West Belfast. Two incidents were referred to, one of which was Damien's murder.
- 11.75. Neither piece of intelligence was shared with the SIO investigating Damien's murder. This impeded the police investigation, depriving the SIO of the opportunity to develop lines of enquiry that may have led to important evidence being obtained. I am of the view that the failure to share these pieces of intelligence were deliberate decisions that constituted collusive behaviour on the part of police.

11.76. I believe Damien Walsh was the innocent victim of a campaign of terror mounted by loyalist paramilitaries against the nationalist community. The UDA/UFF alone were responsible for Damien's murder. However, my investigation having identified significant investigative failings, gaps and collusive behaviours, I conclude that both Damien and his family were failed by police.

11.77. Finally, I thank Mrs Walsh for her patience and co-operation during this lengthy and protracted investigation of her complaint.

Marie Anderson

Police Ombudsman for Northern Ireland

22 July 2021

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