Patrick Finucane Inquiry

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1. INTRODUCTION AND SUMMARY

The Murder of Patrick Finucane

1.1. Patrick Finucane was murdered just after 7pm on a Sunday evening, 12 February 1989. Moments before, he had been sitting at dinner with his wife, Geraldine, and his three children. Michael was 17, Katherine was 12, and John was 8. [1]

1.2. 14 shots were fired by two masked gunmen. Six were fired into Patrick Finucane's head, at least one of which was fired from less than 15 inches. Geraldine Finucane was injured by another. [2] The Chief Superintendent who attended the scene, and who by then had seen more than two hundred murders and sudden deaths, recalled: "*what lay before me was a picture of ferocity the likes of which I had encountered few times before.*" [3]

1.3. The gunmen ran to a car and were driven away by their accomplice.

1.4. Eleven of the bullets were fired from a 9mm Browning pistol. That pistol had been stolen by a British soldier from his own Army base and sold to loyalist paramilitaries in the Ulster Defence Association (UDA). Kenneth Barrett was one of the UDA team involved in this transaction; he later claimed to have instigated it. [4]

1.5. The Browning pistol found its way into the possession of William Stobie, a Quartermaster for the UDA in West Belfast. William Stobie

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[1] Finucane Family Opening Remarks to the Patrick Finucane Inquiry, 10 June 2026, at [1/1].
[2] The 'de Silva Review': Sir Desmond de Silva QC, *The Report of the Patrick Finucane Review* (HC 802-I, 2012-13) at [279/12.8-12.9].
[3] Alan Simpson: *Duplicity and Deception: Policing in the Twilight Zone of the Troubles* (Dingle: Brandon, 2010), at [28] to [29]. See also David McKitterick et al: *Lost Lives* (Edinburgh: Mainstream Publishing, 2001), which records an unnamed Detective Superintendent telling Patrick Finucane's inquest that the killing was, "*the most ferocious murder I have come across*".
[4] de Silva Review, Volume I, at [280/13.2-13.15].

was an agent for Special Branch of the Royal Ulster Constabulary (RUC).

1.6. Patrick Finucane has been selected, or re-selected, as a target by the UDA in late 1988. [5] At or around that time, a prominent figure in the West Belfast UDA was detained by the RUC at the Castlereagh holding centre. During his questioning, it is likely that an RUC officer of officers proposed to him that Patrick Fiinucane and at least one other individual should be targeted by the UDA. [6]

1.7. Brian Nelson played an important role in the process of targeting Patrick Finucane. He passed Kenneth Barrett a photograph showing Patrick Finucane with a client. [7] He may also have carried out reconnaissance on the Finucane family home and produced a "P" card – an intelligence record of personal details relating to Patrick Finucane. [8] Brian Nelson was an agent for the British Army's Force Research Unit (FRU).

1.8. Following the murder, the RUC failed to carry out an effective investigation. Indeed, there is evidence that loyalists arrested in connection to the crime were congratulated by RUC officers. [9] A suspected loyalist paramilitary arrested over the crime reported that: *"The RUC congratulated them on a fine job, but said that it should not have been done in such a fashion, i.e. in front of Finucane's wife and children".* [10] That, it seems, was too much even for those who coldly applauded murder.

[5] de Silva Review, Volume I, at [401/21.127]; de Silva Review, Volume I, at [525/17]. This and other evidence on the targeting of Patrick Finucane is considered later in this opening.
[6] de Silva Review, Volume I, at [318/16.69].
[7] de Silva Review, Volume I, at [23/83].
[8] de Silva Review, Volume I, at [401/21.127].
[9] de Silva Review, Volume I, at [25/92] and at [439/23.41-23.43].
[10] de Silva Review, Volume I, at [440/23.43].

1.9. In 1991, Kenneth Barrett told three police officers that he was *"hypothetically"* one of the killers of Patrick Finucane. [11] That admission was not admissible in Court, so the RUC had to determine what they were going to do with the information. The choice, to the reported dismay of two of those police officers, was to recruit Kenneth Barrett as an RUC agent. The murder investigation against him was effectively dropped. [12]

1.10. The sequences of events I have just given is based on the findings of the late Sir Desmond de Silva QC. Sir Desmond, an eminent criminal barrister and war crimes prosecutor, was instructed by the UK Government to undertake a review of Patrick Finucane's murder and produce a public account of the involvement of state bodies in it. [13] He was given full access to top secret materials for his work, [14] and his report – from which those findings are taken – was published by UK Government.

1.11. Sir Desmond's degree of certainty over the matters I have just described varied. For some, he was sure; other conclusions were expressed with less confidence. But all were, at least, likely or what Sir Desmond said he believed to have happened.

1.12. In summary, he found that police officers suggested to a loyalist paramilitary that the UDA should murder Patrick Finucane. One of the murder weapons was a pistol taken by a British soldier and sold to the UDA. The gun was harboured and provided by an RUC agent. Targeting information was provided by an Army agent. And when, finally, one of the killers apparently admitted his crime to police

[11] de Silva Review, Volume I, at [26/96] to [26/97].
[12] de Silva Review, Volume I, at [26/97].
[13] de Silva Review, Volume I, at [9/4].
[14] de Silva Review, Volume I, at [9/4].

officers, he was recruited as an agent rather than being pursued for his crime.

1.13. Sir Desmond's findings do not end there. As we shall see, he also described many other incidents of the security forces providing information and encouragement to UDA paramilitaries; failures to act on intelligence about UDA murders and attempted murders; failures to protect Patrick Finucane and other solicitors when intelligence was received that they were under threat. The environment described in his report is one in which information passed freely between the security forces and the UDA, in both directions, with little interrupting the flow.

1.14. The then Prime Minister, David Cameron, described Sir Desmond's report as revealing *"frankly shocking levels of collusion."* [15] That, we suggest, is an inescapable conclusion.

Patrick Finucane

1.15. Patrick Finucane's murder is an event of public importance; yet it is also a private tragedy. This Inquiry concerns the brutal murder of a father, a husband, a son and a brother.

1.16. Patrick Finucane was also a ground-breaking lawyer who developed the law and the rule of law in time of conflict. He did so in the knowledge that this placed him at risk of violence. This Inquiry will hear about him, and about his work. That work was not incidental to his murder. On Sir Desmond's analysis, it was what led others to kill him.

[15] Hansard Official Report, House of Commons, 12 December 2012, vol, 555, col. 296.

1.17. The Inquiry will hear about the effect his murder had on his family, his friends, and his colleagues, and the effect that it had on those who continued to practise law in the Troubles.

1.18. These are matters about which we have heard something in the Family's eloquent statement on 10 June this year. In this Opening Statement we do not wish to pre-empt the many other things that will be said about Patrick Finucane. We note, however, that one of our roles as Counsel to the Inquiry is to ensure that Patrick Finucane the man is never forgotten in our analysis of the events of his murder. His life is not defined by the way in which it was so brutally cut short.

The context of Patrick Finucane's murder

1.19. Patrick Finucane's murder cannot be considered in isolation. In this Opening Statement, we will refer to other killings that are relevant to the question of the state's role in his death. Those, too, saw the loss of sons, husbands, fathers, and brothers. They, too, involved unimaginable private tragedy, as did the thousands of other deaths in the Troubles.

1.20. It is valid to ask why there is a public inquiry into Patrick Finucane's murder and not others. There are two elements to the answer.

1.21. The first is that in 2001, during the Weston Park negotiations, the British and Irish Governments agreed to appoint an international judge to consider six cases in which there were allegations of collusion against the security forces of either the British or Irish state forces. Patrick Finucane's murder was one of these cases. Justice Peter Cory, a former Canadian Supreme Court judge, was appointed to this task. He recommended there be inquiries into five of the cases he considered. Four of those inquiries have been completed. The one that has not is this inquiry, into the murder of Patrick Finucane.

1.22. The second element is that the Supreme Court held in 2019 that the United Kingdom had not discharged its procedural duties under article 2 of the European Convention on Human Rights to investigate the death of Patrick Finucane. Previous investigations, including the de Silva Review, had not done all that the state was required by law to do to investigate this crime. This was a decision reached following a lengthy, indefatigable campaign led by Patrick Finucane's family.

1.23. This Inquiry must be seen in that context. It is a consequence a political agreement that furthered the peace process, and legal requirements intended to ensure proper scrutiny of state involvement in killings. Both reflect the core concern at the heart of Patrick Finucane's murder: to what extent were his killers encouraged, assisted, protected, or directed by the state. There is no more serious question in a democratic society governed by the rule of law.

1.24. That is why there is this focus on Patrick Finucane's murder. It is right, though, to acknowledge that such concerns are not unique; nor are the grief and loss that his family have endured.

Counsel to the Inquiry's Opening Statement

1.25. This Opening Statement is made by Counsel to the Inquiry. The role of Counsel to the Inquiry was explained at the 10 June 2026 hearing and is not repeated it here. We are independent barristers, instructed to exercise our independent judgment to help the Chair in ensuing that this Inquiry is conducted fairly, thoroughly and efficiently.

1.26. As we foreshadowed in June, this first Opening Statement is based solely on publicly available materials. Its purpose is to describe what those materials contain, not to invite the Chair to draw conclusions. There would be no point to that, when we are aware of a large volume of unpublished material that this Inquiry must consider before the

Chair reaches his findings. Counsel to the Inquiry have not yet looked at that material. That has been a deliberate decision, to ensure that all that is said in the oral and written opening statements is based entirely on material that is in the public domain.

1.27. That material is voluminous. Sir Desmond's report contains 500 pages of analysis and 300 pages of documents. Numerous other reports, books, articles, television documentaries and academic papers have been written about Patrick Finucane's murder and topics pertinent to that murder. There is no shortage of open material.

1.28. We do not pretend that our review is comprehensive – we know that it is not. The Core Participants will be invited to make their own Opening Statements in response, and we anticipate – and welcome – other material being cited.

1.29. We have paid close attention to Sir Desmond's Review, because of the material on which it is based and the detail that it contains. It is the product of a lengthy, forensic review of tens of thousands of pages of documents that others have not seen. It is a formidable undertaking and is worthy of respect. It is one of the investigations that this Inquiry is required, by its Terms of Reference, to take into consideration. It is, by far, the most comprehensive and detailed published source concerning Patrick Finucane's murder.

1.30. However, we make the following points, with no discourtesy intended to Sir Desmond or his team.

a. First, Sir Desmond's report is not binding on this Inquiry. The Chair will come to his own conclusions. He will be informed by the work of Sir Desmond, but is not dependent upon it.

b. Second, Sir Desmond's report has been subject to criticism, both in its methodology and its findings. The Supreme Court considered that it did not fulfil the requirements of article 2 ECHR – one of the reasons we are here. Others, including the Finucane Family, have criticised specific conclusions that were made, or not made. Among these strands of criticism is one summarised by the late journalist Ed Moloney:

> *"as with so much of Sir Desmond de Silva's report, there are more questions than answers, more what's, where's and when's than why's"*. [16]

The suggestion is that the report is heavy on factual description, and lighter on analysis of underlying motivation.

c. Third, there is – unquestionably – evidence relevant to Patrick Fincuane's murder that is not covered in Sire Desmond's report and may not have been considered by Sir Desmond and his team. This is evident in some of the books and articles published since the report. It is also evident in the reports of Operation Kenova, which examined the activities of the British agent within the Provisional Irish Republican Army (PIRA) known as Stakeknife. Stakeknife was active at the same time as Brian Nelson and Wiliam Stobie. He was run by the FRU, as was Brian Nelson. Operation Kenova – which began four years after Sir Desmond had concluded – may well have uncovered material relevant to Patrick Finucane's death.

1.31. We have consulted a large amount of other open-source material in preparing our Opening Statement. A full bibliography will accompany the written version of the document. We have focused

[16] Ed Moloney, 'The de Silva Report on Pat Finucane – Some Considered Thoughts, Part 2', *The Broken Elbow*, 3 February 2013.

on where this material adds evidence, context or perspective to Sir Desmond's report. We have placed particular emphasis on reported accounts of individuals with potentially relevant evidence about how and why Patrick Finucane was murdered. We acknowledge that there are many competing theories and opinions, and we have not sought to capture all of them. They are, of course, available for others to read.

1.32. Some of the books, articles and documentaries published about Patrick Finucane's murder contain names that are not contained in Sir Desmond's report. Some expressly link those names with particular ciphers; others provide detail that would allow for what is termed 'jigsaw' identification. Nothing that is contained in our oral or written opening statements should be taken in any way to confirm or support the accuracy of any of the names given in the published materials. We say nothing whatsoever about whether those names are correct. Indeed, we would advise all to exercise extreme caution in this respect, for reasons of both security and accuracy. We are aware, for example, of an individual who has been confidently stated by one writer to be *X*, and by another writer to be *Y*.

1.33. Similarly, the fact that we cite a source does not mean that we endorse it as accurate. This Opening Statement describes what has been published; it does not seek to determine what is correct.

Approach

1.34. Counsel to the Inquiry intend in the oral and written opening statements to provide an overview of the publicly available material. Much of what we cover will be known to those who have campaigned for this Inquiry, and others with an interest in the case. Our intention is to help establish the foundations of the Inquiry, in

line with the Terms of Reference, which require us to take account of previous investigations.

1.35. The story is a complex one. To help tell it, this chapter seeks to identify some of the key issues and questions that arise. It does so by looking first at the immediate circumstances of Patrick Finucane's death, and then the wider factors that may be of relevance.

Immediate Causes

1.36. The immediate cause of Patrick Finucane's death was the attack at his home, on the night of 12 February 1989. Sir Desmond de Silva found that three people carried out the attack: Kenneth Barrett, L/25 and L/29. [17] There is conflicting evidence in the secondary sources about Kenneth Barrett's role: whether he was a gunman or the driver. Kenneth Barrett remains the only man convicted of Patrick Finucane's murder.

1.37. Sir Desmond identified other members of the West Belfast UDA who were involved in the attack. On Sir Desmond's analysis, based on the intelligence he reviewed, the two most prominent instigators of the attack were L/20 and L/28. [18] A further leading figure was L/03, the man who Sir Desmond found was encouraged to kill Patrick Finucane by RUC officers while he was being held at Castlereagh.

1.38. Sir Desmond considered the specific roles of three named individuals: Tommy "Tucker" Lyttle, William Stobie and Brian Nelson. All had died by the time of Sir Desmond's report. I will look, briefly, at each in turn.

[17] de Silva Review, Volume I, at [279/12.7].
[18] de Silva Review, Volume I, at [356/19.56].

Tommy 'Tucker' Lyttle

1.39. Tommy 'Tucker' Lyttle was the long-standing 'Brigadier' of the West Belfast Brigade, and, at the time of Patrick Finucane's murder, the Chairman of the UDA Inner Council. Sir Desmond found that Tommy Lyttle had foreknowledge of the murder plan but may not have known the operational details. [19] One matter for the Inquiry to consider will be how the UDA operated, and the extent to which it has a meaningful 'chain of command'. Was it, as one book suggests, *"an army largely without an officer class"*? [20]

1.40. Another important consideration is the extent and nature of Tommy Lyttle's contacts with RUC Special Branch. At the time of his death, in 1995, Tommy Lyttle was widely considered by journalists to have been a Special Branch agent. Sir Desmond found that there was *"no sound evidential basis for these reports."* [21] However, he recognised that there was: *"a broad spectrum of possible relationships between paramilitary figures and members of the security forces."*[22] Sir Desmond considered that Tommy Lyttle had contacts within the RUC, and that these *"provided him with an entirely improper degree of protection and assistance."* [23]

1.41. The journalist Ed Moloney has reported that Tommy Lyttle told him more about these arrangements. Mr Moloney thought they amounted to what he called *"clearly collusive alliance from which both parties, UDA and RUC gained."* [24]

[19] de Silva Review, Volume I at [379/20.62].
[20] Henry McDonald and Jim Cusack: *UDA: Inside the Heart of Loyalist Terror* (Dublin: Penguin, 2005), at [25] to [26] (first published 2004).
[21] de Silva Review, Volume I, at [372/20.23].
[22] de Silva Review, Volume I, at [372/20.24].
[23] de Silva Review, Volume I, at [379/20.64].
[24] Ed Moloney, 'Who was Bertie Scott, the UDA's Special Friend in the RUC Special Branch?', *The Broken Elbow*, 11 July 2015.

1.42. The Inquiry will consider this relationship, and the evidence provided by another journalist, John Ware, who interviewed Tommy Lyttle in 1994. On Tommy Lyttle's account (as recorded by John Ware), he had contacted his Special Branch source to ask about the rumours that RUC officers had suggested to L/03 that Patrick Finucane be targeted. When asked about the source's response, Tommy Lyttle reportedly replied:

> *"Put it this way [the officer] didn't discourage the idea that Finucane … should be shot. And if a man in his position doesn't discourage it then that amounts to approval."* [25]

William Stobie

1.43. William Stobie's role in the murder has already been touched upon; he was the quartermaster who provided one of the weapons used. Sir Desmond found that he was a *"comparatively minor"* figure in the UDA, [26] but his role as a source of information is important. I will return shortly to the questions of what he told his handlers in RUC Special Branch about the murder plot, what they did and did not do in response, and why they acted in the way that they did.

Brian Nelson

1.44. The details of the role played by Brian Nelson in Patrick Finucane's murder are opaque. He gave various versions of his actions, to his handlers at the time, in a journal he prepared, and to the Stevens investigators. Those accounts are marked by contradictions, half-truths and finally a refusal to co-operate. In a conversation in February 1993, Chief Constable Sir John Stevens suggested to Brian Nelson that he had only told his investigation about two thirds of the

[25] de Silva Review, Volume I, at [369/20.10] to [370/20.11].
[26] de Silva Review, Volume I, at [252/10.10] and at [394/21.86].

truth; it is recorded that *"Nelson nodded his head in an almost agreeable form."* [27] By that time, Sir Desmond found,

> *"the Army had consciously and comprehensively brought [Nelson's] silence by linking it to their continuing care and support of his family."* [28]

1.45. Sir Desmond was, nonetheless, able to draw some conclusions about Brian Nelson's role. He found that he was knowingly and actively involved in targeting Patrick Finucane, despite his protestations to the contrary. His role was, Sir Desmond said, *"direct and important"*. [29]

1.46. He also found that he concealed this from his FRU handlers.[30] That is a matter that this Inquiry will consider for itself and will do so with careful scrutiny.

1.47. All these individuals were members of the UDA, a group that remained a legal organisation throughout this period. There is an extensive and fraught debate about the extent to which the UDA should be seen as a 'surrogate' for the security forces, used as part of a counterinsurgency strategy that had been institutionalised the security forces. However, even were that view to be accepted, it does not absolve those involved of agency. On Sir Desmond's account, all those referred to above were involved to some degree in the murder of Patrick Finucane in front of his family. They bear that stigma and that responsibility. But they do not do so alone.

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[27] de Silva Review, Volume I, at [570/6].
[28] de Silva Review, Volume I, at [385/21.34].
[29] de Silva Review, Volume I, at [401/21.127] and [402/21.130].
[30] de Silva Review, Volume I, at [417/21.209].

Wider causes of Patrick Finucane's murder

1.48. Sir Desmond's concluded that there was culpability in the acts and omissions of the RUC, the British Army, the Security Service and the UK Government. What follows is an outline of Sir Desmond's principal findings, and allegations from others, about the role of each of these organisations.

The RUC

1.49. The role of the RUC can be divided into (i) encouragement; (ii) a failure to act before the murder; (iii) a failure to investigate after the murder; and (iv) a wider role in facilitating the terrorism of the UDA.

1.50. On encouragement: Reference has already been made to evidence that RUC officers actively encouraged UDA paramilitaries to murder Patrick Finucane. On some accounts, they also encouraged the targeting of two other lawyers: Oliver Kelly and PJ McGrory. In 2001, Kenneth Barrett told reporters from BBC *Panorama* that:

> *"Finucane would have been alive today if the Peelers hadn't interfered."* He also claimed that *"The Peelers wanted him whacked, we whacked him, and that's the end of the story as far as I am concerned."* [31]

1.51. The alleged direct culpability of an RUC officer or officers in the decision to murder Patrick Finucane is a matter this Inquiry will examine.

1.52. On the failure to act before the murder: Sir Desmond published RUC intelligence records that showed William Stobie provided his handlers with information about a forthcoming operation in the week before Patrick Finucane's murder. By the evening of 9 February,

[31] de Silva Review, Volume I at [351/19.38].

the Thursday before the murder, Special Branch knew: (i) an imminent hit was planned on a *"top PIRA man"*, (ii) L/20 was a key figure in the operation; (iii) William Stobie was storing weapons for the UDA, including Browning pistols; (iv) William Stobie had already provided one weapon for the hit, and had been asked to hand over a Browning pistol (v) he had contacted Special Branch and wanted his handler to call him back by midnight that night. [32] On Sir Desmond's analysis, the RUC took no action to frustrate the planned attack. [33] He concurred with the view reached by Sir John Stevens, that *"proper exploitation of William Stobie's intelligence prior to the attack could have prevented the murder of Patrick Finucane on 12 February."* [34]

1.53. The Inquiry will examine this evidence, and those conclusions. If they are correct, it will also ask why no action was taken.

1.54. Sir Desmond found it likely that William Stobie did not know the operation was directed at Patrick Finucane. However, as with almost everything in this Inquiry, there is conflicting evidence on this point, including from William Stobie himself. [35] This, too, will be explored, as will the question of whether Special Branch could have used other material to identify the possible or likely target.

1.55. <u>On the failure to investigate</u>: the European Court of Human Rights and Sir Desmond found numerous structural and operational failings with the RUC investigation, including failures by Special Branch to share intelligence with their colleagues in the Criminal Investigation Department (CID). Key suspects, including L/20 and L/28, were not investigated or arrested until the Stevens III investigation a decade after the murder. [36] As we have heard,

[32] de Silva Review, Volume I, at [421/22.19].
[33] de Silva Review, Volume I, at [428/22.60].
[34] de Silva Review, Volume I, at [25/91].
[35] de Silva Review, Volume I, at [24/89].
[36] de Silva Review, Volume I, at. [25/94].

Kenneth Barrett was recruited rather than investigated. The question again arises as to why this was so.

1.56. On the wider facilitation of the UDA by the RUC: The Inquiry will consider the extensive sharing of information between the RUC and the UDA, and the attitude of RUC officers to lawyers who represented republicans. It will also consider the failure to act on intelligence about the West Belfast UDA that was provided to RUC Special Branch by the Army's principal intelligence unit, the FRU. Sir Desmond found such information was provided in the months and years before Patrick Finucane's murder, which begs the question of why it did not result in action. Was too great a premium placed on building an intelligence picture, and too little on acting on it? Was source-protection prioritised over preventative acts? Or were there more nefarious motives at play?

The British Army

1.57. Sir Desmond dismissed some of the most serious allegations that were made against the British Army and FRU. He found that Brian Nelson did not inform his FRU handlers, in advance, of the plan to murder Patrick Finucane. [37] It follows that he did not consider that FRU directed Brian Nelson to instigate the murder. He also found that FRU, in general, provided relevant intelligence from Nelson to RUC Special Branch about murders and attempted murders, and that it was for Special Branch to determine how that intelligence should be exploited to prevent or disrupt the UDA's activities. [38]

1.58. However, Sir Desmond expressly stated that he had not absolved FRU of any criticism in respect of Patrick Finucane's murder. Most fundamentally, he found that Brian Nelson was *"to all intents and*

[37] de Silva Review, Volume I, at [417/21.209].
[38] de Silva Review, Volume I, at [16/40].

purposes, a direct State employee". [39] He had been re-recruited, despite a conviction for kidnapping and torture, for the purpose of infiltrating the UDA. FRU knew that his actions were leading to people being attacked and murdered. Sir Desmond found that Brian Nelson's actions materially increased the targeting capacity of the UDA, and that after his re-recruitment he played some part in at least four murders and ten attempted murders; others put the figure higher. [40] FRU also knew that the information that they were providing to the RUC was not generally being exploited to prevent attacks. [41] Further, from at least June 1988, FRU knew that Brian Nelson was concealing information from them. [42]

1.59. FRU's stated rationale for running Brian Nelson in the UDA was for him to encourage the group to focus on what the Commanding Officer of FRU (CO FRU) described as Provisional IRA activists. These would be more difficult to attack, reducing the level of killing and making it easier to take counter-measures. [43] Sir Desmond found this rationale was undermined by the failings I have just summarised.

1.60. There was also a wider lack of clarity in the approach taken to Brian Nelson. He was given reassurance when the UDA murdered the wrong person, being told that the victim was also a member of PIRA. [44] On occasions, Brian Nelson's FRU handlers provided him with information that he used in targeting. [45] A BBC interview with one of

[39] de Silva Review, Volume I, at [418/21.215].
[40] de Silva Review, Volume I, at [14/29]; John Ware, *Neither Confirm Nor Deny: British Intelligence, Lawless Agent Running and the Suppression of Truth*, (Newbridge: Merrion Press, 2026), at [42].
[41] de Silva Review, Volume I at [14/31].
[42] de Silva Review, Volume I at [417/21.214].
[43] de Silva Review, Volume I at [14/30].
[44] de Silva Review, Volume I at [14/34].
[45] de Silva Review, Volume I at [14/33].

Brian Nelson's handlers, given the pseudonym "Geoff", reflects these ambiguities. [46]

> *"But did 'Geoff' personally ever supply [Nelson] with information. 'No, not directly. But if he said, 'Is that so-and-so's registration?' I would say to him, 'You don't have that wrong.' If that was the case, I asked, and the car owner was killed, weren't he and the FRU complicit in murder? 'Geoff' was matter-of-fact. 'Well, it's a fine line you walk,' he said. I pointed out that in the end Nelson went to gaol for conspiracies to murder. 'Yes,' he replied, 'at our request.' Encouraged by him and his colleagues? 'Yes.' And by FRU? 'Yes.' And by British intelligence. 'Yes.' Geoff was astonishingly candid:*
>
> > *'I'm ashamed of it. He strayed outside the law at our behest. We instructed him to carry on his job of targeting these people. There were certain risks, but it was loosely seen by my hierarchy that if he carried out an action and then reported it, it would negate his guilt. In other words he was doing his job under our direction and once he'd informed us of what he had done, it would not be illegal. Brian believed, not that he was bullet proof, but that he had protection from us and that what he was doing, he was doing at our request and therefore he had immunity. And he didn't."*

1.61. Sir Desmond found:

> *"Given the nature of the tasking he received from the FRU, Nelson was unlikely to have believed there was any distinction between his objective of targeting supposedly legitimate republican targets on one hand, and the objectives of FRU on the other."* [47]

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[46] Peter Taylor: *Brits: The War Against the IRA* (London: Bloomsbury, 2002), at [292] to [293] first published 2001.
[47] de Silva Review, Volume I at [14/32].

1.62. Sir Desmond considered that accountability for what went wrong with the way in which Brian Nelson was handled did not rest solely with FRU, but also with the chain of command, which did not exercise sufficient supervision. He also identified failings by the UK Government to put in place an adequate system of guidance and direction for how agents in Northern Ireland should be run. These are discussed below.

1.63. It is possible to summarise Sir Desmond's view as being that FRU did not intend Brian Nelson to target Patrick Finucane but were responsible for creating an environment in which he was able to do so, without there being sufficient oversight and control to stop him. This Inquiry will consider all aspects of that judgment and these matters.

The Security Service

1.64. There are three principal issues concerning the role of the Security Service.

1.65. The first is the extent to which it oversaw, or should have overseen, the work of FRU. There is a stark dispute between the witnesses on this point. The CO FRU in essence stated that the Security Service knew how FRU were running Nelson and raised no concerns about it. [48] The Director and Coordinator of Intelligence (DCI), the most senior Security Service officer in Northern Ireland, accepted that he was told some of what Nelson produced, but not how he was handled. In his view, the CO FRU, was *"not a man who sought our advice (or that of anyone else)."* [49] The Inquiry will evaluate the plausibility of these different perspectives.

[48] de Silva Review, Volume I, at [227/8.177] to [228/8.182].
[49] de Silva Review, Volume I, at [228/8.183] to [230/8.191].

1.66. The second issue concerns intelligence received by the Security Service in late 1988 about a threat to three solicitors, including one described as the *"shoot to kill"* solicitor. Sir Desmond found that this was a reference to Patrick Finucane, and that the Security Service should have recognised it as such. [50] He found no record that that the Security Service shared this intelligence with the RUC; he would have expected such records had this been done. He concluded there had been a failure to act, and that responsibility lay with the Security Service.[51] This is a matter that the Inquiry will examine.

1.67. The third issue is the so-called propaganda initiative run by the Security Service in the late 1980s. Sir Desmond was guarded in his Report and provided little detail of what the initiative involved. What he did say was that Security Service officers disseminated information within the loyalist community, and did so in such a way that republicans would become aware of it. [52] Some officers felt that an important purpose of the initiative was, in Sir Desmond's words, to *"unnerve and expose republican players."*[53] The initiative, however, was not particularly focused or controlled and came to include not just paramilitaries but prominent figures in the broader nationalist and republican communities. [54] One of those was Patrick Finucane, and the information circulated, in Sir Desmond's words, *"effectively involved fanning the rumours and speculation linking him to the IRA … and the activities of his clients."* [55] Sir Desmond found that the propaganda initiative breached the basic principles by which the State should approach lawyers, as later formalised by the United Nations. [56] He was restrained in his further conclusions, finding that

[50] de Silva Review, Volume I, at [317/16.62].
[51] de Silva Review, Volume I, at [320/16.84] to [321/16.86].
[52] de Silva Review, Volume I, at [298/15.14].
[53] de Silva Review, Volume I, at [301/15.28].
[54] de Silva Review, Volume I, at [298/15.14].
[55] de Silva Review, Volume I, at [301/15.32].
[56] de Silva Review, Volume I, at [302/15.34].

the link between the propaganda and paramilitary murder *"should not be overstated"*. [57] He did find that the initiative *"could undoubtedly have served to further legitimise [Patrick Finucane] as a potential target"* and that this consequence should have been foreseen, even though he was satisfied it was not intended, by the Security Service.[58] The Inquiry will consider the cause and effect of the propaganda initiative, and the conclusions that should be drawn about it.

The UK Government

1.68. Sir Desmond found no evidence to suggest that political leaders knew in advance of the plot to murder Patrick Finucane. [59] He also rejected the notion that the murder was a consequence of an over-arching State conspiracy. [60] Those are conclusions that some have questioned, sometimes in vehement terms. They are matters this Inquiry will revisit.

1.69. However, it is clear from Sir Desmond's report that the UK Government did know of other matters pertinent to the murder.

1.70. It knew, at Cabinet level, that there was no clear guidance, and no clear legal basis, on how the security forces should run agents in paramilitary organisations in Northern Ireland. [61] The guidance that was in place was developed in the late 1960s and was directed to East End gangs, not West Belfast terrorists. It applied only to the police. The vacuum created was discussed at the most senior levels of Government. It was the subject of departmental working groups and Cabinet committees. Yet throughout the Troubles, no new guidance

[57] de Silva Review, Volume I, at [303/15.41].
[58] de Silva Review, Volume I, at [20/65].
[59] de Silva Review, Volume I, at [28/108].
[60] de Silva Review, Volume I, at [29/.116].
[61] de Silva Review, Volume I, at [12/21] to [13/26] and Chapter 4.

was formally approved; no legislation passed. This was, Sir Desmond found, a *"wilful and abject failure by successive Governments."* [62]

1.71. What more Ministers and civil servants knew, and did not know, of the approach that FRU, Special Branch and the Security Service were taking to running agents in the paramilitary organisations is a matter for further examination. Sir Desmond suggests that too little was shared, and too little authorised. If that is right, how did that situation arise? And what were the consequences?

1.72. The UK Government also bore responsibility for the structures governing the interaction of the RUC, Army and Security Service on intelligence matters. Those structures developed in a piecemeal fashion, resulting in an elusive and complex set of arrangements without clear lines of authority and oversight. Sir Desmond wrote of an *"accountability gap"*. [63] The Inquiry will wish to consider the extent to which that allowed abuses to develop, and to go unchecked, and the extent to which that contributed to the murder of Patrick Finucane.

1.73. There are also two concrete examples of Ministerial intervention that fall to be examined.

1.74. The first is the statement to the House of Commons on 17 January 1989 by the then Junior Home Office Minister, Douglas Hogg, that a number of solicitors were *"unduly sympathetic to the cause of the IRA."* Seamus Mallon of the SDLP deplored these words, saying lawyers would, as a result, become *"targets for assassins' bullets."* [64] Weeks later, Patrick Finucane was murdered. Sir Desmond found that loyalist paramilitaries had heard his words, and that there were *"grounds for believing"* that they increased the vulnerability of

[62] de Silva Review, Volume I, at [13/26].
[63] de Silva Review, Volume I, at Chapter 8.
[64] de Silva Review, Volume I, at [20/66].

Patrick Finucane and others. [65] Sir Desmond held there was no basis for saying that Douglas Hogg intended this outcome, and that he had been *"compromised"* by a briefing provided by senior RUC officers. [66] Again, these are controversial findings, and this Inquiry will consider the matter with an open mind.

1.75. The second example of direct ministerial intervention came in respect of the prosecution of Brian Nelson. This matter is considered in detail later in this Opening Statement, including in respect of the Ministerial and departmental opposition that the Director of Public Prosecutions (Northern Ireland) (DPP(NI)) and the Attorney General had to overcome to proceed with that prosecution.

Conclusion

1.76. Sir Desmond's overall assessment was that there had been collusion in the murder of Patrick Finucane, a finding the Government has accepted as reflected in this Inquiry's Terms of Reference. [67]

> *"Overall left in significant doubt as to whether Patrick Finucane would have been murdered by the UDA in February 1989 had it not been for the different strands of involvement by elements of the State. The significance is not so much, as Sir John Stevens concluded in 2003, that the murder could have been prevented, though I concur entirely with this finding. The real importance, in my view, is that a series of positive actions by employees of the State actively furthered and facilitated his murder and that, in the aftermath of the murder, there was a relentless attempt to defeat the ends of justice."*

[65] de Silva Review, Volume I, at [21/68].
[66] de Silva Review, Volume I, at [21/67] to [21/68].
[67] de Silva Review, Volume I, at [29/115].

1.77. The Chair will come to his own view on these matters and on the question of where responsibility lies for Patrick Finucane's death. In this Opening Statement we have approached this by considering the role and responsibilities of the different agencies involved: the UDA, the RUC, FRU, the Security Service, and the Government. However, we must take care not to be trapped by silos. Patrick Finucane's murder was the consequence of how these agencies interacted: the way that information was passed between them; the way in which they influenced one another, intentionally or otherwise; the way in which they were, or were not, overseen and directed.

1.78. This can be seen by examining the stated reason the UDA gave for murdering Patrick Finucane. Following his death, the Ulster Freedom Fighters (UFF) – the UDA's *nom de guerre* - issued a statement in which they claimed that they had killed *"Pat Finucane the IRA officer."* That statement was, on his own account, largely drafted by Brian Nelson, the FRU agent. [68]

1.79. There is compelling evidence that the claim was false. At the inquest into Patrick Finucane's death, the RUC Chief Superintendent Alan Simpson stated that there was no evidence that Patrick Finucane was a member of the IRA, a position repeated by former Chief Constables Ronnie Flanagan and Sir Hugh Orde.[69] Sir Desmond de Silva – after his extensive review of all the material made available to him – stated that he had not seen any evidence that would persuade him to displace the findings already made by Justice Cory and others that Patrick Finucane was not a member of PIRA. [70] The CO FRU gave its perspective on the claim that Patrick Finucane was a leading Provisional:

[68] de Silva Review, Volume II, at [559/48]to [561/50].
[69] Ware, *Neither Confirm Nor Deny* at [56]to [57].
[70] de Silva Review, Volume I, at [356/19.70].

"We knew who was on the Provisional IRA Army Council, Northern Command and Belfast Brigade. Patrick Finucane did not figure." [71]

1.80. Claims of responsibility made by the UFF must be treated with considerable caution. The first time the group claimed responsibility for an attack, it said it had killed an *"IRA man"* in response to the Irish Republican Army (IRA) killing a UDA leader. In fact, they murdered a young man hitchhiking home from his girlfriend's house. The supposed vengeance was also a lie: the UDA leader had been killed by the UDA as a suspected informer. [72]

1.81. However, in respect of Patrick Finucane, there is considerable evidence that his killers did believe him to be a *"top Provisional"*. The Inquiry must consider the environment in which this came to pass. It was an environment where elements within the security forces provided the UDA with information, and where that information was given a heightened status by the UDA. An environment in which RUC officers associated lawyers with the paramilitary causes of their clients. An environment where that elision was briefed by senior RUC officers to a Government Minister, who repeated it in Parliament. An environment in which the Security Service was running a propaganda initiative that furthered such rumours and suspicions, including in respect of Patrick Finucane. An environment in which FRU encouraged its agent within the UDA to focus attention on leading PIRA figures.

1.82. The Inquiry will consider these interactions, and the extent to which they did, or did not, influence the murder of Patrick Finucane.

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[71] de Silva Review, Volume I, at [413/21.188].
[72] McKittrick et al: *Lost Lives*, (2004) at [368] to [369]. See also Ian S. Wood: *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [21] to [23]; McDonald and Cusack at [58] to [59].

1.83. It must also consider a more stark and disturbing explanation: that these interactions were not nebulous, but the consequence of a deliberate and directed action to use the UDA as a proxy to murder a lawyer who had incurred the enmity of the State.

1.84. It will not be easy to examine these matters at a distance of more than 35 years. Witnesses have died, memories have dimmed, and evidence has been lost or destroyed.

1.85. The Inquiry must give proper weight to the circumstances in which these events took place. By the start of 1989, more than 3,000 lives had been lost in the Troubles. This included 258 officers in the RUC and RUC Reserve, and 636 members of the British Army. [73] Informers and agents, where uncovered by paramilitary organisations, were brutally tortured and murdered. Unquestionably, many in the security forces sought to uphold the law against all paramilitaries, and they did so – as those figures show – at considerable personal risk. Anyone reading RUC officer Johnston Brown's memoirs will see the toll that this could take. [74]

1.86. We must also be conscious that we re-examine decisions with the inestimable benefit of hindsight and time, and that we do so in the calm environment of a public inquiry. We must avoid retrospective moralising. However, we do not accept that the difference between then and now makes the task impossible or unfair. The position of the UK Government in the 1980s was that the security forces were seeking to uphold democracy and the rule of law against terrorist violence. It is legitimate to apply those standards to its own actions.

1.87. In doing so, the Inquiry must consider a central question: how should the State run an agent within a paramilitary organisation? The agent

[73] McKittrick et al: *Lost Lives* (2004), Table 1, at [1494].
[74] Johnston Brown: *Into the Dark: 30 Years in the Royal Ulster Constabulary* (Dublin: Gill, 2005).

cannot, as some have observed, simply make the tea, [75] so what degree of criminality will be tolerated? How do you weigh the advantage the agent gives the State in providing information, against the advantage it gives to the paramilitaries in improving their capacity to commit murder? How should the State direct the agent, and to what end?

1.88. The Inquiry will have to consider the rationales put forward to justify the ways in which Nelson and Stobie were run, and the ways in which their intelligence was, and was not, exploited. It will also have to examine the rationale and motivations of those within the UDA who planned and executed the murder of Patrick Finucane.

1.89. These are uncomfortable matters to contemplate. But such examination is what the Terms of Reference require. As Counsel to the Inquiry, we will seek to pose the questions and bring the relevant evidence to light. This is done not to excuse the inexcusable – the murder of a man in front of his family – but to help the Chair understand not just how it happened, but why it happened. We do not serve the public, and we do not do justice to Patrick Finucane, by doing anything less.

[75] Ware, *Neither Confirm Nor Deny* at [12].

2. PREVIOUS INVESTIGATIONS AND SOURCES

Introduction

2.1. In addition to the investigation launched by the RUC CID into Patrick Finucane's death, there have been nine investigations into the murder and the circumstances surrounding it:

a. Three criminal investigations conducted by Lord Stevens, albeit that only the third directly addressed the murder of Patrick Finucane.

b. One inquest which, given the law as it stood at the time, was confined in scope to the cause and immediate circumstances of the death.

c. Three criminal prosecutions, none of which involved a contested criminal trial.

d. Two independent, primarily document-based investigations, one conducted by Judge Peter Cory, a former judge of the Supreme Court of Canada, and the other by Sir Desmond de Silva QC, a senior barrister, neither of whom had the power to compel evidence or hold oral hearings.

2.2. These investigations have been concurrent with, and informed by:

a. A report by the United Nations Special Rapporteur.

b. A report by the non-governmental organisation British Irish Rights Watch (now Rights & Security International).

c. Investigative journalism, most notably by John Ware of BBC Panorama.

2.3. In addition, several protagonists have written books addressing their investigative work into the murder, including Lord Stevens and the RUC CID officers Johnston Brown and Alan Simpson.

Stevens I Investigation

Background

2.4. On 20 September 1989, John Stevens (later, Lord Stevens), the then Deputy Chief Constable of the Cambridgeshire Constabulary, was appointed by Sir Hugh Annesley, the Chief Constable of the RUC, to investigate alleged leaks of information by the security forces in Northern Ireland (Stevens I). [76]

2.5. In his memoir, *Not for the Faint-hearted: My Life Fighting Crime*, Lord Stevens records that his task was to investigate the theft of montages from the charge room and administrative offices at Dunmurry police station. [77] He was told by Detective Chief Constable (DCC) Annesley that his investigative work would last little more than a month. [78]

2.6. The terms of reference for Stevens I did not include the murder of Patrick Finucane. [79]

Methodology

2.7. Both Lord Stevens and Sir Desmond de Silva QC concluded that Stevens I was obstructed by the Army and the RUC. [80] Sir Desmond's

[76] de Silva Review, Volume I at [45/1.75].
[77] John Stevens, *Not for the Faint-hearted: My Life Fighting Crime* (London: Phoenix, 2006), at [176].
[78] John Stevens, *Not for the Faint-hearted* at [176].
[79] de Silva Review, Volume I at [45/1.75].
[80] 'Stevens 3 Overview and Recommendations': Sir John Stevens, *Stevens Enquiry 3: Overview & Recommendations* (17 April 2003), at [15/3.1].

conclusions about the nature of this obstruction are considered in greater depth later in this document. In summary:

a. Written statements, which existed at the time, were not provided to the investigation. [81]

b. Lord Stevens would later discover that, in the same month his investigation was established, the Army's FRU seized Brian Nelson's 'intelligence dump' and concealed it from the Stevens I team.[82] At the same time, Nelson was trying to retrieve the materials from the FRU so that he could show a BBC journalist, John Ware, as part of an effort by the UDA to demonstrate its access to security force intelligence. [83]

2.8. Notwithstanding these issues, Stevens I identified Nelson's fingerprints on intelligence documents held by the security services. [84] He was subsequently arrested by the Stevens I team on 12 January 1990. [85]

Outcome

2.9. Stevens I reported on 5 April 1990. Its findings and recommendations have never been published.

2.10. On 17 May 1990, the then Secretary of State for Northern Ireland, Peter Brooke (later Baron Brooke of Sutton Mandeville), told the House of Commons that, as a result of Stevens I, 94 individuals had been arrested and 59 had been reported for or charged with criminal offences. [86]

[81] Stevens 3 Overview and Recommendations at [15/3.5].
[82] Stevens 3 Overview and Recommendations at [15/3.3].
[83] Ware, Neither Confirm Nor Deny at [133] to [134].
[84] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 9].
[85] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 10].
[86] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 7].

Inquest

2.11. Later that year, on 6 September 1990, an inquest into the death of Patrick Finucane was held.

2.12. At that inquest, Patrick Finucane's widow, Geraldine Finucane, was prevented from giving evidence about the threats that had allegedly been made by RUC officers to some of his clients during interviews at the Castlereagh Holding Centre. [87]

2.13. The coroner conducting the inquest ruled that, as the law then stood, the inquest was confined to investigating the cause and immediate circumstances of Patrick Finucane's death. [88] The inquest was closed on the same day with an open verdict. [89]

Criminal proceedings against Brian Nelson

2.14. On 22 January 1992, Brian Nelson pleaded guilty to 20 offences, including five charges of conspiracy to murder and one charge of possession of a firearm with intent to endanger life. None of these convictions related to the murder of Patrick Finucane. [90] On 3 February 1992, Brian Nelson was sentenced to 10 years' imprisonment. [91]

Stevens II Investigation

Background

2.15. On 11 February 1992, Geraldine Finucane commenced a civil action against the Ministry of Defence (MoD) and Brian Nelson, and later against the RUC. [92] Nelson's solicitor in those proceedings informed

[87] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 5].
[88] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 5].
[89] Hansard Official Report, 11 September 2024; Vol. 753, col. 841.
[90] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 10].
[91] de Silva Review, Volume I at [45/1.77].
[92] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 12].

the Crown Solicitor's Office that his client may feel compelled to give evidence making serious allegations against Crown Servants. [93]

2.16. On 8 June 1992, BBC Panorama broadcast its programme, '*The Dirty War*'. [94] The programme was presented by John Ware, who had been given access to a journal Nelson had written in custody which depicted his activities as an agent of the FRU. It was in this journal that the serious allegations foreshadowed by his solicitor were made.

2.17. The Panorama programme claimed that Nelson had been involved in a number of murders and that he had been responsible for targeting Patrick Finucane. It was also reported that he had passed Patrick Finucane's photograph to the UDA. [95]

2.18. These events brought about the instruction of Lord Stevens to conduct a second investigation (Stevens II). [96]

2.19. On 2 April 1993, the DPP (NI) instructed the Chief Constable of the RUC to investigate the allegations made by Nelson in his journal. These allegations included that (i) Nelson had informed his handler; [97] and (ii) Nelson's handlers instructed the Army to take a photograph of the house of an IRA commander of operations he was targeting. [98] A later direction from the DDP(NI) instructed the Chief Constable of the RUC that Nelson's handlers should be interviewed.[99]

2.20. However, Stevens II did not address directly the murder of Patrick Finucane. [100]

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[93] de Silva Review, Volume I at [46/1.80].
[94] Available at: https://www.youtube.com/watch?v=lUbnjCXWF94
[95] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 13].
[96] John Stevens, *Not for the Faint-hearted* at [200] to [201].
[97] de Silva Review, Volume I at [46/1.81].
[98] de Silva Review, Volume I at [47/1.82].
[99] de Silva Review, Volume I at [47/1.83].
[100] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 14].

Methodology

2.21. Aside from these directions from the DPP(NI) to the Chief Constable of the RUC that certain matters should be investigated, there appears to be no record of self-contained terms of reference for Stevens II. [101]

Outcome

2.22. The interim reports of Stevens II were submitted to the DPP(NI) on 25 April 1994 and 18 October 1994, and a final report was delivered on 24 January 1995. [102] The findings and recommendations of these reports have never been published.

2.23. On 17 February 1995, the DPP(NI) issued a direction that there would be no prosecutions arising out of Stevens II. [103]

Report of the UN Special Rapporteur

Background

2.24. In response to allegations concerning the harassment and intimidation of defence solicitors by officers of the RUC, the UN Special Rapporteur on the Independence of Judges and Lawyers sought permission from HM Government to conduct an *in situ* investigation in Northern Ireland. Permission was granted. [104]

[101] de Silva Review, Volume I at [46/1.79].
[102] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 14].
[103] Report of the Special Rapporteur on the independence of judges and lawyers (5 March 1998) at [20/64].
[104] Report of the Special Rapporteur on the independence of judges and lawyers (5 March 1998) at [3/2] to [3/4].

2.25. One of the matters to be investigated by the Special Rapporteur was the allegation that there was official collusion in the unresolved murder of Patrick Finucane. [105]

Methodology

2.26. The Special Rapporteur travelled to London and Belfast on a fact-finding mission from 20 to 31 October 1997.

2.27. In London, those he met included: (i) the Lord Chief Justice, Lord Bingham; (ii) the Minister of State for the Home Office, Alun Michael; (iii) the Chief Inspector of Prisons, General Sir David Ramsbottom; and (iv) solicitors Jane Deighton, Gareth Peirce and Geoffrey Bindman. [106]

2.28. In Belfast, those he met included: (i) Geraldine Finucane and members of the Finucane family; (ii) solicitors Peter Madden and Kevin Winters of Madden & Finucane; (iii) the Lord Chief Justice of Northern Ireland, Lord Carswell; (iv) the Minister of State for Northern Ireland, Paul Murphy (now Baron Murphy of Torfaen); (v) the Chief Constable of the RUC, Ronnie Flanagan; (**vi**) the DPP(NI); (**vii**) Sir Louis Blom-Cooper, the Independent Commissioner for the Holding Centres; and (**viii**) a large number of solicitors and barristers who provided evidence about the forms of harassment they experienced. [107]

2.29. The Special Rapporteur discussed the murder of Patrick Finucane with the Chief Constable of the RUC and the DPP(NI). The DPP(NI) told the Special Rapporteur there was insufficient evidence to bring

[105] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [4/5(d)].
[106] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [4/7] to [5/8].
[107] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [4/7] to [5/8] and [21/67].

a prosecution in respect of the case: he did not consider there was a reasonable prospect of obtaining a conviction. [108]

Outcome

2.30. Notwithstanding this, the Special Rapporteur made two comments about the case: (i) he said that if Nelson's claim that he informed military intelligence of the UDA's intent to murder Patrick Finucane is true, then HM Government violated its duty to safeguard his life; [109] and (ii) HM Government should establish an independent judicial inquiry to investigate the outstanding questions that remain in the case of Patrick Finucane. [110]

British Irish Rights Watch report

2.31. On 12 February 1999 – the tenth anniversary of Patrick Finucane's murder – the non-governmental organisation, British Irish Rights Watch delivered a confidential report to the British and Irish governments and to the UN Special Rapporteur on the Independence of Judges and Lawyers. The report was titled '*Deadly Intelligence: State Collusion with Loyalist Violence in Northern Ireland*'.

2.32. British Irish Rights Watch released a summary of its allegations which included:

a. Officers of the RUC suggested that the UDA murdered Patrick Finucane;

[108] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [21/67] to [21/68].
[109] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [22/73].
[110] Report of the Special Rapporteur on the independence of judges and lawyers, (5 March 1998) at [28/95].

b. Officers of the RUC Special Branch had detailed information about the plot to murder Patrick Finucane and did not act to prevent it.

c. Brian Nelson was actively involved in the murder.

d. The FRU misled the Stevens Investigations about its knowledge of, and involvement in, the murder.

e. The FRU failed to provide all relevant documents to the Stevens Investigations. [111]

Langdon Review

2.33. In response to the confidential report delivered by British Irish Rights Watch, the Secretary of State for Northern Ireland, Mo Mowlam, asked Anthony Langdon, a Home Office civil servant, to conduct an inquiry into whether a fresh investigation of these claims was warranted. [112]

2.34. The Langdon Report was presented to the Secretary of State in mid-1999. [113] Although the Langdon Report has not been published in full, its conclusions are in the public domain, having been cited in litigation. Among those conclusions was that it was probable that Brian Nelson had mentioned something about Patrick Finucane to his handler before the murder. [114]

[111] British Irish Rights Watch, "*Deadly Intelligence: State Collusion with Loyalist Violence in Northern Ireland*: *Summary*", February 1999, as referenced in *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 39].
[112] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 16].
[113] de Silva Review, Volume I at [48/1.87].
[114] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 16].

Stevens III Investigation

Background

2.35. The Stevens III Investigation began on 19 April 1999 (Stevens III).[115] It focused on the murders of Patrick Finucane and Adam Lambert, and the question of collusion between members of the security services and loyalist paramilitaries. [116] In light of the contents of the British Irish Rights Watch report, the Chief Constable of the RUC asked Lord Stevens, as he had now become, to review the investigation into the murder of Patrick Finucane in its entirety. [117]

2.36. During the course of the investigation, on 19 and 23 June 2002, BBC Panorama broadcast its two-part programme, '*A Licence to Murder*'. [118] The programme was once again presented by John Ware. Lord Stevens was interviewed, during which he described the activities of Brian Nelson as "*inexcusable*". [119] The programme played a recording of Brian Gillen, an IRA commander, who alleged that police officers told him Patrick Finucane was a "*Provo*" and "*We'll have him taken out*".

2.37. The programme also featured secret recordings of interviews with UDA member Kenneth Barrett who alleged that:

a. An RUC officer told him that Patrick Finucane was "*an IRA man*" who would "*have to go*".

[115] Stevens 3 Overview and Recommendations at [17/4.1].
[116] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 17].
[117] de Silva Review, Volume I at [48/1.88].
[118] Transcripts available at: (i) https://cain.ulster.ac.uk/issues/collusion/docs/panorama190602.htm and (ii) https://cain.ulster.ac.uk/issues/collusion/docs/panorama230602.htm.
[119] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 19].

b. RUC officers were telling young UDA members detained in the Castlereagh Holding Centre that the UDA should target Patrick Finucane.

c. "*Finucane would have been alive today if the peelers hadn't interfered*".

Methodology

2.38. Stevens III conducted a forensic examination of a wealth of material recovered from loyalist paramilitary groups, particularly that belonging to Brian Nelson.[120] In conjunction with Lord Stevens' previous two investigations, it represented the largest criminal investigation undertaken in the UK: 9,256 statements were taken; 10,391 documents were recorded; and 16,194 exhibits were seized. [121]

2.39. In November 2002, Stevens III received a considerable amount of additional documentation from the MoD. The problem of late disclosure was something Lord Stevens had encountered during his two previous investigations. [122] It was also necessary for the investigation team to interview the same witnesses a number of times on account of their failure to provide complete information at the first time of asking. [123]

2.40. The Stevens III team arrested three of the original suspects for the murder of Patrick Finucane and nine others. However, no admissible evidence was obtained to enable any of them to be charged. [124]

[120] Stevens 3 Overview and Recommendations at [12/2.14].
[121] Stevens 3 Overview and Recommendations at [17/4.1].
[122] Stevens 3 Overview and Recommendations at [7/1.11].
[123] Stevens 3 Overview and Recommendations at [16/3.6].
[124] Stevens 3 Overview and Recommendations at [11/2.9].

Conclusions

2.41. On 17 April 2003, Stevens III published a report containing an overview of that investigation into the murder of Patrick Finucane. [125] Its findings included:

a. The allegation that Patrick Finucane had been threatened by RUC officers could not be substantiated against any officer, due to the absence of any record. [126]

b. There was sufficient evidence to believe that the murder of Patrick Finucane could have been prevented. [127]

c. The RUC's investigation into the murder should have resulted in the early arrest and detection of his killers. [128]

d. There was collusion in the murder and the circumstances surrounding it. [129]

2.42. The Stevens III report set out that his three investigations had found the following elements of collusion to be present: (i) the poor coordination, dissemination and sharing of intelligence; (ii) the allowing of informants and agents to operate without effective control and to participate in terrorist crimes; (iii) the failure to warn or protect nationalists who were known to be targeted; and (iv) the withholding of critical information from senior investigating officers. [130]

[125] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 20].
[126] Stevens 3 Overview and Recommendations at [13/2.16].
[127] Stevens 3 Overview and Recommendations at [18/4.6].
[128] Stevens 3 Overview and Recommendations at [18/4.6].
[129] Stevens 3 Overview and Recommendations at [18/4.7].
[130] Stevens 3 Overview and Recommendations at [18/4.9].

Criminal Proceedings against William Stobie

2.43. In June 1999, UDA member William Stobie was charged with the murder of Patrick Finucane, [131] having been arrested by the Stevens III team. [132] At the time of the murder, he was working as an agent of the RUC Special Branch. [133]

2.44. The case against him appears to have rested largely on the evidence of Neil Mulholland, a journalist to whom, in June 1990, Stobie had provided an account of his activities in the UDA and as an RUC Special Branch agent. [134]

2.45. The case against Stobie collapsed in November 2001 after Neil Mulholland was deemed to be unfit to give evidence due to ill health. [135] Weeks later, on 12 December 2001, Stobie was murdered by, it is believed, loyalist paramilitaries. [136]

Cory Investigation

Background

2.46. In the summer of 2001, during the course of Stevens III, negotiations between the UK and Irish Governments took place at Weston Park, Staffordshire. [137]

2.47. As part of the subsequent agreement, it was announced that a judge of international standing would undertake a thorough investigation of allegations of collusion in six cases of murder: (i) Patrick Finucane; (ii) Rosemary Nelson; (iii) Robert Hamill; (iv) Billy Wright; (v) Chief

[131] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 18].
[132] Stevens 3 Overview and Recommendations at [11/2.8].
[133] de Silva Review, Volume I at [48/1.91].
[134] de Silva Review, Volume I at [48/1.92].
[135] John Stevens, *Not for the Faint-hearted* at [205].
[136] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 18].
[137] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 23].

Superintendent Harry Breen and Superintendent Bob Buchanan; and (vi) Lord Justice and Lady Gibson. [138]

2.48. The judge appointed was Judge Peter Cory, a retired judge of the Supreme Court of Canada. The statement announcing his appointment said that in the event Judge Cory recommended a public inquiry in any of the six cases, the relevant government would implement that recommendation. [139]

2.49. Judge Cory recommended that public inquiries should be held in relation to every case, except for the murders of Lord Justice and Lady Gibson. To date, there have been judge-led inquiries into the deaths of Rosemary Nelson, Robert Hamill, Billy Wright, Harry Breen and Bob Buchanan. [140] As such, until the establishment of this Inquiry on 9 March 2026, the murder of Patrick Finucane has been the only case included in the Weston Park Agreement where a public inquiry was recommended but not yet conducted.

Methodology

2.50. Judge Cory's task was not to make final determinations of fact or attributions of responsibility. Rather, he had the preliminary role of assessing whether there was a case to be answered as to possible collusion, in a wide sense, by members of the security forces in relation to the deaths he was asked to examine. [141]

2.51. Given the nature of his task, Judge Cory considered it was not necessary or appropriate to hear any oral evidence from those

[138] Implementation Plan issued by the British and Irish Governments on 1 August 2001, para 18 (CAIN Web Service).
[139] de Silva Review, Volume I at [49/1.94].
[140] All these inquiries have published their reports. The Robert Hamill Inquiry Report was published on 14 September 2026, having been delayed for years in order to avoid prejudice to a criminal investigation.
[141] 'Cory Collusion Inquiry Report – Patrick Finucane' by Judge Peter Cory (2004) (HC 470, 2003-04) (the "Cory Report") at [3].

referred to in his reports. His review methodology was to scrutinise the documentary evidence that existed in relation to each of the cases he investigated. [142]

Outcome

2.52. Judge Cory's report was published on 1 April 2004. He concluded that there was strong evidence that collusive acts were committed by the FRU, the RUC Special Branch and the Security Service in relation to the murder of Patrick Finucane and was satisfied of the need for a public inquiry. [143]

2.53. His conclusions included:

a. Certain matters might lend support to Nelson's claim that he told his FRU handlers about the UDA plan to murder a "*PIRA solicitor*". [144]

b. There was little doubt that, on occasion, Nelson's FRU handlers provided information to him that facilitated his targeting activities, albeit that there was no indication that his handlers provided information that specifically pertained to Patrick Finucane. [145]

c. Nelson's FRU handlers were aware, or most certainly ought to have been aware, of his criminal acts. Little or no effort was made to prohibit or discourage him from committing those acts. [146]

d. In 1981, 1985 and 1988, the Security Service was aware that the UDA had plans to target Patrick Finucane. On each occasion, the

[142] Cory Report at [3].
[143] Cory Report at [107/1.293].
[144] Cory Report at [100/1.284].
[145] Cory Report at [102/1.286].
[146] Cory Report at [102/1.287].

Security Service failed to suggest to the RUC Special Branch that action should be taken in respect of these threats. [147] In respect of the 1981 threat, the RUC Special Branch was aware of the direct, serious and imminent threat to Patrick Finucane's life and took no action. [148]

e. The RUC Special Branch failed to report to the senior investigating officer investigating the murder of Patrick Finucane information concerning the role of Nelson, as a FRU agent, or Stobie, as an RUC Special Branch agent. [149]

Criminal Proceedings against Kenneth Barrett

2.54. On 3 October 1991, RUC CID officers Johnston Brown and Trevor McIlwrath met with Kenneth Barrett at the latter's request. In his book, '*Into the Dark: 30 Years in the RUC*', Johnston Brown recalls that, as they sat in a car together, he asked Kenneth Barrett who murdered Patrick Finucane. Barrett responded, "*Hypothetically, me*", [150] and went on to describe the murder in graphic detail[151] Brown would characterise what Barrett told him as a "*candid and boastful confession to the murder*". [152]

2.55. This conversation had been recorded. [153] However, it was not until April 1999, when Johnston Brown came to provide his own evidence to the Stevens III team, that he discovered that the recording made of the conversation on 3 October 1991 had been switched by RUC Special Branch with the recording of a conversation with Barrett

[147] Cory Report at [103/1.290] to [104/1.291].
[148] Cory Report at [104/1.292a].
[149] Cory Report at [105/1.292e].
[150] Brown at [163].
[151] Brown at [165]-[167].
[152] Brown at [185].
[153] Brown at [218].

which took place a week later on 10 October 1991, during which he made no such confession. [154]

2.56. Notwithstanding this, Kenneth Barrett was later arrested by the Stevens III team. [155] On 16 September 2004, he pleaded guilty to having a different role in the murder of Patrick Finucane,[156] admitting to driving two UDA gunmen to and from the Finucane home on 12 February 1989. [157] He received a sentence of life imprisonment but was released in 2006, having been determined to qualify for early release under the terms of the Belfast (Good Friday) Agreement 1998.

2.57. Following Barrett's conviction, the Secretary of State for Northern Ireland, Paul Murphy, wrote to Geraldine Finucane, outlining a statement he intended to make to the House of Commons on 23 September 2004. The letter said that it would be necessary to hold the inquiry into Patrick Finucane's murder on the basis of new legislation. [158] The Secretary of State duly announced in the House of Commons on 23 September 2004 that steps should now be taken to enable the establishment of an inquiry into the death of Patrick Finucane. [159] The new legislation he referred to in his letter to Geraldine Finucane was to be the Inquiries Act 2005. [160]

2.58. On 25 June 2007, the DPP(NI) issued a statement following his examination of the Stevens III Investigation that the test for prosecution was not met in relation to any other possible prosecutions in connection with the murder of Patrick Finucane. [161]

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[154] Brown at [225]-[228].
[155] de Silva Review, Volume I at [26/95].
[156] de Silva Review, Volume I at [348/19.24].
[157] de Silva Review, Volume I at [26/95].
[158] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 35].
[159] Hansard Official Report, 11 November 2010, Written Statements, vol. 518.
[160] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 36].
[161] *In re Finucane's Application for Judicial Review* [2017] NICA 7, at [para 30].

Sir Desmond de Silva QC's Review

Background

2.59. The coalition government formed after the May 2010 general election took a different approach to the question of whether a public inquiry should be established into the death of Patrick Finucane. In his statement to the House of Commons upon the publication of Lord Saville's report on the Bloody Sunday Inquiry on 15 June 2010, Prime Minister David Cameron (as he then was; now Lord Cameron of Chipping Norton) said: "*let me reassure the House that there will be no more open-ended and costly inquiries into the past*". [162]

2.60. Ultimately, on 12 October 2011, the then Secretary of State for Northern Ireland, Owen Paterson, appointed Sir Desmond de Silva QC to conduct an independent review of any state involvement in Patrick Finucane's murder (de Silva Review).[163] This was notably not a public inquiry under the Inquiries Act 2005.

2.61. Sir Desmond's terms of reference required him to produce a full public account of any involvement of the Army, the RUC, the Security Service and other HM Government bodies in the murder. [164] At the outset, he decided to take a broad approach to his terms of reference and consider, at length, the context to the murder. [165]

Methodology

2.62. The de Silva Review was a non-statutory, document-based review. It initially received the material generated by the Stevens Investigations. In addition, Sir Desmond sought and received new

[162] Hansard Official Report, 15 June 2010; Vol. 511, col. 741.
[163] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 43].
[164] de Silva Review, Volume I at [31/1.4].
[165] de Silva Review, Volume I at [32/1.11].

documentary material from all the organisations cited in his terms of reference. He described this as containing new and significant information that was not available to Lord Stevens or Judge Cory. [166]

2.63. Although Sir Desmond had no statutory powers of compulsion, his report set out that all relevant HM Government departments and agencies provided the de Silva Review with access to all the evidence it sought. [167]

2.64. Sir Desmond was not asked to, nor given the power to, hold oral hearings; however, he was able to – and did – meet with individuals during the course of his review. [168] Oral evidence was received from eleven individuals, including: (i) Lord Stevens; (ii) Anthony Langdon; (iii) the former Commanding Officer of the FRU; (iv) a senior officer from the Security Service; and (v) three former senior officers of the RUC Special Branch, and the former RUC Deputy Chief Constable. [169]

2.65. Written submissions were received from twelve individuals and organisations, including: (i) the MoD; (ii) the Police Service of Northern Ireland (PSNI); (iii) the Security Service; (iv) the BBC journalist, John Ware (who provided the de Silva Review with notes of his conversations with Brian Nelson and Thomas Lyttle); [170] and (v) Douglas Hogg, Viscount Hailsham. [171]

Outcome

2.66. The de Silva Review published its report on 12 December 2012. The conclusions Sir Desmond reached included the following:

[166] de Silva Review, Volume I at [10/7].
[167] de Silva Review, Volume I at [10/10].
[168] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [paras 44-45].
[169] de Silva Review, Volume I at [40/1.48].
[170] de Silva Review, Volume I at [39/1.41].
[171] de Silva Review, Volume I at [40/1.48].

a. There was a wilful and abject failure by successive governments to provide the clear policy and legal framework necessary for agent-handling operations to take place effectively and within the law. [172]

b. On occasion, Nelson's FRU handlers provided him with information that was subsequently used for targeting purposes; in some instances, these actions were indicative of handlers deliberately facilitating Nelson's targeting of PIRA members. [173]

c. In almost all of the relevant murders or attempted murders examined, the FRU passed intelligence to RUC Special Branch indicating that the intended victim was under threat. Nothing was done by RUC Special Branch to seek to prevent these attacks, and the FRU should have been aware that RUC Special Branch was taking no action. [174]

d. In 1981 and 1985, the Security Service and the RUC failed to warn Patrick Finucane that the UDA planned to attack him. [175] In 1988, the Security Service became aware that the UDA was planning to murder three solicitors, one of whom, Sir Desmond concluded, was Patrick Finucane. The Security Service did not pursue this threat intelligence with the RUC. [176]

e. On the balance of probabilities, an RUC officer (or officers) proposed Patrick Finucane as a target when speaking to a member of the UDA in Castlereagh Holding Centre on either 8 or 9 December 1988. [177]

[172] de Silva Review, Volume I at [13/26].
[173] de Silva Review, Volume I at [14/33].
[174] de Silva Review, Volume I at [16/40].
[175] de Silva Review, Volume I at [18/53] to [20/56].
[176] de Silva Review, Volume I at [21/69] to [21/70].
[177] de Silva Review, Volume I at [22/74].

f. Kenneth Barrett's allegation that the UDA received intelligence about Patrick Finucane from a police source was essentially accurate. [178]

g. Nelson conducted targeting on Patrick Finucane at the request of a key UDA figure behind the murder plot.[179] It was likely that Nelson: (i) produced a 'personality card' ('P' card) in respect of Patrick Finucane;[180] (ii) carried out a reconnaissance on the Finucane family home;[181] and (iii) passed a photograph of Patrick Finucane to Kenneth Barrett and another UDA member involved in the murder plot on 7 February 1989, knowing that it would be used to target Patrick Finucane. [182]

h. Nelson did not inform his FRU handlers about his involvement in the targeting of Patrick Finucane. [183]

i. Proper exploitation of the intelligence Stobie provided to his RUC Special Branch handlers could have prevented the murder of Patrick Finucane. [184]

j. There was no evidence whatsoever that any government minister had foreknowledge of Patrick Finucane's murder or that any government minister encouraged or directed any form of collusive activity with the UDA. [185]

k. The threshold for finding collusion was met in this case. [186] A series of positive actions by employees of the state actively furthered and facilitated the murder of Patrick Finucane and, in

[178] de Silva Review, Volume I at [22/75].
[179] de Silva Review, Volume I at [23/80].
[180] de Silva Review, Volume I at [23/81].
[181] de Silva Review, Volume I at [23/82].
[182] de Silva Review, Volume I at [23/83].
[183] de Silva Review, Volume I at [24/84].
[184] de Silva Review, Volume I at [25/91].
[185] de Silva Review, Volume I at [28/108].
[186] de Silva Review, Volume I at [29/114].

the aftermath of the murder, there was a relentless attempt to defeat the ends of justice. [187] However, Sir Desmond was satisfied that, despite the different strands of involvement by elements of the state, they were not linked to an over-arching state conspiracy to murder Patrick Finucane. [188]

2.67. In addition to the publication of his report, Sir Desmond placed into the public domain over 300 pages of material provided to him by the FRU, RUC Special Branch and the Security Service, much of which had been classified at TOP SECRET or SECRET. [189]

2.68. The UK Supreme Court would, in 2019, find that the de Silva Review suffered from the following shortcomings:

a. Those who provided oral evidence were not subject to testing by way of challenging probes as to the accuracy of their evidence. [190]

b. A potentially critical witness – one of Nelson's handlers – was excused from attendance for questioning by Sir Desmond on the basis that the witness had been suffering from stress and was "very frail". [191]

c. Sir Desmond did not identify: (i) those who knew of imminent threats to Patrick Finucane's life in 1981 and 1985 and failed to warn him; (ii) the RUC officer (or officers) who probably did propose Patrick Finucane as a UDA target; or (iii) the police source who provided Kenneth Barrett with intelligence about Patrick Finucane. [192]

[187] de Silva Review, Volume I at [29/115].
[188] de Silva Review, Volume I at [29/ 116].
[189] de Silva Review, Volume II.
[190] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 134].
[191] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [paras 47-48 & 134].
[192] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [paras 131-133].

HM Government's response to Sir Desmond's report

Prime Minister's Announcement

2.69. On 12 December 2012, upon publication of the report of the de Silva Review, Prime Minister David Cameron made a statement to the House of Commons. He described Sir Desmond as having found "*shocking levels of State collusion*" in the murder of Patrick Finucane, in five areas:

a. There were leaks of security force information to the UDA and other loyalist paramilitary groups.

b. There was a failure by the authorities to act on threat intelligence.

c. Employees of the state and state agents played key roles in the murder.

d. There was a failure to investigate and arrest key members of the West Belfast UDA over a long period of time.

e. There was a "*relentless attempt to defeat the ends of justice*" after the murder had taken place. [193]

2.70. Lord Cameron went on to set out how policing and intelligence work had changed since 1989, citing that:

a. The FRU and RUC Special Branch no longer existed.

b. The Regulation of Investigatory Powers Act 2000 had established a framework for the authorisation of the use and conduct of agents.

[193] Hansard, Official Report, 12 December 2012; Vol. 555, col. 296-297.

c. The Intelligence Services Commissioners and the Office of Surveillance Commissioners regulated the use of agents and reported to the House of Commons. [194]

2.71. He told the House that he had asked the Secretaries of State for Defence and for Northern Ireland and the Cabinet Secretary to report on all the issues arising from the de Silva Review. [195]

Lessons Learnt Report

2.72. On 16 January 2015, the report by the Cabinet Secretary, the Secretary of State for Defence and the Secretary of State for Northern Ireland on the '*Lessons learnt by government departments from Sir Desmond de Silva's Report of the Patrick Finucane Review*' (Lessons Learnt Report) was published. [196]

2.73. Upon its publication, Prime Minister David Cameron made a written statement to the House of Commons, setting out that the Lessons Learnt Report concluded that the approach of the police and intelligence agencies to handling covert human intelligence sources had completely transformed since 1989. [197]

2.74. The Lessons Learnt Report emphasised that there was now a far more rigorous system of independent oversight and control than existed at the time of Patrick Finucane's murder, by reference to the legislative framework and independent bodies cited by the Prime Minister in his statement on 12 December 2012. [198]

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[194] Hansard, Official Report, 12 December 2012; Vol. 555, col. 298.
[195] Hansard, Official Report, 12 December 2012; Vol. 555, col. 298.
[196] A report by the Cabinet Secretary, the Secretary of State for Defence and the Secretary of State for Northern Ireland, 'Lessons learnt by government departments from Sir Desmond de Silva's Report of the Patrick Finucane Review' (Cabinet Office, Ministry of Defence, Northern Ireland Office and Home Office, 16 January 2015).
[197] Hansard, Official Report, 16 January 2015; Vol. 590, col. 42WS.
[198] A report by the Cabinet Secretary, the Secretary of State for Defence and the Secretary of State for Northern Ireland, 'Lessons learnt by government departments from Sir

UK Supreme Court Ruling

2.75. In 2019, following an application for judicial review by Geraldine Finucane challenging HM Government's failure to establish a statutory inquiry into the murder of Patrick Finucane, the UK Supreme Court considered whether the various investigations conducted by the state had discharged its investigative duty under Article 2 of the European Convention on Human Rights.

2.76. The Supreme Court found that they had not and made a declaration that there had not been an Article 2 compliant inquiry into the death of Patrick Finucane. [199]

2.77. However, on 30 November 2020, the then Secretary of State for Northern Ireland, Brandon Lewis (now Sir Brandon), announced that he would not establish a public inquiry at that time.[200] Geraldine Finucane subsequently brought a judicial review which culminated, in July 2024, in the Court of Appeal in Northern Ireland requiring the Secretary of State for Northern Ireland, in liaison with the Finucane family, to propose an Article 2 compliant process for investigating Patrick Finucane's death. [201]

2.78. On 11 September 2024, the then Secretary of State for Northern Ireland, Hilary Benn MP, announced the establishment of this statutory inquiry into the murder of Patrick Finucane. [202]

Desmond de Silva's Report of the Patrick Finucane Review' (Cabinet Office, Ministry of Defence, Northern Ireland Office and Home Office, 16 January 2015), at [para 26].
[199] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 153].
[200] Hansard Official Report, 30 November 2020; Vol. 685, col. 54.
[201] *In re Finucane's Application for Judicial Review* [2024] NICA 55, at [para 121].
[202] Hansard Official Report, 11 September 2024; Vol. 753, col. 841.

3. THE ROYAL ULSTER CONSTABULARY (OVERVIEW)

Hierarchy and Structure

3.1. The RUC came into existence on 1 June 1922 following the partition of the island of Ireland under the Government of Ireland Act 1920 and the Anglo-Irish Treaty of 1921. Control of the force was initially vested in the Inspector-General who was responsible to the Minister of Home Affairs for the maintenance of law and order in Northern Ireland. [203]

3.2. When it was established in 1922, there was a statutory limit of 3,000 on the size of the RUC. By 1986, there were 8,000 full-time constables which was double the strength of 1982. There were also 4,000 full and part-time reserves. [204]

3.3. The organisational structure of the police was the product of decades of security policing. Historically police forces were organised on military lines, and the RUC has retained more traces of this than most, at least in part because of its close working relationship with the military. [205] The RUC initially performed a dual function as both a police force and a state security body. In other words, in addition to carrying out the civilian duties associated with police forces elsewhere in the United Kingdom, it was responsible for duties of a military nature. [206]

3.4. The beginning of the Troubles put enormous strain on the RUC; initially, it struggled to maintain order on the streets and on 14 August 1969 the Inspector General of the RUC requested military aid

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[203] The Constabulary Act (Northern Ireland) 1922, c.8, s.1(3).
[204] Robert M. Pockrass, 'The Police Response to Terrorism: The Royal Ulster Constabulary' (1986) 59/2 The Police Journal 143, at [146].
[205] The 'Patten Report': Independent Commission on Policing for Northern Ireland, *A New Beginning: Policing in Northern Ireland* (HMSO, 1999), at [72/12.2]: https://cain.ulster.ac.uk/issues/police/patten/patten99.pdf (accessed 14 Sep 2026).
[206] The 'Hunt Report': Hunt, J, *Report of the Advisory Committee on Police in Northern Ireland* (Belfast, HMSO, Cmd. 535, 1969), at [33].

and the British Army was deployed on the streets in Northern Ireland by the Home Secretary, James Callaghan. [207]

3.5. A short time later, the Home Secretary commissioned an inquiry to examine the structure, organisation and composition of the RUC and the Ulster Special Constabulary (USC, also known as the B Specials) to recommend changes for the "efficient enforcement of law and order". The Hunt report was published in October 1969 and as a result several changes were made: the RUC's military duties were taken over by the Ulster Defence Regiment (UDR), a locally recruited unit under the control of the British Army, [208] the USC was stood down [209] and the RUC was restructured along British policing lines. [210] It was headed by a Chief Constable (replacing the old title of Inspector-General), under whom the ranks in descending order were broadly as follows: Deputy Chief Constable; Assistant Chief Constable; Chief Superintendent; Superintendent; Chief Inspector; Inspector; Sergeant; and Constable, with Reserve Constables serving in the RUC Reserve. [211]

3.6. The RUC was controlled and administered from its Headquarters at Knock in Belfast at which administrative branches were located with overall responsibility on a functional basis. At this point, it is relevant to highlight two branches:

a. **Special Branch (SB, also known as E Department):** Within the RUC, SB had the lead responsibility for gathering and exploiting

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[207] The 'Operation Kenova Interim Report': Kenova, *Operation Kenova Northern Ireland 'Stakeknife' Legacy Investigation - Interim Report of Jon Boutcher QPM* (2024), [58/6.1]: https://www.kenova.co.uk/Kenova%20Report%202024%20Digital%20(002).pdf (accessed 14 Sep 2026).
[208] The Hunt Report recommended that the RUC be relieved of all duties of a military nature as soon as possible. The Ulster Defence Regiment was established under the Ulster Defence Regiment Act 1969, c.65.
[209] Operation Kenova Interim Report at [55/5.8].
[210] The Hunt Report recommended that the RUC rank structure should be reviewed. (This recommendation was implemented under the Police Act (Northern Ireland) 1970.
[211] The Royal Ulster Constabulary (Ranks) Regulations (Northern Ireland) 1970, SI 1970/111.

intelligence on republican and loyalist terrorist activity in Northern Ireland, which will be discussed in further detail below. [212] The overall Head of SB, an Assistant Chief Constable, was based at RUC Headquarters in Belfast. As is discussed below, SB was divided into regional branches, based at regional headquarters. The Regional Head of SB was a Detective Chief Superintendent, who was supported by the Deputy Head, a Detective Superintendent. The Regional Head was responsible for all SB activity within their relevant area.[213] At the divisional level, the head of SB was typically a chief inspector or superintendent. [214]

b. **Criminal Investigation Department (CID) (also known as Crime Branch or C Department):** the function of Crime Branch/CID was to investigate crime, including by gathering evidence and interviewing suspects, and prepare cases for submission for prosecution. [215] It was initially led by an Assistant Chief Constable (ACC), who held overall responsibility for CID across Northern Ireland. Following internal security reviews, a Senior Assistant Chief Constable (SACC) rank was introduced in 1984. The SACC was placed directly above both CID and SB. [216]

3.7. Operationally, Northern Ireland was divided into three regions, divisions and sub-divisions for policing purposes, replacing the old

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[212] de Silva Review, Volume I, at [65/3.7].
[213] The 'Operation Greenwich Report': Police Ombudsman for Northern Ireland, *Public statement by the Police Ombudsman pursuant to Section 62 of the Police (Northern Ireland) Act 1988. Relating to: Investigation into Police Handling of Certain Loyalist Paramilitary Murders and Attempted Murders in the North West of Northern Ireland During the Period 1989 to 1993* (Belfast: Police Ombudsman for Northern Ireland, 2022), at [68/6.16]. https://www.policeombudsman.org/getmedia/ac49ce6c-dbc5-47ee-af6f-ce354ab3e224/OPERATION-GREENWICH_1.aspx?ext=.pdf: (accessed 14 Sep 2026).
[214] Mark Urban, *Big Boys' Rules: The Secret Struggle Against the IRA* (Faber & Faber 1992), at [94].
[215] Pockrass, at [150]; Urban, at [20].
[216] HC Deb 17 February 1988, vol 127, col 978; The 'Walker Report': Walker, P J, 'Report on the Interchange of Intelligence between Special Branch and CID and on the RUC Units involved, including those in Crime Branch C1(1)' (31 Mar 1980).

county-based system. [217] Each sub-division operated patrol shifts, a CID, and SB. [218]

3.8. The regular sub-division patrols were supported by the Divisional Mobile Support Units (DMSUs). [219] These units received riot control and special firearms training. [220] In addition, the Headquarters Mobile Support Units (HMSUs) were established as a back-up to rural units, with training in ambush techniques and other undercover skills. HMSU members generally operated in plain clothes, under the control of SB. [221]

The Gathering and Dissemination of Evidence During the Troubles

3.9. Within the RUC, SB had the lead responsibility for gathering and exploiting intelligence. The SB also gathered intelligence on espionage, other serious crime and threats posed to public order throughout Northern Ireland, deploying a wide range of intelligence-gathering assets, including surveillance and a significant number of human agents. [222]

3.10. In 1969, SB numbered around sixty officers whose primary concerns were the political activities of members of the IRA and communist groups [223] There was little threat to life and the activity they monitored was predominantly subversion rather than terrorism.[224] The conflict dramatically increased the number of staff and the range of skills SB needed. [225] Addressing this was a slow process; by

[217] Patten Report at [72/12.2]
[218] Pockrass at [147].
[219] Pockrass at [147].
[220] Graham Ellison and Jim Smyth, *The Crowned Harp: Policing in Northern Ireland* (Pluto Press 2000), at [108].
[221] Pockrass, at [147]; Ellison and Smyth, at [108].
[222] de Silva Review, Volume I at [65/3.7].
[223] Operation Kenova Interim Report at [59/7.1].
[224] Operation Kenova Interim Report at [59/7.1].
[225] Operation Kenova Interim Report at [59/7.1].

1972 the entire SB had only 161 personnel. [226] By contrast, in 1999, SB comprised more than one tenth of all regular RUC Officers. [227]

3.11. The SB was divided into regional branches (Belfast, North and South) which enjoyed a "*considerable degree of autonomy*".[228] Regional Heads at the rank of Chief Superintendent were based at each of the Regional Headquarters. [229] Although a number of SB units operated from Regional Headquarters, including those in the Source Unit, Tasking Coordination Group (TCGs) and those who carried out surveillance in the region, the remainder were based in police stations in the Sub-Divisions. [230]

3.12. Agents were the key source of human intelligence. SB defined an agent as a person who: was the subject of regular direction and control; had an agent runner or handler; and was used to obtain intelligence secretly. [231] Registered agents were given a reference number and a code name. They were given a regular financial payment, along with the possibility of reward payments for particularly valuable intelligence and there were performance-related reviews of registered agents. [232] Within each region there were agent handlers [233] and typically an agent was managed by a number of handlers. [234]

3.13. Sir Desmond de Silva noted that SB also received information from individuals known as 'casual contacts'. The system for casual

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[226] Operation Kenova Interim Report at [59/7.1].
[227] Patten Report at [69/12.2].
[228] The 'Rosemary Nelson Inquiry Report': Sir Michael Morland, Dame Valerie Strachan and Sir Anthony Burden (2011) *The Rosemary Nelson Inquiry Report* (HC 947, 2010-11), at [132/12.1]: https://assets.publishing.service.gov.uk/media/5a7c78ab40f0b62aff6c1e76/0947.pdf (accessed 14 Sep 2026).
[229] Rosemary Nelson Inquiry Report at [132/12.1].
[230] Rosemary Nelson Inquiry Report at [137212.1].
[231] Operation Kenova Interim Report at [145/50.4].
[232] de Silva Review Volume 1, at [603.11].
[233] Operation Kenova Interim Report at [147/50.4].
[234] Rosemary Nelson Inquiry Report at [133/12.7].

contacts was more informal; there appeared to have been, in theory, an understanding that a 'contact' would become a registered agent if they were judged to be suitable after the third meeting with their prospective handlers. [235]

3.14. SB agent-handlers were attached to specific police stations within each RUC Division. The handlers worked under the direction of a controller. [236] After a meeting with an agent, the handler would discuss the content of the meeting with the controller and undertake the task of 'prioritising the intelligence'. [237] SB agent-handlers reported into the local RUC Source Unit, which was headed by a Detective Chief Inspector. The Source Unit and the TCG were involved in debriefing agent-handlers after they had met with a source. [238] It appears that an original handwritten debrief form was created as a result. [239] In addition, brief notes of the information received from the agent were made in the Daily Intelligence Book. [240] The Daily intelligence Book was maintained by the Source Unit. [241]

3.15. The intelligence received from an agent was subsequently summarised in an RUC document known as an SB50. An SB50 was typically a brief summary of the intelligence received from an agent and were often produced in very guarded fashion in order to protect the identity of the source. [242] Examples of SB50s can be found in volume II of the De Silva Report.[243] This would be routed through the SB command chain and collated and analysed at headquarters. [244] If

[235] de Silva Review Volume 1, at [65/3.12.]
[236] Rosemary Nelson Inquiry Report at [133/12.7].
[237] Rosemary Nelson Inquiry Report at [133/12.7].
[238] de Silva Review, Volume I at [66/3.13] and at [421/22.17]; Thomas Leahy, *The Intelligence War against the IRA in Belfast and Derry City, January 1976 to August 1994*. In: *The Intelligence War against the IRA* (Cambridge University Press 2020) at [138] to [163].
[239] For example, see de Silva Review, Volume I, [419/22.3] and [421 22.17].
[240] de Silva Review, Volume I, at [66/3.13].
[241] de Silva Review, Volume I, at [467/24.66].
[242] de Silva Review, Volume I, at [66/3.14].
[243] de Silva Review, Volume II, at [610].
[244] Operation Kenova Interim Report at [147/50.4].

SB decided to share its intelligence with other agencies, such as the FRU, the information on the SB50 form would be copied to an intelligence document known as a RIRAC. [245]

3.16. Units within HQ were responsible for the assessment and dissemination of intelligence. [246] In 1970, following a recommendation in the Hunt Report that all SB records should be centralised, SB Registry was established at RUC Headquarters. Records were transferred from local and regional offices and stored using a paper system which was a replica of the Security Service Registry. Prior to May 1990, RUC SB relied on this paper system to record and disseminate the intelligence it gathered. [247]

3.17. During the late 1970s and early 1980s, E3, Intelligence Division, was the central organising and analysis body of the SB. [248] Section E3A dealt with republican terrorism whilst another, E3B, dealt with loyalist terrorism. [249] In the late 1980s, E3B was comprised of around five officers supervised by a Chief Inspector. The officers worked on daily and weekly intelligence assessments, and on the dissemination of intelligence reports.

3.18. Within the RUC, when SB considered that its intelligence was too sensitive to share, it could be partially disseminated in a redacted format to specific individuals, withheld for a period or withheld permanently. [250] SB routinely used the terms 'slow waltz' or 'no downward dissemination' to indicate that information should be

[245] de Silva Review, Volume I, at [66/3.14]; Leahy.
[246] Operation Greenwich Report, at [67/6.12].
[247] Rosemary Nelson Inquiry Report, at [137/12.28].
[248] Urban, at [94].
[249] de Silva Review, Volume I, at [65/3.9].
[250] Operation Greenwich Report, at [69/6.20]; Operation Kenova Interim Report at [31-32].

shared in slow time, if at all. [251] Other SB50s were marked with the explicit phrase "*CID not informed*". [252]

3.19. There was also an Intelligence Collation Section within the SB HQ but Sir Desmond noted that this unit generally only worked on republican terrorism. [253] By contrast, the E3B section was in practice limited in its ability to assess intelligence relating to loyalist terrorism. A Security Service report commissioned by the Chief Constable in December 1988 concluded that E3B "*has neither the time, resources or a sufficient data base to collate and analyse intelligence*". [254]

3.20. The TCGs created in the late 1970s were also crucial in the intelligence network. [255] To avoid conflict between the various agencies involved in undercover work, TCGs were comprised of representatives from SB, the Security Service and the Army, although they were led by a regional SB superintendent. [256] The TCGs were responsible for planning and implementing operations based on intelligence gathered from all agencies in a regional TCG, including physical and technical surveillance and human intelligence. [257] There were three TCGs in Northern Ireland; TCG Belfast, TCG South (based in Gough Barracks and covering Armagh and the southern areas,) and TCG North (covering the Derry/Londonderry area). [258]

3.21. In respect of TCGs, it was noted in the Operation Kenova Interim Report that, with no legislative framework governing how they

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[251] Operation Greenwich Report, at 69/6.20]; Operation Kenova Interim Report at [31] to [32].
[252] For example, see de Silva Review, Volume I at [163/7.183].
[253] de Silva Review, Volume I, at [65/3.9].
[254] de Silva Review, Volume I, at [65/3.10].
[255] Leahy.
[256] de Silva Review, Volume I, at [68/3.30]; Operation Kenova Interim Report at [60/7.5]; Leahy.
[257] Operation Greenwich Report, at [67/6.11]; Leahy; Operation Kenova Interim Report at [60/7.5].
[258] de Silva Review, Volume I, at [63/3.30]; Operation Kenova Interim Report at [59/7.5]; Leahy.

obtained intelligence or its management and dissemination, balancing the risks to agents and the threats to potential victims was left entirely to internal practices and procedures. In addition, there were limited records of the TCG decision making process with those involved commenting that limited time was available to document their work. [259]

The relationship between CID and SB

3.22. The nature of the UK Government's security strategy shifted during the course of the Troubles. [260] From 1976 onwards, the UK Government instituted a policy of 'police primacy'. This gave the RUC lead responsibility for tackling the threat of terrorism in Northern Ireland.[261] This made the role of the SB more prominent; it ran the majority of agents in all terrorist groups. [262]

3.23. In 1980, the incoming RUC Chief Constable requested the Security Service to review the RUC's intelligence gathering practices and Senior Security Service Director (and later Director General) Sir Patrick Walker made a number of recommendations intended to improve the exchange of intelligence between SB and CID, including that:

a. Any agents recruited by CID detectives in the course of criminal investigations should be handed over to SB for handling or, where that wasn't possible, jointly handled between the two branches. [263]

[259] Operation Kenova Interim Report at [60/7.5].
[260] de Silva Review, Volume I, at [57/2.15].
[261] de Silva Review, Volume I, at [65/3.6]; Michael Kirk-Smith & James Dingley, 'Countering terrorism in Northern Ireland: the role of intelligence' (2009) 3/20 Small Wars & Insurgencies at [551] and [557].
[262] de Silva Review, Volume I, at [65/3.11].
[263] Walker Report, at [4/10].

b. All lists of proposed arrestees must be cleared by SB to ensure that no RUC or army agents were involved. [264]

c. CID officers needed to be alert to the possibility of recruiting individuals they were interviewing. If a suspect may have valuable intelligence, CID should involve SB. If a suspect made an admission but may have intelligence of value, the CID should not proceed immediately to a charge whenever an admission has been obtained. [265]

3.24. In adopting the main recommendations, the SB was to become almost exclusively responsible for contact with and the handling of agents concerned with terrorist organisations[266] and the intelligence collection efforts of SB were prioritised.[267] The Operation Kenova Interim Report noted that:

> "*The Walker report appear[ed] to have led to an unhelpful separation between the intelligence gathering and law enforcement sides of policing in Northern Ireland. The report, and how Special Branch interpreted and applied it, resulted in the routine practice of intelligence not being shared with those investigating Troubles related crimes, on the basis that to share such information would risk exposing where it came from. The way senior officers in RUC Special Branch interpreted the report led to a monopoly in agent related activity across the force. It also resulted in a cabal of Special Branch self-interest that was fiercely resistant to any form of scrutiny or oversight based on claims about a paramount need for secrecy*." [268]

[264] Walker Report, at [5/11].
[265] Walker Report, at [7/16].
[266] Operation Kenova Interim Report at [147/50.3].
[267] Operation Kenova Interim Report at [147/50.5].
[268] Operation Kenova Interim Report at [2].

3.25. Following the Walker Report, there were concerns about practices within the RUC which led to investigations by DCC Stalker and Chief Constable Sampson. [269]

3.26. In May 1984 the DCC of the Greater Manchester Police, John Stalker, was commissioned by the Chief Constable of the RUC to conduct an inquiry into 'shoot to kill' allegations facing the RUC. The interim report described how SB had withheld information from the investigation team which impaired its effectiveness and that some SB officers did not understand the potential evidential value of intelligence material or how to use it. [270] Chief Constable Sampson took over DCC Stalker's work in May 1986; in his report, he described a widely held belief at a senior level in SB that it was autonomous and its operations should not be questioned. [271] He was concerned that SB did not disclose intelligence to its CID. [272] This finding resonated with Jon Boutcher who noted in the Operation Kenova Interim Report that information was not being shared and actioned in order to permit agents to remain in place without coming to harm and that this failure was "*inextricably linked*" to the security forces not disclosing material about agents committing serious crimes. [273]

3.27. Despite the Stalker and Sampson investigations, concerns persisted and HM Inspector Charles McLachlan was asked to carry out a special investigation. In his 1988 report, he drew attention to the RUC's focus on intelligence and the fact that it placed ever more demands on intelligence collectors and little weight on how or from whom they

[269] Operation Kenova Interim Report at [33].
[270] Operation Kenova Interim Report at [149/51.8].
[271] Operation Kenova Interim Report at [32].
[272] Operation Kenova Interim Report at [33].
[273] Operation Kenova Interim Report at [33].

acquired their intelligence. [274] He recommended appointing a senior ACC to coordinate the work of SB and CID. [275]

3.28. This theme is also reflected in other reports and investigations which followed the murder of Patrick Finucane. For example, the Billy Wright Inquiry noted, in relation to the position in 1997: "*…how little cooperation appeared to exist between SB and CID, reflecting a culture of secrecy and confidentiality which was endemic.*" [276] In 1999 the Patten Report on policing in Northern Ireland recorded that "*several respondents have described it* [SB] *as a "force within a force" and RUC officers, serving and retired, have made similar comments to us, a common observation being that sub-divisional commanders often knew very little about the activities of the Branch in their areas."*[277] Sir John Stevens also examined the relationship between the RUC SB and CID during the Stevens III investigation. In his 2003 Report, he made a specific recommendation that the CID Senior Investigating Officers should receive full cooperation and relevant intelligence from the SB. [278]

3.29. One of the significant impacts of the "*long-standing strains in the relationship between the RUC SB and CID during the Troubles*" [279] was that criminal cases involving secret intelligence or agents were particularly difficult to prosecute because they were inextricably bound up with considerations of secrecy and agent-protection. [280] Agents infiltrating and penetrating terrorist groups provided the security forces with significant amounts of valuable intelligence, but this was not always seen as actionable because intervening on the

[274] Operation Kenova Interim Report at [151/53.4].
[275] Operation Kenova Interim Report [152/53.6].
[276] Lord MacLean (2010) *The Billy Wright Inquiry – Report* (HC 431, 2010-11), at [651/ 16.37]: https://assets.publishing.service.gov.uk/media/5a7caf1840f0b65b3de0a869/0431.pdf (accessed 14 Sep 2026).
[277] Patten Report at [75/12.10].
[278] Stevens 3 Overview and Recommendations at [19], recommendation 5.
[279] de Silva Review, Volume I, at [440/23.46].
[280] Operation Kenova Interim Report at [134/46.5].

strength of it could point to its existence and consequently compromise its source and any future supply of intelligence. [281] Former SB officers emphasised to Sir Desmond de Silva that the rationale underpinning SB's approach was that, after 1976, security policy was driven by an intelligence-led approach aimed at preventing loss of life and the importance of protecting intelligence sources limited the SB's ability to provide all relevant information to the CID. [282] As a result, the security forces often withheld and did not act on or share with investigators intelligence they held about Troubles related murders and other offences. The Operation Kenova Interim Report noted that investigations and prosecutions were often stymied from the outset. [283]

[281] Operation Kenova Interim Report at [134/46.6].
[282] de Silva Review, Volume I, [441/23.49].
[283] Operation Kenova Interim Report at [134/46.6].

4. THE ARMY AND FORCE RESEARCH UNIT (OVERVIEW)

Introduction

4.1. The Army acted in support of the RUC and was involved in many aspects of intelligence. The Army's recruitment and handling of agents is an important topic relevant to this Inquiry (and to Sir Desmond's Review) [284] and therefore an overview of its hierarchy and structure is provided below.

4.2. The FRU was the Army's premier covert agent-running unit formed in 1982. The Army had run agents in Northern Ireland for many years, though responsibility had previously rested with separate Brigade Research Units and other units. [285]

4.3. As per a new 1988 Directive, entitled 'Perestroika' [286] the FRU's Commanding Officer (CO) directed a reorganisation of the Unit in order to make it an "*independent unit*" within the Army intelligence structures. [287] The Directive set out the systems for reporting of intelligence within the FRU; job descriptions for different roles; and a series of moves necessary to establish the independence of the FRU. The changes included agent case files being moved from the offices of the Security Services' Assistant Political (ASP) to the FRU HQ. [288]

4.4. FRU's role was described in a statement made to Stevens I in 1990 by the FRU's CO, A/05:

> *"The secret role of the FRU is to obtain intelligence from secretly penetrating terrorist organisations in Northern Ireland by recruiting and running agents and informants. This role is vital to*

[284] de Silva Review, Volume I at [66/3.15].
[285] de Silva Review, Volume I at [66/3.15].
[286] Meaning 'restructure' in Russian regarding the political and economic reform movement in the Soviet Union during the mid-1980s by leader Mikhail Gorbachev.
[287] de Silva Review, Volume I at [66/3.19].
[288] de Silva Review, Volume I at [66/3.19].

counter terrorist operations because only the 'inside knowledge' provided by agents can lead to a true understanding of the terrorists and their intention." [289]

4.5. Sir Desmond provided information regarding the FRU's structure in his report. [290] It consisted of an HQ and four regional units or "Dets": North Detachment, West Detachment, East Detachment and South Detachment. Brian Nelson was run from the East Detachment FRU (East Det), which covered the Greater Belfast area. Each Detachment employed handlers and an Officer Commanding (OC) (who normally held the rank of lieutenant or captain). The OC of each Detachment then reported to the FRU's overall Commanding Officer (CO). An Operations Officer would deputise for the CO and had specific responsibilities for certain areas of operations. The CO then reported to the Commander of Land Forces (CLF), through the Assistant Chief of Staff of the Army's Intelligence Section (ACOS G2), and then the CLF to the GOC. The Chief of the G2 Intelligence Section was responsible for the Field Intelligence Fund, which financed FRU operations.

4.6. The Intelligence Services in Northern Ireland – army intelligence, the RUC Special Branch, and MI5 – were heavily dependent on recruiting informers among both republican and loyalist paramilitary organisations. The FRU ran Brian Nelson as their only agent infiltrated into loyalist paramilitary groups, whereas the FRU ran many agents in republican paramilitary organisations. [291]

4.7. The existence of the FRU only first became public during the trial of Bian Nelson in 1992.

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[289] de Silva Review, Volume I at [66/3.16] and Statement of A/05, 9 October 1990.
[290] de Silva Review, Volume I at [66/3.17] to [66/3.18].
[291] de Silva Review, Volume I at [67/3.20].

The Army Command Structure

4.8. Sir Desmond notes that the way in which the military chain of command was operated was set out in the 1986 Directive for the FRU issued by Major General A S Jeapes on 26 July 1986. The 1986 Directive stated that:

> "*CO FRU is responsible to CLF [Commander of Land Forces] through ACOS-G2 for the command, control and coordination of all Research operations Province-wide. Detachments of the FRU operating in [Brigade areas] are under command of CO FRU*." [292]

4.9. According to submissions made in 2000 by the campaigning group British Irish Rights Watch (BIRW), the CO FRU was supported by an Operations Officer and Intelligence Officer among other personnel. Each Detachment was commanded by an officer who was assisted by a Field Source Controller, who had eight or ten handlers, a clerk and a collator, [293] FRU was tasked through G2 (Intelligence and security) at army headquarters in Lisburn (HQBI). BIRW also report that FRU employed some 50 handlers and ran some 100 agents and informers in total. [294]

4.10. Under the heading 'Concept of Operations', the 1986 Directive stated that:

> *"No Research operation is to be carried out which does not conform to this Directive or to the Instructions for Source*

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[292] de Silva Review, Volume I at [218/8.126] and Directive for the Force Research Unit, 1986, para 7.
[293] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 2.4. See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/
[294] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 2.4. See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/

Handling, without prior authority of Commander Land Forces (CLF).” [295]

4.11. Sir Desmond notes that an Annex to the ‘Instructions for Source Control and Handling in Northern Ireland’ dated 25 July 1986 explicitly sets out the command and control arrangements for the FRU. [296] Critical instructions relevant to the chain of command include:

> *“The policy in respect of source handling and the organisation required to deal with Army sources is to be directed by HQNI. The ACOS G2 is responsible to the CLF for all matters of policy relating to the recruitment, security, management and payment of sources.*
>
> *… All tasking for FRU is to be through ACOS G2.*
>
> *It is unlawful for any person to authorise an illegal act. Where there is any possibility of a source becoming involved in criminality or an area of political sensitivity, ACOS G2 is to be informed, through CO FRU, so that preventative measures can be taken.”* [Emphasis added by Sir Desmond] [297]

Intelligence gathering and dissemination

4.12. It is important to note that the British Army and the RUC had overlapping responsibilities when fighting paramilitary violence. Both created specialised units for different types of covert operations. The RUC had Special Branch (SB) and Special Support Units (SSUs), and the Army had the 14th Intelligence Company (“Special Reconnaissance Unit”, also known as “the Det”), Special Air

[295] de Silva Review, Volume I at [218/ 8.127] and Directive for the Force Research Unit, 1986, para 4.
[296] de Silva Review, Volume I at [218/8.128].
[297] de Silva Review, Volume l I at [218/8.128] and Instructions for Source Control and Handling in Northern Ireland, Annex A, Command and Control, paras 1–3.

Service (SAS) and the FRU. MI5, the UK Intelligence Service responsible for domestic security was in addition to this. To ensure cooperation and coordination between these many groups, the UK Government set up integrated intelligence centres called Tasking and Coordination Groups (TCGs)[298]. The TCGs were under the control of RUC Special Branch, the division of the police responsible for intelligence gathering[299]. Martin Ingram (the pseudonym of a former member of the FRU) told the Lawyers Committee for Human Rights in February 2002 that FRU would pass information to the appropriate regional head of Special Branch, who was ultimately responsible for deciding what needed to be done as a result of the information. Ingram stated that the Army would have some say in how the information was to be exploited primarily to ensure that the agent was not compromised. [300] A TCG which contained members of the various specialist intelligence units, would then implement or coordinate the implementation of this decision. [301]

4.13. The Army's study of Operation Banner [302] claimed that it was "hard to understate" the importance of intelligence-gathering for "the insurgency could not have been broken, and the terrorist structure could not have been engaged and finally driven into politics without

[298] Fionnuala Ní Aoláin, *The Politics of Force: Conflict Management and State Violence in Northern Ireland* (Blackstaff Press 2000) at para. 59, cited in Lawyers Committee for Human Rights, 'Beyond Collusion' (February 2002) at fn. 81 lchr.org/pubs/descriptions/beyond_collusion.pdf
[299] Peter Taylor, *Brits: The War Against the IRA* (Bloomsbury 2001) at para. 242 and Fionnuala Ní Aoláin, *The Politics of Force: Conflict Management and State Violence in Northern Ireland* (Blackstaff Press 2000) at para. 59, both cited in Lawyers Committee for Human Rights, 'Beyond Collusion' (February 2002) at fns. 81 and 82 lchr.org/pubs/descriptions/beyond_collusion.pdf
[300] See footnote 84 in Lawyers Committee for Human Rights, 'Beyond Collusion' (February 2002), lchr.org/pubs/descriptions/beyond_collusion.pdf
[301] Urban at [95]; Peter Taylor, *Brits: The War Against the IRA* (Bloomsbury 2001) at para. 242, both cited in Lawyers Committee for Human Rights, 'Beyond Collusion' (February 2002), lchr.org/pubs/descriptions/beyond_collusion.pdf
[302] The operational name for the British Armed Forces' operation in Northern Ireland from 1968-2007.

the intelligence organisations and processes that were developed". [303]

4.14. Sir Desmond described the system for the recording and dissemination of FRU intelligence as follows:

a. The FRU recorded the detail of all debriefs with agents on a **Contact Form (CF) or Telephone Contact Forms (TCFs).** CFs/TCFs contained "*exhaustive detail*" about the intelligence provided by a source, as well as information about the source's security, motivation, finance and welfare. [304] Sir Desmond found CFs the most detailed record of intelligence that he saw for his Review, more than the Security Services' 'Contact Notes' or telegrams, and handwritten 'debrief forms' produced by the RUC SB.[305] According to BIRW one copy of each form was made and sent to FRU HQ in Lisburn. [306]

b. The FRU also produced **Military Intelligence Source Reports (MISRs).** [307] MISRs contained a summary of the information from the CFs which were disseminated to the broader intelligence community in Northern Ireland, including the RUC SB's Source Unit and the Tasking and Coordinating Group (TCG). [308] Sir Desmond found that since the Stevens Investigations were able to find signed receipts for some MISRS, despite the passage of time, it was reasonable to assume that the majority of the MISRs issued by FRU must have reached the RUC. [309] Anything

[303] MoD, 'Operation Banner', para.818, as cited in Aaron Edwards, *Agents of Influence* (Kildare: Merrion Press 2021) at [xvii].
[304] de Silva Review, Volume I at [190/8.32].
[305] de Silva Review, Volume I at [190/8.32].
[306] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 2.5
See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/
[307] de Silva Review, Volume I at [190/8.33].
[308] de Silva Review, Volume I I at [190/8.33].
[309] de Silva Review, Volume I at [190/8.33].

particularly sensitive would be contained within a 'MISR supplement' form which was held at a higher classification. Many of Nelson's reports fell into this category. [310] Sir Desmond found that there was nothing wrong with the summary nature of this information, and that they were generally more informative than the RUC SB's equivalent SB50 documents. [311] In addition, Sir Desmond noted that FRU officers indicated that Nelson's intelligence would routinely be communicated to the FRU Source Unit over a secure telephone call prior to issuing a formal MISR. [312] Judge Cory also noted that there were daily meetings involving members of FRU and RUC SB in which the contact of the CFs and TCFs could be discussed. [313]

c. Information could then be passed to the RUC CID to investigate suspected crimes and to act on information to arrest suspects. Within the RUC, the division of labour saw the RUC Special Branch concerned primarily with the "*collection, collation and dissemination of intelligence on terrorist individuals and organisations*", and the CID concentrating on "*investigation of major crimes*", including "*interviewing witnesses, interrogating suspects and [the] collection of evidence*". [314]

[310] de Silva Review, Volume I at [190/8.34].
[311] de Silva Review, Volume I at [190/8.35].
[312] de Silva Review, Volume I at [191/8.36].
[313] Cory Report at [23/1.42].
[314] The National Archives, Kew (TNA) CJ 4/2903, Report of the Working Party on Force Levels in Northern Ireland, 21 September 1979, annex D – Police Tasks, as cited in Aaron Edwards, *Agents of Influence* (Kildare: Merrion Press 2021) at [xii].

5. THE SECURITY SERVICE (OVERVIEW)

Introduction

5.1. Whilst the names 'MI5' (known officially as the Security Service) and 'MI6' (the Secret Intelligence Service) are today familiar parts of modern British life and well known to many of those engaged in this Inquiry, an introduction to the agencies is instructive in grounding this chapter and giving context to the publicly-known information regarding their role in the events surrounding the murder of Patrick Finucane.

5.2. In contrast to the 21st century position (where MI5 and MI6 each now has websites, publicly identified leaders and well-known headquarters), at the outset of their operations neither service was even officially acknowledged to exist. The first official public acknowledgment did not come until the publication of Lord Denning's report into the Profumo Affair in December 1963 [315] which set out the existence and remit of the Security Service ('MI5'). Even then, it was not until thirty years later in 1994 that the existence of the Secret Intelligence Service was officially confirmed with the enactment of its enabling legislation.

5.3. Those dates can be contrasted with the now published histories of both services which establish that by the time Lord Denning's report in 1963, each had already been in operation in one form or another for more than half a century, having grown out of the 'home' (MI5) and 'foreign' (MI6) sections of a single war-time intelligence service - the Secret Service Bureau - in the early 1900s.

[315] Lord Anderson, 'National Security and Human Rights' (Denning Society Lecture at Lincoln's Inn, London, 27 Nov 2024), at [1/3]. https://www.daqc.co.uk/wp-content/uploads/sites/22/2024/11/Denning-Society-Lecture-Anderson-281124.pdf (accessed 14 Sep 2026).

5.4. One aspect of the secrecy shrouding the first decades of the agencies' operations was that neither of them were defined nor delimited in law by legislation. Both agencies have now been placed upon a statutory footing: MI5's enabling legislation is the Security Service Act 1989; [316] whereas MI6's is the Intelligence Act 1994. Those statutes are peculiar to the organisations, [317] but each sets the role, remit and accountability structure for its respective agency. Neither statute was in force at the time of Patrick Finucane's murder. During that period MI5 and MI6 operated under the aegis and license of the relevant Secretary of State: the Home and Foreign Secretaries respectively. In consequence and during that period, it has come to be recognised that there was little external oversight or guiding principle available to safeguard the operation of either agency, and even less public scrutiny of their actions and decision making.

5.5. At the time of Patrick Finucane's murder, the remit of the Security Service was still that as had been expressed in a Directive issued by the then Home Secretary to MI5's Director General in 1952 (known as the 'Maxwell Fyfe' Directive or Security Service Charter).

5.6. The Directive was initially a secret document but had been published in full a decade later in 1963 by Lord Denning within the text of his Profumo-affair Report that had first officially acknowledged the existence of MI5. [318]

> "1. *In your appointment as Director-General of the Security Service you will be responsible to the Home Secretary personally. The Security Service is not, however, a part of the Home Office. On*

[316] In force 18 December 1989.
[317] Although The Intelligence Act 1994 is also the enabling legislation for the third branch of the UK's Intelligence Community, Government Communications Headquarters ('GCHQ').
[318] *Lord Denning's Report* (Cmnd 2152, 1963).

appropriate occasion you will have right of direct access to the Prime Minister.

2. *The Security Service is part of the Defence Forces of the country. Its task is the Defence of the Realm as a whole, from external and internal dangers arising from attempts at espionage and sabotage, or from actions of persons and organisations whether directed from within or without the country, which may be judged to be subversive to the State.*

3. *You will take special care to see that the work of the Security Service is strictly limited to what is necessary for the purposes of this task.*

4. *It is essential that the Security Service should be kept absolutely free from any political bias or influence and nothing should be done that might lend colour to any suggestion that it is concerned with the interests of any particular section of the community, or with any other matter than the Defence of the Realm as a whole.*

5. *No enquiry is to be carried out on behalf of any Government Department unless you are satisfied that an important public interest bearing on the Defence of the Realm, as defined in paragraph 2, is at stake.*

6. *You and your staff will maintain the well-established convention whereby Ministers do not concern themselves with the detailed information which may be obtained by the Security Service in particular cases, but are furnished with such*

information only as may be necessary for the determination of any issue on which guidance is sought." [319]

5.7. There are a number of features of the Charter that are worth highlighting as we move to consider MI5's operations in Northern Ireland:

a. The Charter charged the Service with protecting the realm from the dangers of espionage, subversion and sabotage. Counter-terrorism was not one of MI5's initial functions but was added later (see below).

b. The chief check on MI5's authority was the requirement to limit their actions to what was considered "necessary" to discharge their responsibility. The Directive contained no provision guiding that principle, nor created any external structure that could provide oversight or accountability.

c. MI5's operational autonomy and lack of supervision was underlined in the exhortation that Ministers 'should not concern themselves' with the detail of MI5's operations.

d. Importantly, the Charter did expressly require MI5 to operate without "*political bias*" and to offer its protection to all "*sections of the community*" in discharging its duty of defence of the realm.

5.8. MI5's responsibility for counterterrorism was added to the Charter on 13 November 1972 by the Joint Intelligence Committee in a notice that again underlined the operational autonomy of MI5:

"*The Security Service is the focal point for the receipt, assessment and distribution of intelligence on terrorist activities affecting*

[319] Subsequently published in full by the ECHR in *Hewitt and Harman v UK* App no 12175/86 (ECtHR, 9 May 1989).

British security and for the provision of advice to the appropriate authorities on precautions and counter-measures against the threat.

The role of the [JIC] Current Intelligence Groups is confined to the field of assessment. In that field they are not concerned with the assessment of intelligence of an operational nature relating to specific threats to British security. Assessment of such material is... the responsibility of the Security Service." [320]

Organisation of MI5 and MI6 Operations in Northern Ireland

5.9. As has been explained, throughout the period of direct rule after 1972, the Secretary of State for Northern Ireland had been given constitutional responsibility for the administration of law and order in Northern Ireland.

5.10. Sir Desmond reports that shortly after the first Secretary of State was appointed, the new Ministry identified an urgent requirement for an increased supply of intelligence from Northern Ireland. [321] That requirement had come in the form of an urgent request from the Permanent Under Secretary of the New Northern Ireland Office Sir William Neild. [322]

5.11. A new, Irish Joint Section (IJS) was selected as the mechanism to service the new intelligence requirement. The IJS was a combined operation between MI5 and MI6, designed to control the agent running operations that were then being undertaken by both services, and for the distribution of the intelligence obtained as a

[320] Christopher Andrew, *Defence of the Realm: The Authorized History of MI5* (Allen Lane, 2009) at [614] (quoting from MI5 archives seen by the author).
[321] de Silva Review, Volume I at [67/3.23].
[322] Andrew, at [621] quoting from MI5 archives seen by the author.

result. It was managed in London, but maintained a Belfast 'station' which

> "*possessed a combination of human and technical sources (both still classified) which sometimes provided important insights into PIRA policy and operation*". [323]

5.12. Incongruously, the histories assert that at the outset of the IJS's operations it was MI6 and not MI5 (which had just been given the responsibility for counter-terrorism by the Joint Intelligence Committee) that had the greater role in running the joint service. The explanation given is that MI6's primacy was a function of MI5's lack of preparedness and focus, rather than a deliberate choice. [324] That lack of focus was perhaps reflected by MI5's resource allocation at that stage, as calculated by an MI5 Director preparing a spending review in 1974:

> "*The proportion of total Service effort devoted directly to the investigation of terrorist organisations is approximately 3% while another 4.5% is directly concerned with Northern Ireland.*
>
> *…DDG agreed that to use these figures in the Intelligence Co-ordinator's Review… could not pass without startled comment from the Chiefs of Staff and their advisers. Even if we were to use figures reflecting the effort in the field of counter subversion (without giving any figure for that) we should still only be talking about something under 10% on counter terrorism and approximately 15% on Northern Ireland, figures which again the DDG considered were subject to a similar objection*". [325]

[323] Andrew, at [684].
[324] Andrew, at [621]
[325] Andrew, at [610].

5.13. However, the inference that arises from the publicly available material is that in the years that followed the initial establishment of the IJS, MI5 significantly scaled up their operations and increased their involvement, efficacy and contribution to the joint section. In 1976 the Secretary of State for Northern Ireland Merlyn Rees felt able to give the Prime Minister James Callaghan the following appraisal,

> "*The first point I should like to make is that we now have a well-established, single machine for processing intelligence and covert work in Northern Ireland. The overall responsibility for the coordination of intelligence operations is exercised by the Director and Coordinator of Intelligence (DCI)... [in] the Northern Ireland Office in Belfast. He is responsible to me through the Permanent Under Secretary*". [326]

5.14. By November 1980, matters had progressed to the point that the Director of MI5's F Branch (himself a former DCI) gave his MI5 Director General the following appraisal:

> *"[IJS] officers are already more directly involved with RUC Special Branch in producing operational intelligence on all aspects of the security scene in Northern Ireland; and that involvement extends to dealings with SB officers both at RUC HQ and elsewhere in the Province... In short [the IJS] is increasingly seen by both Army and the RUC as a significant part of the intelligence gathering organisation in the Province.*
>
> *...The RUC suspicion of the Security Service Operations in Northern Ireland apparent some years ago has now gone and the Security Service maintains close contacts with the RUC through two sections, F5 (principally) and F3, which already have an*

[326] Andrew, at [645].

acknowledged responsibility for parts of the Irish Republican and Protestant extremism..." [327]

5.15. The publicly available material suggests that as the IJS increased in capability and efficacy through the 1970s and into the early 1980s, so too did MI5's influence and leadership develop within the Joint Section. To complete the picture, the Inquiry understands that in April 1984, the 'joint' aspect of the section was finally wound-up, with MI6 formally exiting the arrangement and MI5 taking over sole responsibility for the Belfast station, together with its agents its intelligence product. MI5 created a new, dedicated section, F8, in London with responsibility for the task. [328] The F8 Section was a part of the FX Branch of the Service, which was then given responsibility for delivering MI5's wider counter-terrorism function.

5.16. In 1988, MI5's FX Branch became G Branch and F8 was renamed as G8. [329] In 1990 and shortly after Patrick Finucance's murder, MI5 transferred their Irish counter-terrorism function to a new, dedicated T Branch. [330]

5.17. Perhaps more important than the precise internal MI5 departmental structure is Sir Desmond's unequivocal conclusion that – alongside the agent handling activities of the RUC and the Army's FRU considered in other chapters of this opening – MI5 were actively involved in running their own undercover agents in Northern Ireland throughout the relevant period for this Inquiry. The conclusion was expressed in Sir Desmond's report in the following way,

"*The Security Service ran a comparatively small number of agents within republican and loyalist terrorist groups in Northern Ireland.*

[327] Security Service Archives, quoted in Andrew at [684].
[328] Andrew, at [700].
[329] Andrew, at [745] to [746].
[330] Andrew, at [772].

The Service also played a considerable role in providing operational support for various technical means of intelligence-gathering. Security Service agent-handlers would produce Contact Notes of meetings with agents". [331]

5.18. The Inquiry will test the qualitative conclusions about the nature and extent of MI5's independent agent-running activities, and seek the necessary disclosure to be able to evaluate the visibility the Service would have gained of other agencies intelligence gathering operations through the provision of their 'considerable' operational and technical support.

5.19. The Inquiry will also seek disclosure from MI6 to test the contention that they exited the IJS in 1984, and to understand any role, access and influence they may have had on the events relevant to the murder of Patrick Finucane.

The DCI

5.20. As set out in earlier Chapters, the Secretary of State for Northern Ireland's (SSNI's) principal intelligence advisor was the DCI. That post had been established in 1972 by the first SSNI, William 'Willie' Whitelaw "to act as both his personal security adviser and his main link with the senior army general and the RUC Chief Constable". [332]

5.21. The publicly available information records that the first DCI appointed in 1972 did not come from MI5 as at the time they were then unable to provide an officer of sufficient seniority. We would observe that this fact is capable of providing further support for the contention that MI5 had initially lacked preparedness to fulfil their Northern Irish counter-terrorism function at the outset of the period of direct rule. However, the Inquiry understands that since 1973, the

[331] de Silva Review, Volume I at [68/3.27].
[332] Andrew, at [621].

post of DCI was filled continuously by a senior officer of the Security Service. [333] Sir Desmond's report noted that the purpose of the role was to "coordinate the intelligence machinery" [334] that operated in Northern Ireland.

5.22. A more detailed explanation of the role and function of the DCI is set out in Chapter 7. For present purposes, it is sufficient to note that - in the position of the DCI - MI5 was at the very centre of the various agencies' intelligence gathering in Northern Ireland.

[333] de Silva Review, Volume I at [64/3.4].
[334] de Silva Review Volume I, at [67/3.24].

6. HM GOVERNMENT (OVERVIEW)

6.1. A number of government departments are relevant to the work of this Inquiry:

a. the Ministry of Defence;

b. the Northern Ireland Office;

c. the Home Office;

d. the Cabinet Office; and

e. the Attorney General's Office.

Ministry of Defence

6.2. The Ministry of Defence functions as a military strategic headquarters and a Ministerial Department. It is responsible for the direction of the Armed Forces and the implementation of defence policy.

6.3. The 'Single Service' Chiefs are responsible for the generation and development of forces in their respective services:

a. the Chief of the General Staff is responsible for the British Army;

b. the Chief of the Naval Staff (known as the First Sea Lord) is responsible for the Royal Navy; and

c. the Chief of the Air Staff is responsible for the Royal Air Force.

These posts are subordinate to the professional head of the British Armed Forces, the Chief of the Defence Staff.

6.4. The Secretary of State for Defence is responsible for the direction and conduct of all military operations by providing strategic direction and setting the constraints on the use of force. The Secretary of State

for Defence was therefore ultimately responsible for the conduct of the Army's operations in Northern Ireland during the period the Inquiry will examine.

6.5. During the period the Inquiry will consider, the Secretary of States for Defence were:

a. John Nott MP (later Sir John Nott) (from January 1981 to January 1983).

b. Michael Heseltine MP (later Lord Heseltine) (from January 1983 to January 1986).

c. George Younger MP (later Viscount Younger) (from January 1986 to July 1989).

d. Tom King MP (later Lord King) (from July 1989 to April 1992).

Northern Ireland Office

6.6. The Northern Ireland Office is the Ministerial Department responsible for Northern Ireland. It was formed in March 1972 upon the introduction of the 'direct rule' of Northern Ireland by the UK Government. 335 Before 1972, responsibility for Northern Ireland affairs within the UK Government was held by the Northern Ireland Department of the Home Office, with the Home Secretary taking the key strategic decisions in relation to Northern Ireland affairs. [336]

6.7. The Secretary of State for Northern Ireland has overall responsibility for the Northern Ireland Office. During the period with which the Inquiry is concerned, the Secretary of State was effectively

[335] The Northern Ireland (Temporary Provisions) Act 1972, c.22, s.1.
[336] For example, it was Home Secretary James Callaghan MP's decision to authorise the deployment of the British Army to Belfast in August 1969. See, David McKittrick & David McVea, *Making Sense of the Troubles: A History of the Northern Ireland Conflict* (Viking, 2012) at [64].

responsible for governing Northern Ireland: although there were various initiatives to establish power-sharing and devolution, [337] it was not until December 1999, following the implementation of the Belfast (Good Friday) Agreement, that a lasting devolution settlement was reached.

6.8. During the period the Inquiry will consider, the Secretary of States for Northern Ireland were:

a. Jim Prior MP (later Lord Prior) (from September 1981 to September 1984).

b. Douglas Hurd MP (later Lord Hurd) (from September 1984 to September 1985).

c. Tom King MP (later Lord King) (from September 1985 to July 1989).

d. Peter Brooke MP (later Lord Brooke) (from July 1989 to April 1992).

Home Office

6.9. The Home Office (or the Home Department) is a Ministerial Department responsible for key areas of domestic policy including public safety, national security, policing and immigration. It was established in March 1782. The Secretary of State for the Home Department (more commonly, the Home Secretary) is the head of the Home Office. The Home Secretary is supported by junior Ministers who are responsible for discrete portfolios within the Home Department.

[337] These included: (i) the Northern Ireland Executive, which ran from January to May 1974; (ii) the Northern Ireland Constitutional Convention, which ran from May 1975 to March 1976; (iii) the Northern Ireland Assembly, which ran from October 1982 to June 1986; and (iv) the Anglo-Irish Agreement 1985.

6.10. The Home Secretary is the minister responsible for the Security Service, the UK's domestic intelligence agency. The Security Service is headed by the Director General of the Security Service.

6.11. During the period the Inquiry will consider, the Home Secretaries were:

a. William Whitelaw MP (later Viscount Whitelaw) (from May 1979 to June 1983).

b. Leon Brittan MP (later Lord Brittan) (from June 1983 to September 1985).

c. Douglas Hurd MP (later Lord Hurd) (from September 1985 to October 1989).

d. David Waddington MP (later Lord Waddington) (from October 1989 to November 1990).

e. Kenneth Baker MP (later Lord Baker) (from November 1990 to April 1992).

<u>Cabinet Office</u>

6.12. The Cabinet Office is a Ministerial Department responsible for supporting the Prime Minister and the Cabinet to ensure the effective running of Government and the implementation of policy. It was formed in 1916. The head of the Cabinet Office is the Cabinet Secretary, who is the most senior civil servant in the UK Government.

6.13. During the period the Inquiry will consider,

a. the Prime Ministers were:

i. Margaret Thatcher MP (later Baroness Thatcher) (from May 1979 to November 1990).

ii. John Major MP (later Sir John Major) (from November 1990 to May 1997).

b. the Cabinet Secretaries were:

i. Sir Robert Armstrong (later Lord Armstrong) (from October 1979 to January 1988).

ii. Sir Robin Butler (later Lord Butler) (from January 1988 to January 1998).

Attorney General's Office

6.14. The Attorney General's Office is a Ministerial Department supporting the Law Officers of the Crown, the Attorney General and the Solicitor General of England and Wales. The Law Officers provide legal advice to the UK Government. From 1972 to 2010, the Attorney General for England and Wales also performed the role of Attorney General for Northern Ireland. [338]

6.15. During the period the Inquiry will consider, the Attorneys General were:

a. Sir Michael Havers QC MP (later Lord Havers) (from May 1979 to June 1987).

b. Sir Patrick Mayhew QC MP (later Lord Mayhew) (from June 1987 to April 1992).

[338] See: (i) The Northern Ireland (Temporary Provisions) Act 1972, c.22, s.1(2); and (ii) The Northern Ireland Constitution Act 1973, c36, s10(1).

7. RELATIONSHIP BETWEEN THE THREE ELEMENTS OF THE SECURITY FORCES & GUIDANCE ON THE USE OF AGENTS IN NORTHERN IRELAND

Introduction

7.1. The intelligence networks used by the security forces in Northern Ireland, and the relationship between them, developed *"piecemeal, over a number of years, often in response to specific events during the Troubles"*. [339] As a consequence, they are complex and characterised by overlapping roles and elusive lines of communication and direction.

7.2. The theoretical starting point was the concept of police primacy, which had been established by then Secretary of State for Northern Ireland, Merlyn Rees, in 1976. The RUC was given lead responsibility for tackling the threat of terrorism in Northern Ireland, with the Army and Security Service required to act in support of the RUC. [340]

7.3. However, Rees' predecessor as Secretary of State, Willie Whitelaw, had previously established the position of Director and Coordinator of Intelligence (DCI) as *"his personal security adviser and his main link with the Chief Constable of the RUC and General Officer Commanding (GOC) of the Army in Northern Ireland*." The role was held, from 1973, by an officer of the Security Service. [341]

7.4. In 1976, Rees briefed the incoming Prime Minister, James Callaghan, that: "we now have a well-established, single machine for intelligence and covert work in Northern Ireland. The overall responsibility for the coordination of intelligence operations is

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[339] de Silva at [64/3.2].
[340] Operation Kenova Interim Report at [59/6.3]; Andrew at [645]. The lead agency for countering Irish Republican terrorism in Great Britain until 1992 was the Metropolitan Police Special Branch: Operation Kenova Interim Report at [60/8.2]. The lead agency for countering Irish Republican terrorism in Europe, and Loyalist terrorism in the Great Britain, was the Security Service: Andrew at [649-650], [653]. Andrew, at [653], comments that the management of the Security Service *"reasonably regarded"* this arrangement to be *"illogical"*.
[341] Operation Kenova Interim Report at [62/8.4]; Andrew at [621]. See also de Silva at [64/3.4].

exercised by the [DCI] … He is responsible to me through the Permanent Under Secretary." [342]

7.5. This confident assertion was not borne out by what followed. According to the findings of Operation Kenova and Sir Desmond de Silva, in the years that followed, the intelligence units of the RUC, the Army and the Security Service were very far from being a "single machine". [343] Each worked to its own processes and chain of command, and the relationships between the three were complex, sometimes tense, and at points hostile. Meanwhile, the role of the DCI, and the coordination and oversight the holder exercised, was considerably more nebulous and less directive than implied by Rees' words to Callaghan. [344]

Structures

<u>The Role of the DCI</u>

7.6. Sir Desmond described the role of the DCI in the following terms: [345]

7.7. The Interim Report of Operation Kenova agreed that the DCI did not have operational responsibility and that the role was "not to direct intelligence operations but rather to liaise and coordinate."

> "*The DCI was responsible under the Permanent Secretary of the NIO for delivering high-level policy direction and advice relating to intelligence activity in Northern Ireland, and for providing support on intelligence matters to the Secretary of State … and the Minister's two other principal security advisers, the Chief*

[342] Quoted in Andrew at [645].
[343] Similar evidence is found in the secondary sources. See, for example: Ware at [23] - [26]; Martin Ingram and Greg Harkin, *Stakeknife: Britain's Secret Agents in Ireland* (Dublin: O'Brien Press Ltd, 2004, 2024 reprint), at [30] – [32].
[344] This summation is a simplification of the complexities. Within the RUC, both Special Branch and the CID ran, and sometimes clashed over, agents: see Brown, chapter 13. The Army retained various intelligence gathering capabilities, which were given greater central direction through the establishment of the Force Research Unit in 1982.
[345] de Silva at [68/3.29].

Constable of the RUC and the GOC. The DCI had no operational responsibilities, but was concerned with the provision of an intelligence-reporting service to Ministers and officials in the NIO and in Whitehall…" [346]

7.8. The 1986 directive that governed the work of FRU (and which is considered in more detail below), is quoted by Sir Desmond as stating that: "The overall direction for source coverage within the Province is the responsibility of the [DCI] who exercises this responsibility through the various Intelligence Committees."

7.9. The extent to which the DCI was responsible for providing *"direction"* is ambiguous, at least from these publicly available sources. Was the expectation that it would be limited to high-level strategic considerations, such as identifying the priority areas for intelligence coverage? Or was it more extensive, implying some role in overseeing the work of the agencies and providing advice on how it was conducted (while not descending into operational detail)? Did this ambiguity contribute to what Sir Desmond identified as the *"accountability gap"* in the handling of Brian Nelson as an agent? [347] As is discussed further below, there is a stark difference of view between the evidence of FRU and Security Service personnel over the extent to which the latter oversaw the work of the former.

7.10. It appears from Sir Desmond's report that at the time of the murder of Patrick Finucane, the DCI was John Deverell. [348] He died in the Mull of Kintyre Chinook helicopter crash in June 1994. [349]

7.11. The DCI was supported by officers who worked closely with both the RUC and the Army. The former was stationed at the RUC Headquarters on Knock Road, Belfast, and was known as the DCI Rep

[346] Operation Kenova Interim Report at [61/8.3].
[347] de Silva, chapter 8.
[348] de Silva at [228/8.183].
[349] Andrew at [785].

Knock. That officer was responsible for liaising between the Security Service and the RUC and supporting national security warrant applications. [350]

7.12. Within the Army, the DCI was represented by the Assistant Secretary Political (ASP) and the Deputy Assistant Secretary Political (DASP). The role of the ASP was, according to Operation Kenova, "to ensure that MI5 views were represented at military headquarters and that it was kept informed of developments relating to the Army's collection and exploitation of intelligence." [351] The ASP also provided operational security advice in certain circumstances. 352 The 1986 FRU directive stated that the ASP was "to be kept informed of the status of current sources on a regular basis". [353] Operation Kenova's Final Report found that the ASP "was also consulted where recruitment or retention of a source offered the possibility of political embarrassment or adverse publicity." [354]

7.13. The DASP worked in the Army's All-Source Intelligence Cell, which was responsible for the collation and assessment of all Army intelligence. [355] Operation Kenova's Final Report found that the role of the DASP was "to ask questions and give feedback on FRU reporting and, where possible, advise on future taskings, especially at a strategic level. Having access to the FRU intelligence output also enabled DASP to direct material to the appropriate branches within MI5". [356]

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[350] Operation Kenova Interim Report at [61/8.5].
[351] Operation Kenova Interim Report at [61/8.4].
[352] Operation Kenova Interim Report at [61/8.4].
[353] de Silva at [226/8.173].
[354] The 'Operation Kenova Final Report': Kenova, *Kenova Final Report – Northern Ireland Legacy Investigations and Reviews* (2025), at [160/ 14]: https://www.psni.police.uk/sites/default/files/2025-12/Operation%20Kenova%20Final%20Report%202025.pdf (accessed 14 Sep 2026).
[355] de Silva at [227/8.174].
[356] Operation Kenova Final Report at [89/12.23].

7.14. Administrative staff from the Security Service also provided support to the ASP and the Army by maintaining the filing system within FRU. [357]

Committees and intelligence forums

7.15. As is noted above, the 1986 FRU directive referred to the DCI exercising the *"overall direction for source coverage … through the various Intelligence Committees"*. [358] Some of those committees, and other forums in which intelligence work was discussed, are recorded in the de Silva report in the following terms.

7.16. **Tasking and Co-ordination Groups (TCGs)** were permanent units under the command of RUC Special Branch. They were concerned with the exploitation of intelligence to frustrate terrorist groups. To this end they received information from *"all three organisations involved in intelligence gathering in Northern Ireland and from a variety of technical sources."* The TCGs drew on operational resources from the RUC and the Army and made decisions on how such resources should be prioritised and deployed. Examples of the outcome of TCG work given by Sir Desmond include exploiting intelligence by means of covert surveillance or the use of overt Army or RUC units. Statements to the Stevens investigation suggests that records were generally destroyed after a short period of time.[359]

7.17. **The All-Source Intelligence Cell** was established in 1988 to improve the sharing of intelligence between the RUC, the Army and the Security Service. Officers from each of these agencies were based in the Cell. Sir Desmond's report comments that *"in theory"* they had access to the intelligence produced by all the agencies. [360]

[357] de Silva at [227/8.174–8.175]; Operation Kenova Final Report at [89/12.23].
[358] de Silva at [226/8.173].
[359] de Silva at [69/3.34–3.35].
[360] de Silva at [69/3.36].

7.18. **The Targeting Policy Committee (TPC)** was chaired by what Sir Desmond's report describes as the Assistant DCI. [361] It was attended by, among others, the Assistant Chief of Staff of the Army Intelligence Section (ACOS G2), CO FRU, and the Deputy Head of Special Branch. The TPC considered which terrorist groups or geographical regions required greater intelligence coverage and sought to co-ordinate attempts to obtain new sources of intelligence to meet these needs. [362]

7.19. **The Intelligence Review Committee (IRC)** met monthly until mid-1988, and thereafter on a weekly basis. It was chaired by the DCI and comprised senior representatives of the RUC, Army and *"other agencies"*. The IRC reviewed the intelligence efforts made against both republican and loyalist terrorist organisations. [363]

7.20. **Security Policy Meetings (SPMs)** were attended by the Secretary of State for Northern Ireland, the DCI, the Chief Constable of the RUC, the GOC, and the NIO Permanent Secretary. The meetings typically occurred every month and involved a review of paramilitary activity and intentions, and consideration of other relevant security issues that were raised. Sir Desmond's report describes the meetings as *"high-level discussion of security policy at a strategic level; they did not generally cover operational issues such as agent recruitment and handling"*. [364]

7.21. **The Joint Intelligence Committee (JIC)** is a long-established committee that (from 1957) sat within the Cabinet Office at the apex of Whitehall's central intelligence machinery. [365] The JIC was responsible for making assessments for Ministers and officials on a

[361] It is not clear if this is a reference to the ASP or to a separate post.
[362] de Silva at [69/3.33].
[363] de Silva at [69/3.32].
[364] de Silva at 68/3.31].
[365] The National Archive, Cabinet Office records, Central Intelligence Machinery: https://discovery.nationalarchives.gov.uk/details/r/C1353; Aaron Edwards, *Agents of Influence: Britain's Secret War Against the IRA* (Newbridge: Merrion Press, 2021), at [13].

wide range of intelligence related matters, covering all threats to the UK homeland and overseas territories and dependencies (and thus going well beyond the issue of terrorism in Northern Ireland). It drew on all relevant information, of which secret intelligence reports were one component. The JIC played a role in co-ordinating the work of the intelligence agencies, in line with its broad remit. Through its assessments branch, it sought to *"turn secret intelligence into briefings for the Prime Minister and her senior ministers"*. [366] Sir Desmond's report commented that the JIC minutes disclosed to his review showed that it *"focussed primarily on the terrorist threat in Great Britain and in continental Europe during the late 1980s."* [367]

Dissemination of intelligence

7.22. The most important elements of the dissemination of intelligence for the purposes of this Inquiry are (i) the dissemination of intelligence from FRU to the RUC, and (ii) the dissemination of intelligence from the combined efforts of the security forces in Northern Ireland to politicians and civil servants in the NIO and Whitehall.

<u>The dissemination of intelligence from FRU to the RUC</u>

7.23. Sir Desmond's report found that FRU produced *"two main types of intelligence document"* recording the intelligence provided by an agent: a Contact From (CF) and a Military Intelligence Source Report (MISR). [368]

a. <u>Contact Forms</u> were predominantly internal documents circulated within Army structures. They contained detailed accounts about the meeting between an agent and a handler.

[366] Edwards at [13], citing Michael Goodman, *The Official History of the Joint Intelligence Committee* vol. 1 (Abingdon: Routledge, 2016), and the report of Lord Franks, *Falkland Island Review* (London: HMSO, 1983), Annex B, para 13-15.
[367] de Silva at [70/3.37].
[368] de Silva at [67/3.20].

[369] Examples are contained in volume 2 of Sir Desmond's report, including a redacted extract of a CF dated 14 February 1989 recording contact with Nelson (Agent 6137) in the aftermath of the murder of Patrick Finucane. [370] Sir Desmond's report suggests that CFs concerning Nelson were not shared with RUC SB and that the Security Service did not *"routinely receive"* them. The records seen by Sir Desmond's review show that the Service was sent nine CFs regarding Nelson, all of which dated from 1985 and 1986 and related to the acquisition of arms overseas, a matter on which the Service had an *"operational interest"*. [371] As is discussed below, there is a distinction between CFs being sent to the Security Service, and them being accessible (at least in theory) to the ASP and DASP, both of which were Security Service posts located within FRU.

b. Military Intelligence Source Reports were summaries of intelligence received by FRU that were sent to the RUC SB and the Tasking and Co-ordination Group.[372] At one point in Sir Desmond's report it is stated that MISRs were provided *"when appropriate"* to the Security Service; [373] elsewhere, evidence is quoted that suggests the ASP and DASP had access (or could have access) to most, if not all, MISRs. [374] One example is provided in volume 2 of Sir Desmond's report, a MISR dated 16 February 1989 containing intelligence relating to the murder of Patrick Finucane.[375] As can be seen from this example, MISRs were considerably shorter and (in this instance at least) did not contain information linking the intelligence to a particular

[369] de Silva at [190/8.32].
[370] de Silva at [521]-[526].
[371] de Silva at [230/8.194–8.195].
[372] de Silva at [190/8.33].
[373] de Silva at [67/3.21].
[374] de Silva, para [228/8.186-8.189].
[375] de Silva at [527].

source. This may reflect the requirements for source protection, given that MISRs would be seen by a wider group of individuals than CFs. However, Operation Kenova's Final Report states that (in respect of Stakeknife at least), MISRs would often use his numerical codename. [376] Sir Desmond commented that he did not find anything *"inherently wrong"* with the way in which intelligence was summarised in MISRs and noted that RUC SB were able to follow up on them by asking for further details or proposing tasking for the agent. [377]

7.24. Operation Kenova's Final Report identified three types of MISR (in ascending order of sensitivity): a standard MISR, a MISR Supplement (such as that of 16 February 1989), and a Special MISR Supplement. MISRs and MISR Supplements were generated on a computer and delivered directly to RUC SB on a daily basis. Special MISR Supplements were produced on a manual typewriter. Operation Kenova found that *"much of the intelligence they contained was not uploaded onto the computerised intelligence database,"* and that in some instances specific instructions were given not to upload the intelligence. Special MISR Supplements were passed directly from FRU headquarters to the Deputy Head of RUC SB, who would then pass them to the relevant SB department. [378]

7.25. Sir Desmond's report referred only to MISR and MISR Supplements, stating that the latter contained *"the most sensitive reports"* that were *"classified at the highest level of sensitivity."* The Report found that many of the MISRs produced from intelligence emanating from Nelson were disseminated through MISR Supplements. [379] It is unclear whether Sir Desmond was aware of the existence of Special

[376] Operation Kenova Final Report at [52/9.29].
[377] de Silva at [190/8.35].
[378] Operation Kenova Final Report at 52/9.29–9.30].
[379] de Silva at [190/8.34].

MISR Supplements, or whether they have any relevance to the murder of Patrick Finucane.

7.26. MISRs would contain a marking concerning further dissemination. Operation Kenova's Final Report refers to a 1987 document passed from the Army to RUC SB that outlined the usual arrangements. Standard MISRs would routinely be marked as *"Limited Dissemination."* MISR Supplements would be marked as *"No Downard Dissemination."* Special MISR Supplements were marked as *"No Dissemination."* Operation Kenova also found documents relating to Stakeknife being marked with *"No Action to be Taken Without Reference to the Originator."* As can be seen, the MISR from 16 February 1989 was a MISR Supplement that contained a slightly different form or words: *"MISR Supplement – Sensitive source information - No further dissemination or action to be taken without direct reference to OC East Det FRU"*. [380]

7.27. Operation Kenova investigators were told by RUC SB personnel that *"once they received the intelligence their hands were tied due to these restrictive markings."* In contrast, Army personnel told both Operation Kenova and Sir Desmond that responsibility for the exploitation of intelligence was a matter for the RUC, reflecting the policy of police primacy and the Army's role in support of the civil power. [381] This tension is explored further below.

7.28. For completeness, Operation Kenova also found that some intelligence was, for an unspecified period, passed from the Army to RUC SB and the Security Service using a document called a Digest of Army Source Intelligence Supplement. [382] Sir Desmond's report makes no reference to such documents (at least by that name).

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[380] de Silva at [190/8.34].
[381] Operation Kenova Final Report at [56/ 9.49]; de Silva at [185/8.2–8.4] and Chapter 8 generally.
[382] Operation Kenova Final Report at [53/9.31].

7.29. The MISR Supplement dated 16 February 1989 contains a code of *"B2"* for *"grade/reliability"*.[383] A possible explanation for this coding may be found in the NATO Intelligence Grading System (also known as the Admiralty Code), although it should be noted that different organisations used different grading systems at different times. A Ministry of Defence publication explains that in the NATO Intelligence Grading System, the letter refers to the reliability of the source, ranging from A (*"completely reliable"*) to E (*"unreliable"*) and F (*"reliability cannot be judged"*). The number refers to the credibility of the information, ranging from 1 (*"confirmed by other sources"*) to 5 (*"improbable"*) and 6 (*"truth cannot be judged"*). B2 represents a *"usually reliable"* source providing information that is *"probably true"*. [384]

7.30. A slightly different explanation is given by Martin Ingram and Greg Harkin in *"Stakeknife: Britain's Secret Agents In Ireland"*, which states that grading for FRU agents ran from A to G and 1 to 6. On their account, a grade of A1 represents a fact, such as a known event. B2 *"is the best category of source information. B indicates that the reliability of the source is good and 2 indicates that the probability of information is high, or that there is good collateral evidence to back it up"*. [385] It is noted that the reliability of some of the information contained in this book has been questioned. [386] A third description of the B2 Grade is contained in a recent book by the journalist John Ware. He cited an interview in 2002 with an anonymous source who

[383] de Silva at [527].
[384] Ministry of Defence, Joint Doctrine Publication 2-00, *Intelligence, Counter-intelligence and Security Support to Joint Operations"* 4th edition (2023; first published 2011), Table 3.1 at [69/3.40(a)], published online at https://www.gov.uk/government/publications/jdp-2-00-understanding-and-intelligence-support-to-joint-operations .
[385] Ingram and Harkin, at [48-49]. "Martin Ingram" is a pseudonym for former FRU solider Ian Hurst.
[386] Operation Kenova's Interim Report found that a central allegation contained in the book – that Francisco Notorantonio was targeted for assassination to protect Stakeknife – *"did not happen"*. It also found that Stakeknife had *"nothing to do with"* several murders that the authors had attributed to him. See [167/63.11].

said the grading meant that Nelson's intelligence was considered *"actionable, and the source reliable"*. [387]

7.31. It is important to remember that in addition to the written dissemination of intelligence, there were also opportunities for oral communication between FRU and both RUC SB and the Security Service, both within and outside the committees and forums discussed above. [388]

7.32. Operation Kenova's Final Report recorded that the DCI was *"personally briefed by the FRU Commanding Officer every four to six weeks on all of the FRU's most significant cases, one of which was Stakeknife"*. [389] This is consistent with the statement given to Sir Desmond by A/05, the CO FRU at the time of Patrick Finucane's murder. [390] A/05 also said that the ASP sat in on his regular briefings to the Commander Land Forces (CLF). John Deverell, who appears to have been the DCI at the time of Patrick Finucane's murder, told the Stevens I investigation that the briefings from A/05 would take about an hour and would cover 15 to 20 cases, *"one of which might be that of Nelson, though not invariably"*. [391]

<u>Dissemination of intelligence from Northern Ireland to Whitehall</u>

7.33. According to Sir Desmond's report, the principal written means of communicating intelligence from Northern Ireland to politicians and civil servants was through Northern Ireland Intelligence Reports (NIIRs). These were prepared by the Assessments Group (AsGp) within the Security Service. A senior officer from the Security Service told Sir Desmond that NIIRs were: [392]

[387] Ware at [37].
[388] de Silva at [191/8.36].
[389] Operation Kenova Final Report at [89/12.22].
[390] de Silva at [227/8.178].
[391] de Silva at [228/8.185].
[392] de Silva at [68/3.28].

"based on intelligence reporting from the RUC, Army and the Security Service and the texts were represented as an agreed line between AsGP and the originating organisation. NIIRs were disseminated across the agencies and the policy makers in Whitehall and NI, with the list of recipients depending on the context of each report and the particular requirements of the customer. NIIRs containing high level, strategic intelligence were the means by which Ministers received regular updates on terrorist developments. It was not usual for Ministers to receive briefings on specific cases."

7.34. Again, it is important to remember that there were also opportunities to provide intelligence briefings for Ministers and civil servants orally, including through the committees and forums described above.

Intelligence coordination and cooperation in practice

7.35. The reports by Sir Desmond and Operation Kenova, and the wider secondary literature, identify a near-consensus view that there were serious flaws in how the three intelligence agencies worked together in Northern Ireland at the time of Patrick Finucane's murder and in the years before and after. Three areas of particular importance to this Inquiry emerge: (i) the lack of coordination between the agencies, (ii) the extent to which intelligence was shared and the use then made of the intelligence, and (iii) the extent of MI5 knowledge and supervision of the work of FRU.

<u>Coordination between agencies</u>

7.36. Sir Desmond's overview conclusion was in the following terms: [393]

"It has been clear to me throughout this Review that there was a lack of clarity about the respective roles and relationships of each

[393] de Silva at [72/3.47].

of the main organisations involved in the intelligence sphere. The confusion was exacerbated by institutional rivalry between different organisations and parts of the intelligence community. In the late 1980s this rivalry was most apparent in the strained relationship between the RUC SB and Army intelligence."

7.37. Sir Desmond's report provides numerous examples of such tension. One of the most striking is the note of a briefing provided to the Prime Minister, Margaret Thatcher, in 1988, following a PIRA attack that killed eight soldiers. The Chief of the General Staff (CGS) complained that intelligence was *"very badly organised"* and marked by *"insufficient coordination and insufficiently rapid use of the raw data."* The Chief Constable disagreed, which may have provided the Prime Minister with direct evidence of the tensions in play. She was recorded as being *"very concerned"* at this situation. [394]

7.38. Operation Kenova's Interim Report, which drew on Sir Desmond's findings, also found that:[395]

"The relationship between the FRU and the RUC sometimes lacked coordination and clarity. This confusion was exacerbated by institutional rivalry between the different organisations and parts of the intelligence community. This rivalry became most apparent in the often-strained relationship between the FRU and RUC Special Branch."

7.39. The same report identified similar views being expressed in the unpublished findings of other investigations.

a. The Stevens I report was summarised as finding that liaison processes between FRU and the RUC SB were uncoordinated, with Lord Stevens recommending that existing arrangements

[394] de Silva at [72/3.41].
[395] Operation Kenova Interim Report at [63/9.11].

needed to be formalised, with the RUC SB reasserting its primacy. [396]

b. The report of the Blelloch Review in May 1992 made 12 recommendations, which were principally directed at improving the coordination and sharing of intelligence. [397]

c. The Stevens II report found (in the words of Operation Kenova's Interim Report), *"a lack of coordination between the security forces in Northern Ireland."* [398]

7.40. The published Stevens III report made 21 recommendations. A number of these were, again, directed to measures to improve coordination and cooperation between intelligence agencies in Northern Ireland. [399] This report was published in 2003. Jon Boutcher observed in Operation Kenova's Interim Report that in his earlier reports, submitted between 1990 and 1991, Lord Stevens had *"dealt with similar issues and had hoped that lessons had already been learned, they had not."* [400] He also commented that following the Blelloch Review of 1992, the government's position had been that lessons would be learned and applied, but *"this position was not translated into reality"*. [401]

<u>Intelligence sharing and utilisation</u>

7.41. The principal dispute about the sharing and utilisation of intelligence lay between FRU and RUC SB. This is discussed later in this document. Sir Desmond described the outline of the dispute in the following terms:

[396] Operation Kenova Interim Report at [153/54.6].
[397] Operation Kenova, Interim Report at [155/56.3].
[398] Operation Kenova, Interim Report at [156/57.6].
[399] Stevens 3 Overview and Recommendations at [17]-[19].
[400] Operation Kenova Interim Report at [156/57.5].
[401] Operation Kenova Interim Report at [155/56.4].

"*According to A/05 [CO FRU], the object of the exercise in using Nelson as an agent was to pass on to the RUC's Special Branch, in the form of [MISRs], the names of individuals targeted for assassination so that the SB, who enjoyed primacy as to the use of such intelligence, could take appropriate action to frustrate crime, save lives and carry out arrests. It was meant to be an exercise solely aimed at frustrating loyalist terrorism. This was the FRU position.*

On the other side of the divide was the position adopted by RUC SB to explain the number of attacks where no steps were taken by them to frustrate planned assassinations. The RUC position was that information, required by them to discharge their duties, was withheld from them by FRU.

The RUC SB blamed the FRU and vice versa. Both sides cannot be telling the truth in this critically important matter." [402]

7.42. In respect of this aspect of intelligence sharing, Sir Desmond concluded that: "FRU did, in general, pass a considerable amount of potentially exploitable intelligence to the RUC and that the RUC failed to exploit this to prevent attacks from taking place". [403] For the avoidance of doubt, Sir Desmond made a number of other extremely serious criticisms of FRU, including that it "acquiesced in or turned a blind eye to the fact that Nelson's targeting could, and did, lead to people being attacked and killed by the UDA", notwithstanding its knowledge of the intelligence that had been passed to RUC SB. [404] This situation was pithily summarised by the journalist John Ware in his recent book: "As with almost all of the Nelson-sourced MISRs, the

[402] de Silva at [185/8.2–8.4].
[403] de Silva at [217/8.121].
[404] de Silva at [217/8.119]; see more generally [216/8.116–8.121].

branch showed no interest, and the FRU showed no interest in their lack of interest". [405]

7.43. This issue was not unique to the Nelson case. Operation Kenova found a strikingly similar disparity between the views of FRU and RUC SB personnel when investigating the use made (and not made) of intelligence derived from the agent known as Stakeknife. Operation Kenova concluded that the FRU personnel's view – that it was for the RUC SB to decide how to exploit the intelligence provided – was *"at odds"* with clear FRU instructions contained in intelligence reports that further dissemination could only take place after consultation with FRU. [406]

7.44. As is discussed later in this document, the murder of Patrick Finucane also raises issues over the extent to which RUC SB shared intelligence with their colleagues in CID who were investigating the murder.

<u>The extent of Security Services knowledge and supervision of FRU</u>

7.45. Sir Desmond identified a further stark difference of opinion between FRU and the Security Service over the extent of the latter's knowledge and supervision of the former.

7.46. The position of FRU, as expressed through the evidence of A/05 was that *"there was close monitoring and support of our work by the Security Service"*. [407] Among the evidence given to Sir Desmond in support of this proposition was the following. [408]

a. A/05's monthly briefing of the DCI, which were attended by the ASP, which included matters relating to Nelson's reporting,

[405] Ware at [p46].
[406] Operation Kenova Final Report at [162/23].
[407] de Silva at [227/8.177].
[408] de Silva at [227/8.177–8.182].

activities, his intelligence records and *"major case development points*."

b. The attendance of the ASP at A/05's regular briefings to the CLF.

c. The evidence of the FRU Operations Officer (effectively the second-in-command) that the ASP and DASP had *"continuous and full access to all intelligence reports including CFs and MISRs."*

d. The OC of East Det FRU stated that Nelson's activities were *"monitored and scrutinised"* by the Security Service.

7.47. In contrast, both Security Service witnesses and the Service itself in its submissions expressed strong disagreement with A/05's position. The DCI, John Deverell, and the ASP at the time of Patrick Finucane's murder had died before Sir Desmond's review was established, though they did give accounts to the Stevens investigation in 1990. Among the evidence considered by Sir Desmond in support of the Security Service position was the following: [409]

a. The DCI's evidence of the briefings given by A/05 were that they would cover some 15 to 20 cases in an hour, which might include Nelson although he was not invariably discussed. The DCI said he was interested in the intelligence product, not the handling details, and he was not *"au fait with the day to day details."*

b. In an internal document from 1990, the DCI stated that while there was *"an element of truth"* to A/05's claims, they were *"not really an accurate representation of the realities."* A/05, he said, was *"not a man who sought our advice (or that of anyone else)."*

[409] de Silva at [228/8.183–8.191].

c. The ASP said he only saw MISRs, not *"de-briefing notes"*. He said he had *"nothing whatsoever to do with the agent handling, frequency of meets or [Nelson's] direction and control."*

d. The ASP emphasised that *"FRU ran their own agents under the command of their own Commanding Officer and I would not have become involved in the running of any agent engaged in unlawful acts."*

e. The DASP in 1988 to 1989 said she could not recall if she saw CFs, though she did see MISRs. She said she had *"no part in the decision making"* relating to the exploitation of Nelson's intelligence.

f. The Security Service submissions to Sir Desmond stated that it did not agree with A/05's account and that the Security Service did not exercise command and control over CO FRU. The ASP and DASP could offer advice but were *"in no way able to dictate to them how they ran their agents."*

7.48. Sir Desmond tested these accounts against the evidence he obtained on specific operations and the records to which he was provided access. Among his findings were the following.

a. As noted above, CFs were not routinely copied to the Security Service in the Nelson case. [410] However, the DCI accepted that the ASP and DASP could ask to see the files if they wished to do so, and the DASP stated that she *"might have seen the contact forms"*, although she could not remember. [411]

[410] de Silva at [230/8.195].
[411] de Silva at [228/8.186] and [229/8.189].

b. The Security Service were provided with CFs relating to efforts to acquire arms from overseas, a matter on which the Security Service had an operational interest. [412]

c. The Security Service, through the ASP, were aware of Nelson's intelligence about, and potential involvement in, a plot to murder Gerry Adams in 1987. Security Service documents show considerable concerns being expressed about the Nelson case and some discussion on whether the Security Service should take over Nelson's handling. The records indicate an intention to provide guidance to FRU, though one memo expressed doubt over whether *"a whole series of briefings would have the slightest effect"*. [413]

d. The Security Service received its own intelligence about Nelson's role as Intelligence Officer for the UDA shortly after his return to Belfast. One assessment was that Nelson would be principally involved in the targeting of leading Republicans in Belfast. Another noted that he was intelligent and effective and *"should make a significant contribution to the UDA's military capabilities"*. [414]

e. Later in 1987, the Security Service tasked him, through FRU, to answer a series of questions, predominantly concerning high-level strategic intelligence. [415]

f. The last direct engagement by the Security Service with the Nelson case before the murder of Patrick Finucane occurred at a meeting on 27 June 1988. This was attended by a Security Service officer, Nelson, the OC of East Det FRU, and two handlers. The Security Service were again mainly interested in

[412] de Silva at [230/8.194].
[413] de Silva at [231/8.197–8.202].
[414] de Silva at [232/8.203–8.204].
[415] de Silva at [232/8.203 – 8.206].

strategic issues concerning the UDA and its direction. The Security Service note of the meeting stated that FRU had *"clearly managed to establish control over the case and there no longer appears to be any pressing need for us to volunteer to take over the running of the case."* However, the same note recorded that Nelson *"takes his UDA intelligence role seriously, does not necessarily pass FRU all details of 'justifiable' actions, and to an extent may attempt to use his agent role to gain intelligence from FRU."* Sir Desmond noted the *"contradiction"* within the note and found it *"surprising"* that the officer concluded that FRU had established control. He considered that points made about Nelson's commitment to his UDA role *"should have been a cause for serious concern"*, particularly given the Security Service's previous anxiety about Nelson's role in the Gerry Adams case. [416]

g. After Patrick Finucane's murder, and after a new FRU handler took over the Nelson case in April 1989, FRU appear to have actively sought the guidance and advice of the ASP and the Security Service regarding the running of Nelson. [417]

7.49. Sir Desmond's conclusions were as follows:

a. The Security Service were *"undoubtedly aware that Nelson was targeting Republicans,"* but there is no evidence to suggest that Security Service officers had necessarily read the CFs that would have demonstrated Nelson's enthusiasm for attacking such individuals. [418]

b. On the two occasions on which the Security Service became actively involved in the exploitation of Nelson's intelligence, its

[416] de Silva at [233/8.209–8.213].
[417] de Silva at [233/8.214–8.220].
[418] de Silva at [234/8.221].

officers sought to frustrate the UDA's plans to commit criminal offences. [419]

c. He accepted that the Security Service *"did not have an executive role in the handling of Nelson"*. [420]

d. He agreed with Justice Cory's conclusion that there was an absence of evidence to reveal any collusive acts on the part of the Security Service. [421]

e. However, he concluded that the Security Service *"failed to carry out its advisory and co-ordinating duties adequately in the Nelson case"*. [422]

7.50. Operation Kenova faced a similar dispute between FRU witnesses and those of the Security Service in respect of the role of the latter in running Stakeknife. [423] In the Interim Report, Jon Boutcher found that the Service "was not responsible for how Stakeknife was targeted or run and could not sensibly be criticised for the conduct or operation of the FRU or any of its agents". [424]

7.51. However, this finding was revisited in the Final Report in light of further, late disclosure from the Security Service. [425] The Final Report concluded:

> "*While it is correct to say that FRU, rather than MI5 or RUC SB, was ultimately responsible for the recruitment and operation of Stakeknife, and there is no evidence of him being co-handled by multiple security forces, MI5's knowledge was not 'limited' [as had*

[419] de Silva at [234/8.221].
[420] de Silva at [235/8.222].
[421] de Silva at [235/8.223].
[422] de Silva at [235/8.223].
[423] Operation Kenova Interim Report at [174/67.2].
[424] Operation Kenova, Interim Report at [120/41.2].
[425] The Final Report was highly critical of the *"deeply regrettable"* belated disclosure, which it said represented *"a serious organisational failure"* on the part of the Security Service: see [20/4.3– 4.10], [91/12.29-12.30].

been claimed by a former Director General, Baroness Eliza Manningham-Buller]. On the contrary, the further MI5 material demonstrates that it had a much greater awareness and involvement in the running of Stakeknife throughout the entirety of his operation as an agent than previously thought." [426]

7.52. The Final Report found the following, among other matters: [427]

a. The Security Service were aware from the outset of Stakeknife's recruitment and knew about his identity and role within the PIRA Internal Security Unit, including his involvement in abduction and interrogation of suspects who were subsequently murdered.

b. The Security Service was involved in briefing and tasking Stakeknife via the FRU, and in discussions with FRU and RUC SB about Stakeknife's role, importance, and use.

c. The Security Service's received *"debriefs on all his intelligence"*.

d. The Security Service supported Stakeknife's operations through the provision of specialist technical support.

e. Stakeknife provided intelligence of a strategic nature, which would have been of value to the Security Service given its role.

f. There were occasions on which both the Security Service and RUC SB offered to take over the running of Stakeknife from FRU.

g. The Security Service expressed concerns and reservations about Stakeknife in the early and later stages of his operations and an agent, including about his failure to give warnings of PIRA activities.

[426] Operation Kenova Final Report at [87/12.19].
[427] Operation Kenova, Final Report at [88/12.20].

h. The Security Service were aware of two incidents in which FRU handlers took Stakeknife out of Northern Ireland on holiday when he was wanted by the RUC for murder. [428]

7.53. Operation Kenova found no evidence of Security Service personnel escalating concerns about Stakeknife or his handling to more senior officers or any other members of the security forces.[429]

7.54. Operation Kenova's Final Report stated that:

> "*one former FRU Commanding Officer has stated on numerous occasions that: everything done in respect of Stakeknife was done with MI5's knowledge and concern; and MI5 had an influential role, particularly through the involvement of its ASP. The newly revealed files support this account, especially considering that the Commanding Officer met and briefed the MI5 DCI every four to six weeks … MI5 had automatic sight of all Stakeknife intelligence and was aware of his involvement in serious criminality.*" [430]

Guidance on agent handling

7.55. As is discussed earlier, a central theme in this Inquiry will be the tension inherent in seeking to uphold democratic norms and the rule of law by running agents in active terrorist organisations. The findings of both Sir Desmond and Operation Kenova, which are expressed in forceful terms, are that the absence of effective guidance worsened this tension.

7.56. Sir Desmond concluded: *"It is absolutely clear that there was no adequate agent-handling guidance or directions whatsoever in the late 1980s"*. [431] Jon Boutcher reached a similarly unequivocal view in Operation Kenova's Interim Report: *"The use of agents by security*

[428] Operation Kenova Final Report at [58/9.60] and [90/12.28].
[429] Operation Kenova Final Report at [89/12.21].
[430] Operation Kenova Final Repot at [89/12.26].
[431] de Silva at [95/4.86].

forces in Northern Ireland was not the subject of any meaningful, effective or enforceable legal or policy framework during the course of the Troubles". [432]

7.57. In Sir Desmond's view, this was a political failure. Politicians were aware of the issue and had discussed it *"extensively"* including at Cabinet level. They had also directed or accepted a policy of police primacy and an intelligence-led approach to countering terrorism. Sir Desmond found that:

> "*In such circumstances, the UK Government had a duty to provide an effective statutory framework and clear policy direction … [A]gent-handlers and their supervisors were being asked to perform a task – namely the penetration of agents to the heart of a terrorist group – that, in some cases, could not be carried out in a way that was both effective and lawful.*
>
> *What was required was a clear statutory recognition that agents must be run at the heart of terrorist groups; some recognised limits as to the extent to which agents could become involved in criminal enterprise; and a rigorous regulatory framework to prevent abuses …*
>
> *Many of the grave issues relating to the involvement of agents in the murder of Patrick Finucane must, therefore, be considered in the context of the wilful and abject failure by the UK Government to put in place adequate guidance and regulation for the running of agents."* [433]

<u>The position at common law</u>

7.58. Prior to Parliament passing the Regulatory and Investigatory Powers Act 2000 (RIPA), the legal position of intelligence agencies running

[432] Operation Kenova Interim Report at [68/11.1].
[433] de Silva at [95/4.86–4.89].

agents in criminal organisations was governed by common law. Sir Desmond considered the relevant principles and case law, which it said provided *"some limited guidance"*. [434] This included the following.

a. It was never permissible for an agent to act as an agent provocateur. [435]

b. There was some authority in support of the position that someone who participated in a crime with the intention of frustrating that crime would not be guilty as a secondary party. However, this was far from settled case law and was subject to strident criticism in advice provided by the DPP(NI) in 1990.[436]

c. In Sir Desmond's view, a distinguished criminal barrister, *"the complexities of agent-handling and the realities of the diverse situations that agents would inevitably be placed in, went far beyond the guidance provided by case law."*[437]

Guidance applicable to the RUC

7.59. The only guidance in place relating to the use of informants by the police at the time of Patrick Finucane's murder was contained in the Home Office Circular 35/1986, *"Consolidated Circular to the Police on Crime and Kindred Matters"* (the HO Guidelines). Although issued in 1986, these were *"essentially unchanged"* from a previous version issued in 1969.[438]

7.60. The 1969 Guidelines stated that, *"No member of a police force, and no police informant, should counsel, incite or procure the commission of a crime."* When an informant provided prior notice of

[434] de Silva at [74/4.9].
[435] de Silva at [74/4.9].
[436] de Silva at [75/4.10–4.11].
[437] de Silva at [75/4.14].
[438] de Silva at [76/4.15]; Operation Kenova Interim Report at 68/11.2].

a crime to the police, his participation should only be allowed to continue where:

"*(i) he does not actively engage in planning and committing the crime;*

(ii) he is intended to play only a minor role; and

(iii) his participation is essential to enable the police to frustrate the principal criminals and to arrest them … before injury is done to any persons or serious damage to property." [439]

7.61. The HO Guidelines were, in the words of John Ware, *"outdated"* and *"originally drawn up for East End gangs."* [440] Sir Desmond found that the RUC did not apply either the 1969 or 1986 versions as they regarded them as inadequate for dealing with terrorist-related crime, a point that it made explicitly in a letter to the Northern Ireland Office dated 21 January 1987, and a submission dated February 1988. [441]

7.62. Operation Kenova's Interim Report found that the RUC had *"some regard"* to the HO Guidelines *"as a yardstick"*, but that *"there was a widespread acknowledgment within government and all of the security forces that the guidance … was wholly unsuited to the management of agent handling operations in Northern Ireland."* [442] In Jon Boutcher's view, running agents in PIRA and other terrorist groups was *"essential in the fight against terrorism, but it was also incompatible with Home Office Circular 97/1969."* [443]

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[439] Letter from Sir Philip Allen to Chief Constables, 12 May 1969, containing Home Office Circular No. 97/1969, *"Informants Who Take Part in Crime"*, referred to in the Operation Kenova Interim Report at [68/11.2], fn 15. The letter itself is accessible at https://www.kenova.co.uk/10.%20D13669%20Home%20Office%20Circular%2097%20of%201969.pdf.
[440] Ware at [121].
[441] de Silva at [76/4.15–4.17].
[442] Operation Kenova Interim Report at [68/11.4].
[443] Operation Kenova Interim Report at [68/11.4].

7.63. There is evidence that a senior RUC Officer raised the matter directly with the Prime Minister when she asked him during a visit to Belfast if he had everything he needed: *"Well, Prime Minister, I would welcome detailed guidance and regulation in relation to what we do …We are operating in a very grey area"*. John Ware, who obtained this information in an interview with the police officer, wrote that the Prime Minister *"appears to have had no idea this didn't exist."* [444]

Guidance applicable to the Army in Northern Ireland

7.64. The HO Guidelines were directed to Chief Constables, not to the Army. [445] Instead, the starting point for the Army's approach to agent-handling in the late 1980s was the "Directive for the Force Research Unit (Northern Ireland)", promulgated by Major General A S Jeapes, the then CLF, on 26 July 1986.[446] Sir Desmond's report contains the following salient extracts: [447]

"*Concept of Operations*

4. The FRU is to continue to complement existing intelligence gathering agencies by acquiring, within Northern Ireland, from human sources, intelligence related to terrorist activities in Ulster. No research operation is to be carried out which does not conform to this Directive or to the Instructions for Source Handling, without prior authority of Commander Land Forces (CLF).

5. All operations are to be conducted within the Law and members of the FRU shall remain subject to Military and Civilian Law at all times."

[444] Ware at [119]-[120].
[445] As the Operation Kenova Interim Report points out at [69/11.3], the 1969 guidelines pre-dated the deployment of the Army in support of the civil power in Northern Ireland.
[446] de Silva at [77/4.20].
[447] de Silva at [77/4.21].

7.65. The 1986 Directive was accompanied by "Instructions for Source Control and Handling in Northern Ireland", dated 25 July 1986. [448] These provided (among other matters) that: [449]

a. *"Army source handling operations are to be carefully coordinated with the RUC SB."*

b. *"The primary aim of such operations is to be the penetration of terrorist groups."*

c. Under the heading "Command and Control":

> *"It is unlawful for any person to authorise an illegal act. Where there is any possibility of a source becoming involved in criminality or an area of political sensitivity, ACOS G2 [Assistant Chief of Staff of the Intelligence Section and the officer to whom CO FRU reported] is to be informed, through CO FRU, so that preventative measured can be taken."*

7.66. A/05 recognised the tension inherent in the Directive in his statement to the Stevens III investigation in 2002. He noted that the Directive required FRU to use agents to penetrate terrorist organisations, but membership of some of those organisations (including PIRA and the UFF) was itself proscribed by law. *"This contradiction,"* he wrote, *"marks not only my period of command but also those who preceded it and those subsequent to it."* He went on:

> "*As I understood it this apparent contradiction was acknowledged by all intelligence gathering operations within Northern Ireland. I believed that the Instructions and Directive were to be given a meaning which made sense of the apparent contradiction. I understood that the Instructions and the Directive*

[448] de Silva at [77/4.20–4.21].
[449] de Silva at [77/4.22–4.23].

permitted operations essential to intelligence gathering to be pursued even if prima facie unlawful (such as encouraging an agent to become a member of a proscribed organisation) but that any involvement by an agent in a crime should only be permitted or condoned if the agent's intention was to ensure, by that involvement, that the commission of substantive offence would be prevented. In this way I believed that the agent himself would not be criminally liable since his intention and mental state was to uphold the law and prevent crime."[450]

7.67. The shortcomings of the guidance provided to the Army in the late 1980s was acknowledged by the Secretary of State for Defence in March 1991, Tom King, in a minute to the Attorney General concerning the Nelson prosecution:

"We cannot expect to obtain valuable intelligence from agents who are not at the heart of the target organisation of group. We must establish proper guidelines for all those concerned. I believe that it is unacceptable that there are no clear legal rules of guidance to cover the specific circumstances of agent-running in the terrorist environment of Northern Ireland." [451]

<u>Guidance applicable to the Security Service</u>

7.68. The HO Guidelines were not issued to the Security Service and a minute from June 1989 indicated that they did not consider themselves bound by them.[452]

7.69. There was, however, an Instruction that was in place from at least February 1969 that:[453]

[450] de Silva at [78/4.24].
[451] de Silva at [79/4.30].
[452] de Silva at [80/4.33].
[453] de Silva at [80/4.31]. The substance of the Instruction in this regard was included in the Service's Manual of Investigation from 1978: de Silva at [80/4.32]; Operation Kenova Interim Report at [69/11.6].

a. Contemplated that agents might be involved in criminal activity.

b. Directed that where this was so, and there remained a good case for continuing the contact, the Director General was to be consulted.

c. Where an agent or contact asked the Security Service to intervene on their behalf with the police, the general rule was that the Service should not do so, *"and certainly not without consulting the Legal Adviser"* and another officer (A.3).

7.70. Sir Desmond found the Service Legal Adviser provided regular advice and guidance on the legal implications of specific agent running operations. Sir Desmond commented that: *"This form of legal support and guidance does not appear to have been available to the FRU or the RUC Special Branch in the 1980s."* [454]

Attempts at reform

7.71. The de Silva Report contains a helpful account of the attempts made from at least 1987 to formulate new and agreed guidance.

a. Efforts to this end were led by senior RUC officers from 1987, with the matter being raised with the NIO at a meeting on 13 March 1987.[455]

b. The response of the NIO was unenthusiastic. An internal minute to the Permanent Secretary dated 18 May 1987 indicated that the NIO would prefer *"a rather different method for reviewing the guidance."* As such, *"It will suit us if the process set in train by the RUC makes fairly slow progress. But while it would not*

[454] de Silva at [80/4.34].
[455] de Silva at [80/4.35–4.37].

be wise to take any steps at this juncture to halt it; we should simply desist from hastening it." [456]

c. Submissions were made to the Minister of State at the NIO, John Stanley, in February 1988, including through a detailed background paper provided by an RUC Assistant Chief Constable, emphasising the need for new guidelines.[457]

d. The NIO corresponded with the Home Office on the matter in early 1988, referring to the McLachlan Report (a review that had followed the "Shoot-to-kill" investigations led by DCC John Stalker and CC Colin Sampson). [458]

e. In April 1988, the NIO informed the RUC that, *"Ministers are fully seized of the problem … the question is what we do about it."*[459]

f. A note prepared for Ministers by the NIO in the same month recorded the Attorney General's concerns that *"officials should not participate in drawing up guidelines which condone the commission of criminal offences."*[460]

g. Senior RUC and Security Service officers continued to make representation at the highest levels on this point. This included the Director General of the Security Service raising the matter with the Prime Minister in or around May 1988.[461] Security Service documents from September 1988 show some frustration at the slow progress being made within the NIO, and the Director General raising the issue with NIO's Permanent Secretary.[462]

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[456] de Silva at [81/4.38].
[457] de Silva at [81/4.39–4.42].
[458] de Silva at [83/4.43–4.45]. On the Stalker, Sampson and McLachlan investigations, see the Operation Kenova Interim Report at [148/51.1–53.7].
[459] de Silva at [83/4.46].
[460] de Silva at [83/4.47].
[461] de Silva at [84/4.48].
[462] de Silva at [84/4.49].

h. Senior figures within the RUC shared this frustration as the issue dragged on into 1989. The Senior Assistant Chief Constable, Blair Wallace, complained that this forced them to *"continue with a very unsatisfactory system, designed to deal with informants on ordinary crime in the late 1960s."* He thought that Whitehall had *"washed their hands of the matter as it does not particularly concern them at the moment and the legal people seem to be reticent, to say the least, to become involved in formulating a system, despite the fact that what goes on is known or assumed by many."* In his view, what was required was *"recognition that informants on terrorist activities must be involved in criminality otherwise they would not be useful informants."*[463]

i. The Security Service Legal Adviser discussed the matter for some months in early 1989 with the Attorney General. The Legal Adviser recommended reform of the HO guidelines to allow for *"effective but properly supervised use of agents in countering terrorism."*[464]

j. In July 1989, the Secretary of State for Northern Ireland agreed to the formation of a Working Group on the matter. It appears that this met on three occasions, in October and November 1989 and then, for a final time, in October 1990.[465]

k. The Working Group produced a set of draft guidelines. It was Sir Desmond de Silva's view that these were not *"the tightly defined framework … that was required to deal with the complexities of agent-handling in Northern Ireland."* They were not, he thought, a *"solution to the problem."* As the Solicitor General noted on 11 August 1991, the thrust of the central

[463] de Silva at [84/4.50].
[464] de Silva at [85/4.52].
[465] de Silva at [85/4.53–4.54].

paragraph *"appears to be 'Don't get caught'! This is unpromising territory for Ministerial approval."*[466] However, Sir Desmond considered that the draft guidelines were at least an attempt to deal with the issue and contained some necessary safeguards.[467]

l. The Working Group's draft guidelines were sent by the Secretary of State for Northern Ireland to the Home Secretary in December 1990. However, they were then overtaken by the arrest and trial of Nelson. Given the issues raised in that case, the new Secretary of State for Northern Ireland, Sir Patrick Mayhew (who had been Attorney General) commissioned a review of agent-handling by Sir John Blelloch.[468]

m. The de Silva Report found that, notwithstanding the absence of ministerial approval, the Security Service, the RUC and the successor to FRU (the Joint Support Group) all adopted the Working Group's draft guidelines for their own use in the first quarter of 1992.[469]

n. The Blelloch Review began work in March 1992 and had reported by July 1992.[470] Sir John concluded that the HO Guidelines had long been acknowledged as *"inappropriate in the current terrorist context in Northern Ireland."* He noted that the Working Group's draft guidelines had been adopted by the security forces in practice, and that nothing had emerged during his review that suggested that the content should be revised. However, the status of the document, and the question of Ministerial approval was unresolved. He advised: *"The need to clarify this status seems to the review team to be a matter of*

[466] de Silva at [86/4.56].
[467] de Silva at [87/4.57].
[468] de Silva at [87/4.58–4.60].
[469] de Silva at [88/4.61].
[470] de Silva at [88/4.64–4.65].

some urgency now, and, moreover, one that will not go away."[471]

o. An Interdepartmental Working Group was established to consider the Blelloch Report, under the chairmanship of Sir John Chilcot, the Permanent Secretary at the NIO.[472] This met for the first time in December 1992, and its conclusions were provided to the Secretary of State for Northern Ireland in July 1993. Sir John Chilcot's view was that new legislation was required to achieve a stable and satisfactory way forward.[473]

p. The matter then passed to the Cabinet sub-committee on Northern Ireland, chaired by the Prime Minister (by then, John Major), which considered papers in July and September 1993. It appears there was an impasse between Ministers who wanted a legislative solution (NIO, Attorney General, and some support from the Ministry of Defence), and those who were opposed in light of the sensitivity of the issue and the Government's slender majority (the Prime Minister, the Foreign and Home secretaries, and the Chancellor).[474]

q. The changing political landscape in Northern Ireland in the 1990s diminished the impetus for reform. An internal Home Office note from September 1994 stated that: *"The 1969 circular remains an embarrassment but the line will have to be that the police and each of the agencies rely primarily on their own internal (unpublished) guidelines and that they are, in addition subject to the ultimate oversight of the prosecuting authorities and the courts."*[475]

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[471] de Silva at [89/4.65].
[472] de Silva at [90/4.68–4.71].
[473] de Silva at [91/4.71].
[474] de Silva [92/4.72].
[475] de Silva at [92/4.73].

r. The mooted legislative solution did not emerge until the passing of RIPA 2000.[476]

7.72. It follows that between 1987 and 1993, the RUC and the Security Service (supported at least at some points by the Army) repeatedly and firmly raised the need for further guidelines. Their views were supported by the reports of the Stalker, McLachlan, Stevens 1 and Blelloch investigations and reviews.[477] In those six years, which saw the murder of Patrick Finucane, the public revelation of the role of Nelson, and the ongoing activities of Stakeknife, the matter was discussed in numerous briefing papers and submissions, two Working Groups, and a Cabinet sub-committee, but no solution was agreed. The agencies adopted draft guidelines, but these lacked formal approval and were considered – by some at least – to be insufficient such that legislation was required.

7.73. Sir John Blelloch commented that:

> *"There is something manifestly unsatisfactory about a situation in which people are expected by Government to undertake difficult and often very dangerous tasks without, as far as they can see, any clear idea of the extent of the support they can expect if things go wrong."*[478]

7.74. A/05 gave his views to the Stevens III investigation more bluntly:

> *"I believe the wilful neglect in this matter lies with successive governments who despite calling for counter terrorist intelligence measures and reaping the political rewards of FRU's work in Northern Ireland have ignored Blelloch and Chilcot and have*

[476] de Silva at [93/4.75].
[477] Operation Kenova Interim Report at [69/11.7].
[478] de Silva at [89/4.65].

deliberately failed to address the need for a more complete legal framework and more detailed guidelines." [479]

7.75. Sir Desmond considered that one consequence of this state of affairs was a lack of training and legal support for FRU handlers and RUC SB officers on the legal implications of agent-running. He found that *"many of the agent-handlers interviewed by the Stevens I, II or III Investigations appeared to be unclear as to where the line was supposed to have been drawn with regard to agent participation in crime."* [480]

7.76. In the Interim Report of Operation Kenova, Jon Boutcher expressed a similar view. He concluded:

"*The lack of a proper framework for the security forces to operate within and the absence of oversight and governance are underlying failures and had dire consequences both for agents and those that they came into contact with. Those in the security forces involved in recruiting, handling and managing agents during the Troubles were expected to penetrate terrorist groups while being instructed in their training and guidelines that agents could not commit crime. This was a charade, with the official and formal position that agents could not commit crime being delivered in training whilst 'on the ground' agents were inevitably members of proscribed organisations and routinely involved in terrorism*." [481]

[479] de Silva at [93/4.77].
[480] de Silva at [94/4.82].
[481] Operation Kenova Interim Report at [175/67.10].

8. THE ULSTER DEFENCE ASSOCIATION AND THE ULSTER FREEDOM FIGHTERS

Origins

8.1 The UDA grew out of street violence of the late 1960s and early 1970s and the concurrent growth of vigilante groups in working class Protestant areas. The most prominent of these was the Woodvale Defence Association (WDA), which traced its origins to a meeting organised in July 1971 in the unlikely surroundings of the Pigeon Fancier's Club in Leopold Street, West Belfast. Like-minded groups and individuals began to coalesce, encouraged by a series of meetings in summer and autumn 1971. According to the journalists and authors Henry McDonald and Jim Cusack, the collective name "Ulster Defence Association" was proposed at one such meeting in early September, "*almost as an afterthought*". [482]

8.2 Unlike the more established loyalist paramilitary organisation, the Ulster Volunteer Force (UVF), the UDA took a loose approach to membership, aspiring to be a social and quasi-political organisation as well as an armed "defence" force organised along military lines.[483] The academic and journalist Ian Wood has stressed the importance of working-class culture and political consciousness in the origins and development of the UDA, particularly in distinction to the "big house" unionism of the dominant Ulster Unionist Party.[484] He quotes an interview given to The Sunday Times in 1973 by a leading figure within the WDA:

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[482] McDonald and Cusack at [18] to [19]. See also Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [1] to [2]. There is some dispute in the sources as to whether the name was first proposed and used at a meeting in a primary school or a band hall.

[483] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [5] to [7].

[484] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at Chapter 1 and *passim*.

"*I was a bit of everything in those streets – policeman, magistrate, and welfare worker. I sometimes presided at unofficial courts. We bashed faces in if we thought someone guilty of, say, house-breaking. There wasn't much trouble though. I've never been so busy. The parlour of our house was always full, neighbours, men from the UDA and Pressmen from all over the world. We even gave cups of tea to American Congressmen."*[485]

"Increasingly in Woodvale we also talked politics. We felt let down by the Unionists. We didn't want these middle class smarty pants ponceing down our streets once every five years asking for our votes and then never bothering to come back again until the next election." [486]

8.3 This rejection of mainstream unionism was matched by a heightened suspicion that the Westminster government would betray loyalists to Dublin.[487] These elements combined potently in the high watermark of the UDA's power as a mass movement: its prominent role in the Ulster Workers Council and its general strike in response to the Sunningdale Agreement in 1974.[488] The strike led to the collapse of the power-sharing executive and a return to direct

[485] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [8].
[486] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [15].
[487] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), Introduction, at [viii] to [ix].
[488] The Sunningdale Agreement was a power-sharing agreement signed by the British and Irish Governments in December 1973. It was supported by "moderate" political opinion, including the official positions of the UUP, the SDLP and the Alliance Party, but was opposed by loyalist and republican organisations, including the UDA. The former SDLP Deputy Leader, Seamus Mallon, is attributed as saying that the Belfast (Good Friday) Agreement 1998 was *"Sunningdale for slow learners,"* though the thinking behind the comment is challenged: Thomas Hennessey, 'Slow Learners? Comparing the Sunningdale Agreement and the Belfast (Good Friday) Agreement' in David McCann and Cillian McGrattan, *Sunningdale, the Ulster Workers' Council Strike and the Struggle for Democracy in Ireland* (Manchester: Manchester University Press, 2017).

rule from Westminster.[489] Andy Tyrie, who by this time had emerged as the UDA's "Supreme Commander",[490] claimed his organisation, "*gave the strike the brains and the muscle it needed to win.*"[491] Henry McDonald and Jim Cusack report that the "*most frequent self-claimed size of the UDA at the height of its strength was 70,000 – even 80,000.*"[492] The academic Colin Crawford has given a smaller figure of around 50,000 in 1974.[493]

UDA violence and the Ulster Freedom Fighters (UFF)

8.4 The importance to the origin of the UDA of violence and perceived retribution against republican paramilitary attacks should not, however, be understated. Recruits were sworn in on a table covered with a Union flag on which lay a Bible and a sub-machine gun.[494] By the early months of 1972, the UDA was *"outkilling"* the UVF.[495] Collectively, loyalist paramilitaries murdered 121 people that year, with the UDA responsible for 71 of the deaths.[496] Ian Wood wrote of UDA *"murder gangs"* that began to operate in hard-line loyalist areas in Belfast in the summer of 1972:

> "*Simply being in the wrong place in the wrong time was enough to seal the fate of dozens of Catholics who were easy targets for its roving gunmen. The largest gang... was based in the Shankill*

[489] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [28] to [54]; McDonald and Cusack at [64] to [87]; Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [127] to [137], first published 1999.
[490] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [23] to [25].
[491] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [51].
[492] McDonald and Cusack at [25].
[493] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [20].
[494] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [4].
[495] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [6].
[496] David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), Table 3, at [1,496]; Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [35]. A total of 497 people were killed in the Troubles that year, the highest total in the history of the conflict.

and may have numbered thirty members. One of them was… a sadist addicted to the use of knives to torture and mutilate those they abducted, including women, before killing them. Smaller units operated from East and North Belfast and from Sandy Row, close to the city centre." [497]

8.5 In 1973, the UDA began to use the sobriquet the UFF as a flag of convenience.[498] The initiative emerged during a struggle for control of the UDA and was, according to Ian Wood, a response to fears that the government might proscribe the UDA.[499] Henry McDonald and Jim Cusack described it as, "*a simple but effective expedient to divert political and media attention away from the fact that the hands of UDA leaders were stained with innocent blood.*" [500]

8.6 The UFF's first acknowledged victims were James Kelly and Daniel Rouse, who were murdered in June 1973. Jim Kelly was a 25-year-old Catholic who was abducted and shot as he hitchhiked from Belfast, where his girlfriend lived, to his home in Larne. In a statement, the UFF claimed he was an "*IRA man*" who was killed in retaliation for the recent murder of Michael Wilson, the brother-in-law of a UDA leader. In fact, Michael Wilson had also been murdered by the UDA/UFF as a suspected informer. Jim Kelly is listed as a civilian in the respected book *Lost Lives* and was described by a judge as "*an innocent young man selected at random because he happened to be of a different faith.*"[501] Danny Rouse, who was 17, was murdered on

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[497] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [13].
[498] David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), at [1,523]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [21] to [23].
[499] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [21] to [23] and [109].
[500] McDonald and Cusack at [59].
[501] David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), AT [368] to [369]. See also Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [21] to [23], McDonald and Cusack at [58] to [59].

the same night by the UDA/UFF, having been abducted as he walked home.[502]

8.7 One of the founders of the UFF gave the following account of its original purpose, in an interview with Ian Wood in 2001:

> "*The feeling was that the UDA had got too big and that we needed to reorganise the real activities into small, streamlined units which could hit the IRA where it hurt most, by attacks on the communities which were not just making excuses for them but actively supporting them. It was simple and it was brutal, there's no point denying that.*" [503]

8.8 This approach has been characterised by Colin Crawford as maintaining "*a balance of terror between the two communities.*" He quoted the journalist and broadcaster Malachi O'Doherty: "*Murdering Catholics at random made a certain amount of cynical good sense, if your objective was to keep reminding all Catholics that there was a price to be paid for some of them supporting the IRA.*" [504] Ian Wood cited a 1980 poster:

> "*It showed a revolver in shadow with its trigger cocked along with the words, 'The future belongs to the few of us willing to get our hands dirty – Political Terror – it's the only thing they understand. Ulster Freedom Fighters'.*" [505]

It was not stated who "they" were.

8.9 Sir Desmond obtained expert evidence from the historian, Professor Richard English. Of the UDA/UFF violence, he wrote:

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[502] David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), at [369].
[503] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [22].
[504] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [33].
[505] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [80].

"[T]hey were the largest loyalist paramilitary group in Ulster, and were responsible for 414 killings between 1971 and 2001. Deeply hostile towards Irish republicanism and Irish nationalism, and especially towards republican paramilitaries and their politicians and associates, the UDA carried out frequently sectarian violence, often of a very gruesome nature. But it is important to recognise that their blood-stained campaign was expressly political. At the heart of Northern Ireland's Troubles was an essentially Clausewitzean argument: that you had to make the war more painful for your enemy than it would be for them to give you what you wanted…".

8.10 The UDA claimed to be aiming to defend Protestant areas from republican attack, to be using violence against republicanism and their nationalist support communities in order to defeat republicanism, and to be prepared to use violence to prevent any future or threatened expulsion of Northern Ireland from the UK state." [506]

8.11 Sir Desmond himself was clear that:[507]

"*… the supposed distinction between the UDA and the… UFF was, in fact, a fiction. The UDA in the late 1980s were to all intents and purposes a terrorist group, though that is not to say that all of the members were actively engaged in acts of terrorism*."

[506] de Silva Review, Volume I at [59/2.19].
[507] de Silva Review, Volume I at [499/25.10].

8.12 Ian Wood has written that the UFF was "*in no sense a separate body from the UDA*", [508] and required no special oath when UDA men were recruited to its ranks. [509] He agreed with Sir Desmond that:

> "*Joining the UDA did not necessarily mean handling or using firearms. Some never did but those with weapons training and a willingness to use them would more often than not be recruited into the UFF.*"[510]

Organisation

8.13 Henry McDonald and Jim Cusack gave the following account of the organisation of the UDA in Belfast:

> "*The structure that emerged by 1972, and was to stay largely intact, was based on the broad Protestant working-class communal divisions of the city. The four Belfast 'Battalions', eventually renamed 'Brigades' as they grew in size, were based in the north, south, east and west of the city... 'West Belfast' was centred in the Shankill Road and had companies 'B' in the central Shankill area, 'C' in the lower Shankill, and 'A' further up the road, around the Shankill estates of Glencairn and Highfield and the West Circular Road.*" [511]

8.14 This largely corresponds with the description given in 'The Report of the Patrick Finucane Review, December 2012' by Sir Desmond de Silva QC (de Silva Review). Sir Desmond noted that there were two 'brigades' outside of Belfast, Londonderry and South-East Antrim:

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[508] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [101]. See also Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [25] to [26]. Colin Crawford considers that the UFF had an *"operationally independent"* command structure but was located in the UDA.
[509] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [109].
[510] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [109].
[511] McDonald and Cusack at [24].

"*Each geographical area was commanded by a UDA 'Brigadier' and sometimes also had a designated 'Military Commander', 'Intelligence Officer' and 'Quartermaster'. The six UDA Brigadiers formed an 'Inner Council' which held meetings that were sometimes attended by other leading UDA figures. In practice, however, the degree of central control exercised by the Inner Council was limited: the Brigadiers supposedly in command of their areas sometimes had little influence over the younger gangs.*

In West Belfast, the UDA were further sub-divided in to 'Coys' and the Woodvale Defence Association (WDA). In practice, these structures were loose and highly changeable. Factors such as personality clashes and criminal activities sometimes dictated alliances within the UDA to a greater extent than the 'military' structure. Internal power struggles and feuds were a feature of the UDA throughout the late 1980s. Such power struggles resulted in the ousting of the UDA's 'Chairman' in March 1988 and the murder of James Pratt Craig in October 1988..." [512]

8.15 The description of the looseness of the supposed "military" chains of command is supported by Henry McDonald and Jim Cusack:

"*Although from the start the leaders gave themselves absurd military titles, aping the British army, it was an army largely without an officer class. In some places the leaders were there because the men agreed that they were the leaders. Some 'officers' were elected via a kind of democratic process – sometimes even by a relatively free vote... In other places the hard men seized power and threatened anyone to challenge. Men who*

[512] de Silva Review, Volume I at [60/2.24] to [60/2.25].

had organised the first vigilante groups graduated to larger commands as the numbers grew." [513]

8.16 The tensions and fluid command structures within the West Belfast UDA in the late 1980s are considered later in this document.

The UDA in the late 1980s

8.17 A purely statistical analysis of murders attributed to the UDA/UFF shows a (non-linear) decline in the late 1970s and early 1980s, followed by an increase before the murder of Patrick Finucane in February 1989, though still falling well short of the level of killing in the 1970s. [514]

	Responsibility for deaths		
Year	*IRA / Republican*	*UDA / UFF*	*All Loyalists*
1972	280	71	121
1973	137	44	90
1974	149	41	131
1975	130	20	121
1976	163	50	127
1977	74	12	28
1978	62	2	10
1979	104	10	18
1980	58	9	14
1981	84	5	14
1982	85	1	15
1983	62	2	12
1984	51	2	10
1985	47	2	5
1986	41	6	17
1987	74	12	20
1988	69	12	23

[513] McDonald and Cusack at [24]. See also Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [25] to [26].
[514] Taken from Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [35], itself based on David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), at [1,495], Table 2.

8.18 It would be premature in this Inquiry to seek to establish causes for this pattern. Among the suggested factors put forward by authors have been: the lack of military strategy and discipline;[515] the gangsterism and racketeering among some UDA commanders;[516] the political aspirations of others;[517] the infiltration of the UDA/UFF by informers and the successes of the security forces;[518] and an attempt "*to become more selective in its killing* [by seeking] *to target known IRA and Sinn Féin personnel in preference to its previous policy of randomly selecting targets in the Catholic community*." [519]

8.19 As is discussed elsewhere, this last point reflects the rationale given by FRU for their approach when running Brian Nelson as an agent within the UDA.[520] Whether that rationale was genuine, whether it was effective, and the distinct questions of whether FRU's actions were justified and lawful, will be for the Chair to determine in light of all relevant evidence, not just the statistics and the publicly available material. A further consideration will be whether the UDA would have followed this course even without Nelson. Ian Wood gave the following account of the thinking of the UDA "Supreme Commander", Andy Tyrie, based on interviews he gave to him and Colin Crawford:

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[515] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press) at [36]; McDonald and Cusack at [112] to [113].
[516] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press) at [36]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006) at [115]; Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [169] to [170].
[517] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006) at [116]; Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [162]; McDonald and Cusack at [120] to [122].
[518] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press) at [36]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006) at [115]; McDonald and Cusack at [123] to [125]; Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [157] at [160].
[519] Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press) at [36]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [115] to [117]; McDonald and Cusack at [115] to [117].
[520] See, among other examples, de Silva Review, Volume I at [113/6.59].

"*Another factor [in the decline in operations in this period] was Tyrie's belief that the UDA had done enough sectarian killing of Catholics. 'Most of that was because of the amount of autonomy brigade and unit areas had in the early days. It was an eye for an eye, a Catholic for a Protestant, but it was taking us nowhere.' He has told the author. 'I was sickened every time I heard about the death of a Catholic taxi driver or shopkeeper. We wanted to go for the IRA and republicans but we couldn't locate them, we didn't know who they were. The bottom line was that if the IRA killed us, some of us were going to kill them.' 'Them' in this context clearly means ordinary Catholics but Tyrie was clear that at the risk of radically reducing the organisation's rate of killing, 'we needed to go for real high-profile hits. We'd got too defence minded, we needed to go on the attack.'*" [521]

8.20 What does emerge from the published material is the effect that the Anglo-Irish Agreement 1985 had on energising more militant members of the UDA. This Agreement, signed between the Government of Ireland and the Government of the United Kingdom in November 1985, created permanent inter-governmental structures and gave the Irish Government a consultative role in Northern Ireland affairs.[522] This caused "*near universal unionist rage*",[523] and triggered deep-rooted loyalist suspicions about a Domesday scenario in which they would be left to defend their culture and communities against a hostile Irish state.[524] The UDA responses involved a mixture of political agitation, street violence (including attacks on the RUC stations and the homes of RUC

[521] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006) at [115]; Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [46] to [47].
[522] *David McKittrick et al, Lost Lives* (Edinburgh: Mainstream, 2001) at [1,005].
[523] *David McKittrick et al, Lost Lives* (Edinburgh: Mainstream, 2001) at [1,005].
[524] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [89] to [90].

officers), and the formation of a new group, the Ulster Defence Force.[525] This was intended to provide specialist military training to selected UDA/UFF recruits. Some have identified it as a literal training ground for (among others), a group of young militants from West Belfast who would go on to challenge the "moderate" leadership of the Brigade in the late 1980s.[526]

8.21 In his evidence to Sir Desmond, Professor English wrote:

> "*... the loyalism which was faced in the late-1980s at the time of the Finucane killing was a revivified one, stimulated to some degree by fears of UK state betrayal, and by a sense that more aggressive loyalist action was needed to protect Northern Ireland's place in the UK from the republican enemy and from UK pusillanimity.*" [527]

8.22 The increasing political and paramilitary tensions appear to have acted as a catalyst for changes in the leadership of the UDA. In 1988, the long-standing "Supreme Commander", Andy Tyrie, was forced to stand down, a few months after his close associate, John McMichael, had been murdered. 1988 also saw the murder of James Pratt (Jim) Craig, a prominent figure in the UDA who was accused both of racketeering and collaboration with the Provisional IRA (PIRA). The UFF issued a statement saying that Craig had been "*executed for treason*" due to his role in McMichael's death.[528] The UDA moved to a

[525] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [85] to [97] and [124] to [125].
[526] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [123] to [124]; Colin Crawford, *Inside the UDA: Volunteers and Violence* (London: Pluto Press), at [29] to [30].
[527] de Silva Review, Volume I at [59/2.22].
[528] McDonald and Cusack at [158] to [159]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [123] to [137]; Ware, Neither Confirm Nor Deny at [131] to [134]; David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream, 2001), at [1,103] to [1,104] and at [1,148] to [1,151]; de Silva Review, Volume I [365/20.2–20.3] and [53/2.18] to [55/2.25].

more collective style of leadership.[529] As is discussed later in this document, the West Belfast Brigadier, Thomas "Tucker" Lyttle became Chairman of the Inner Council, but he was distrusted by the younger, more militant men nominally under his command.

Proscription

8.23 From its inception in 1972 until after its members murdered Patrick Finucane, and some 300 others, the UDA remained a legal organisation. If the formation of the UFF was intended, in whole or in part, to achieve this outcome, the ploy was successful. While the UFF was proscribed almost immediately, the UDA did not have this sanction imposed until August 1992.[530]

8.24 Sir Desmond wrote that this, "*does strike me as potentially seriously concerning*".[531] He dealt with the matter briefly in the de Silva Review. He found, in short, that many of the same policy considerations applied to both the UDA and Sinn Féin, and as such "*it would be difficult to seek to criticise the Government for taking a biased approach*" when neither organisation was banned.[532]

8.25 Some of the secondary literature suggests that elements within the security forces opposed proscription on the basis that keeping the UDA lawful made it easier to infiltrate.[533] A UDA spokesman suggested this position only changed when they lost their grip on the organisation following the Stevens Investigations: "*We were banned because they couldn't direct us anymore*." [534]

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[529] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [137]; Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [199] to [200].
[530] de Silva Review, Volume I at [499/25.10]; Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [163] to [164].
[531] de Silva Review, Volume I at [499/25.10].
[532] de Silva Review, Volume I at [500/25.15].
[533] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [163].
[534] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [165].

8.26 A full discussion of the reasons why the UDA was not proscribed would require extensive archival research, as well as consideration of publicly available material. It will be for the Chair to determine the extent to which this Inquiry requires such work.

Were the UDA/UFF controlled or directed by the security forces?

8.27 There is an extensive academic, journalistic and political debate over the extent to which the UDA/UFF were controlled or directed by the security forces, and the existence and nature of alleged collusion between the state and loyalist paramilitaries. It would have been possible to write as much on this topic as all others to which this document turns its attention. The debate is important and defies easy summation. There can be a tendency in some of the literature to create straw-man arguments rather than engaging with differing views.

8.28 For reasons of time and proportionality, no attempt is made here to describe the various positions advanced by relevant writers. Thought will need to be given by all involved in the Inquiry as to how it should approach this matter. The Inquiry is required to investigate one death in the Troubles, but to do so it must examine the murder of Patrick Finucane within a proper context. Through both its report and evidence, the Inquiry will undoubtedly contribute to the debate on collusion, but it will not resolve it. The Chair will determine the extent to which he is assisted by evidence on this difficult and complex question when fulfilling the Terms of Reference, by which he is bound.

8.29 It is relevant to note Sir Desmond's finding that:

> "*Any attempt to crudely describe loyalist terrorists as simply 'State-sponsored forces' is, in my view, untenable and fundamentally at odds with a substantial body of contemporary*

evidence and the historical context of the relationship between loyalists and the security forces during this period…" [535]

8.30 In coming to this view, he noted the arrest and imprisonment of a large number of loyalist paramilitaries, finding the figures, "*do not, in my view, suggest any bias.*"[536] He also cited the disruption of loyalist weapons procurement,[537] and the success the intelligence agencies had in "*containing and thwarting loyalist terrorists in the late 1980s.*" [538]

8.31 The consideration given to this topic in Sir Desmond's report was, however, limited. It is important for the Inquiry at this stage to understand that others would challenge his view and would put their arguments with greater nuance than a simple charge that all loyalist terrorists were state-sponsored forces. For present purposes, it is sufficient to leave the debate with only the contours sketched. It is a matter to which the Inquiry could return, should the Chair consider it to be helpful, and within his Terms of Reference, to do so.

8.32 This document does, however, contain extensive analysis of what publicly available evidence shows of the extent to which the security forces and government had foreknowledge of the intentions of the UDA/UFF to murder Patrick Finucane, steps that could have been and were not taken to prevent the murder, and the encouragement and assistance provided by state agents to those who conducted it.

[535] de Silva Review, Volume I at [102/5.20].
[536] de Silva Review, Volume I at [99/5.3] to [100/5.9].
[537] de Silva Review, Volume I at [100/5.10] to [101/5.14].
[538] de Silva Review, Volume I at [102/5.15].

9. SHARING OF INFORMATION BY MEMBERS OF THE SECURITY FORCES WITH LOYALIST PARAMILITARIES

9.1. On 25 August 1989, six months after the murder of Patrick Finucane, gunmen from the UDA broke into another house and murdered another father in front of his family. Loughlin Maginn, aged 28 and a father of four, was shot in the chest and died on his stairs, witnessed by his 10 year-old daughter, Jenny. She told journalist John Ware that: *"He had started to fall asleep, and [a] neighbour had said to me … get a pillow for his head and he was telling him not to go to sleep … and daddy died … he died there."* More than a decade later, she said that this image *"never seems to go away. I see it all the time."* [539]

9.2. Elements within the UDA were, at that time, anxious to counter the reputation it had gained for sectarian violence and murder. They wished to show that the UDA could obtain intelligence to direct targets towards what they deemed to be "legitimate" targets, including active PIRA volunteers.[540] To this end, and in response to claims that Loughlin Maginn was unconnected to paramilitarism, it contacted journalists with the intention of showing them a video filmed during a UDA break-in at Ballykinler army base in County Down. The video included images of a document compiled by the RUC that listed IRA suspects in the area, and which included Loughlin Maginn's name.[541] John Ware reported that after the UDA's initial efforts to control the terms of disclosure had been rebuffed, the video was shown to BBC journalist Chris Moore at UDA headquarters. Numerous reports state that these efforts were led by

[539] Ware, Neither Confirm Nor Deny at [122-123]. See also: David McKittrick et al, *Lost Lives* (Edinburgh: Mainstream Publishing Company, 2001), at [1176]; McDonald and Cusack at [145-146].
[540] de Silva Review, Volume I at [268/11.68] to [269/11.79] and Volume II at [824]
[541] Ware, Neither Confirm Nor Deny at [123]; Henry McDonald and Cusack at [145-146]; Ed Moloney, 'Who was Bertie Scott, the UDA's Special Friend in RUC Special Branch', *The Broken Elbow* (11 July 2015).

the UDA's West Belfast Brigadier and Chairman of the Inner Council, Tommy "Tucker" Lyttle.[542]

9.3. At first, the UDA were pleased with the outcome.[543] The DCI, John Deverell, told the Secretary of State and others at a Security Policy Meeting on 26 September 1989 that the UDA had enjoyed a *"surge in morale"* as it was perceived as a greater threat to PIRA and because the Anglo-Irish Agreement had been put under strain.[544] The victory proved pyrrhic; in the words of journalist Ed Moloney, it was *"the loosened pebble that caused [a] landslide"*.[545] The resulting scandal led the RUC Chief Constable, Sir Hugh Annesley, to commission an external investigation under the then Deputy Chief Constable for Cambridgeshire, John (later Lord) Stevens. This was directed towards the UDA's receipt of the Ballykinler barracks video and other suspected examples of information being provided to loyalist terrorists by members of the security forces.[546] Information uncovered by that investigation, and ongoing concerns about agent handling and collusion resulting from the Nelson trial (itself a product of Stevens I), resulted in two further investigations being undertaken by John Stevens and his team. Cumulatively, these

[542] Ware, Neither Confirm Nor Deny at [123, 133-135]; McDonald and Cusack at [146]; *Moloney*, 'Who was Bertie Scott, the UDA's Special Friend in RUC Special Branch', *The Broken Elbow* (11 July 2015). As is discussed in the de Silva Report, and later in this document, Tommy Lyttle spoke to John Ware in December 1993 and June 1994: see de Silva Review, Vol. I, [366920.9]. The de Silva Review confirmed Lyttle had become Chairman of the Inner Council of the UDA by 1989: Vol. I, [368/20.2].
[543] Ware, Neither Confirm Nor Deny at [124-125].
[544] de Silva Review, Volume II at [824]
[545] Ed Moloney, 'Who was Bertie Scott, the UDA's Special Friend in RUC Special Branch', *The Broken Elbow* (11 July 2015).
[546] Operation Kenova Interim Report at [152/54.1] to [154/54.11].

resulted in 144 arrests and 94 convictions.[547] One of those convicted was Tommy Lyttle, who received a seven-year sentence.[548]

The Ballykinler barracks video

9.4. The details of the Ballykinler barracks video are instructive, albeit care should be taken not to extrapolate too broadly from a single case, which was unique in the publicity and effect that it generated.

9.5. The break-in took place in December 1988. Sir Desmond found that the intelligence agencies in Northern Ireland had prior notice of the plan, but a decision was taken by the RUC not to make efforts to prevent it. According to a Security Service note of a discussion with RUC SB, seemingly based on Nelson's intelligence:[549]

> *"[L/03]* [who was described by Sir Desmond elsewhere in his report as "*a prominent military figure in UDA's 'A' Company based in the Highfield area of Belfast"*[550]] *was planning to break into a UDR camp on 2 December to photograph some intelligence reports … We agreed that this was … odd … a view endorsed by D/HSB* [Deputy Head of Special Branch] *when I spoke to him subsequently. D/HSB advised that 'since the UDA already had lots of this stuff anyway' and they would find nothing of value there was little to be gained trying to prevent [L/03's] activity."*

9.6. Sir Desmond's Report does not discuss the basis for this decision, and whether it was said to relate to source protection.

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[547] Stevens 3 Overview and Recommendations at [17/4.2]. On its own, Stevens I resulted in 46 convictions: Statement of the Director of Public Prosecutions for Northern Ireland, 25 June 2007, para 4, published at https://www.ppsni.gov.uk/news/statement-director-public-prosecutions-northern-ireland-relation-decisions-prosecution-arising.
[548] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Print, 2006, 2013 edition), at [146]; McDonald and Cusack at [146].
[549] de Silva Review, Volume I at [268/11.72].
[550] de Silva Review, Volume I at [340/18.43].

9.7. The break-in subsequently took place and resulted in the video footage discussed above. It appears that the video also contained information that a "hit" had already been planned and that members of the UDA had offered to give refuge in their barracks to the "hit team" if they could not escape.[551]

9.8. Sir Desmond found that in January 1989 Nelson urged the UDA to make use of the information obtained. He reported to his handlers that he told L/03, *"if no attacks resulted from the video tape the UDR personnel who supplied it would not supply any more."*[552]

9.9. John Ware wrote that Nelson also complained at a meeting of UDA commanders on 24 August 1989, the night before Loughlin Maginn's murder, that units were not doing enough to kill "legitimate" targets.[553]

9.10. Sir Desmond referred to a UDA meeting that took place on the same night at which Loughlin Maginn was identified as a *"PIRA suspect"* on other documents that were provided to Nelson. On 30 August, five days after the murder, he told his handlers that the man providing the documents, L/45, claimed to have received them from *"a SB officer in Lisburn"*. Sir Desmond reported that he had seen the relevant montage of photographs, which confirmed that L/45 must have had an RUC contact, even though his claim that the officer was in Special Branch could not be verified. He considered that this information *"may also have increased"* the threat to Loughlin Maginn.[554]

9.11. Sir Desmond's summary of these events was as follows:[555]

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[551] de Silva Review, Volume I at [269/ 11.75]; Ware, Neither Confirm Nor Deny at {123].
[552] de Silva Review, Volume I at [268/11.74].
[553] Ware, Neither Confirm Nor Deny at [122].
[554] de Silva Review, Volume I at [269/11.76 – 11.77].
[555] de Silva Review, Volume I at [269/ 11.79].

"[M]*y examination of the background to the murder of Loughlin Maginn reveals that no attempt was made by the security forces to prevent the UDA from breaking into the UDR barracks and gaining the intelligence; that Brian Nelson subsequently encouraged UDA attacks on those featuring on the video tape; and that an RUC officer was reported to have been involved in leaking further material on Maginn."*

9.12. An internal MoD document succinctly and presciently referred to these events as *"potential dynamite."* [556]

9.13. Two UDR men were subsequently arrested in connection with the murder. In 1992, both men were convicted of murder.[557] Sentencing them to life, the trial judge, Lord Justice Kelly, said: *"Those who set up victims for assassination by targeting their homes, their cars or movements, and pass this information on, are equally guilty of murder in law as the gunman who fires the fatal shot."*[558] Two members of the UFF/UDA also received life sentences for Loughlin Maginn's murder.[559]

Sir Desmond's analysis of leaks from the security forces to the UDA

9.14. Sir Desmond undertook an analysis of two classes of documents to seek to understand the scale and nature of leaks to the UDA from the security forces in the late 1980s. The documents considered were:

a. FRU Contact Forms (FRU CFs) recording Brian Nelson's reporting of security force leaks to the UDA in the period 1987-1989; and,

[556] de Silva Review, Volume I at [269/11.75].
[557] de Silv Review, Volume I at [269/ 11.79].
[558] Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [206], first published 1999.
[559] Peter Taylor, *Loyalists* (London: Bloomsbury, 2000), at [206]; see also McKittrick et al, *Lost Lives* (Edinburgh: Mainstream Publishing Company, 2001), at [1176].

b. The Security Service's compendium of leaks from members of the security forces to loyalist paramilitaries in the period 1987-1989, which was drawn from human and technical sources. This document was compiled in October 1989, following the announcement of Stevens I. [560]

9.15. Sir Desmond said he shared the contemporaneous view that these two classes of documents were *"considered to be established and reliable"* (though he noted he had some reservations about Nelson's reliability).[561] He commented that the two sources could *"only provide a restricted sample of the actual scale of assistance provided by members of the security forces to loyalist paramilitaries."*[562] He also adverted to the inherent risk that some of the alleged "leaks" may have been examples of loyalist paramilitaries inventing or exaggerating their contacts with the security forces in order to boost their own standing within their organisations.[563] With these caveats in place, Sir Desmond felt that he was able to achieve his aim of providing a *"strategic overview of the prevalence and nature of the assistance given by members of the security forces to loyalist paramilitaries.*[564] He noted that his broad conclusions, as set out below, were supported by other sources of intelligence that he had seen.[565]

[560] de Silva Review, Volume I at [267/11.91]; see also [275/11.108], which noted that one of the purposes of the compendium was to *"arm ourselves in case the NIO [Northern Ireland Office] ask us for briefing on what we know of the scale and nature of the problem."* There is no record of such a briefing being requested or shared.
[561] de Silva Review, Volume I at [257/11.12].
[562] de Silva Review, Volume I at [257/11.17].
[563] de Silva Review, Volume I at [256/.11.11].
[564] de Silva Review, Volume I at [256/11.10].
[565] de Silva Review, Volume I at [260/11,22] to [262/11.33].

9.16. Sir Desmond's report contained a separate analysis of information provided by RUC Special Branch and FRU directly to Nelson,[566] which was not included in the statistical assessment summarised below.[567]

The quantity of material

9.17. Sir Desmond concluded that:

a. There were 270 separate instances of assistance provided by members of the security forces to loyalist paramilitaries during the period 1987 to September 1989[568] That amounts to an average of around two instances per week.

b. The majority of the recorded leaks appeared to relate to different members of the security forces providing assistance to the UDA. There were some instances of the same individual providing information on several occasions, in particular relating to checking vehicle registration details.[569]

c. Nelson himself did not cultivate a particular contact within the UDR or RUC. Instead, he *"relied on a wider variety of leaked information from a number of individuals within the UDA who had their own security force contacts."*[570]

d. Given the limitations of his sources, Sir Desmond concluded that these figures were, *"likely to represent only a small sample of a wider problem."* They were weighted towards security forces leaks to the UDA in the Belfast area.[571] Secondary sources report instances of information being shared by members of the security forces in other parts of Northern Ireland and to

[566] See de Silva Review, Volume I, Chapter 7 at [123-184].
[567] de Silva Review, Volume I at [258/11.18].
[568] de Silva Review, Volume I at [257/11.15].
[569] de Silva Review, Volume I at [257/11.16].
[570] de Silva Review, Volume I at [257/11.16].
[571] de Silva Review, Volume I at [258/11.18].

other paramilitary organisations.[572] A source described as a UVF commander is quoted as saying that intelligence documents were *"more common than beer mats."*[573]

9.18. Sir Desmond's analysis that there were numerous, disparate sources of information for loyalist paramilitaries is supported by an extract from an RUC SB document dated November 1988, which estimated that *"in each UDA 'area' there were approximately 20 police 'contacts'."* Sir Desmond's report contained no further explanation of what was meant, in this context, by a UDA "area", though it might relate to the six "geographical areas" that Sir Desmond had previously described.[574]

9.19. The Report also noted an assessment by the Security Service in 1985 that concluded that *"the UDA had thousands of items of intelligence material and that 85% of this was drawn from security force records."*[575] The flow of information appears to have increased after the Anglo-Irish Agreement was signed in November 1985[576] As is discussed below, Sir Desmond concluded that the proportion of intelligence material held by the UDA that originated from the security forces *"remained largely unchanged"* by the time of the murder of Patrick Finucane.[577]

Sources of the material

9.20. Sir Desmond's report contains a chart showing, in broad terms, the types of material provided and the source of the information providing the information to the UDA (where known).[578]

[572] McDonald and Cusack at [197] to [199].
[573] McDonald and Cusack at [197].
[574] de Silva Review, Volume I at [261/11.32] and [60/2.24].
[575] de Silva Review, Volume I at [260/11.23].
[576] de Silva Review, Volume I at [55/2.7] and [260/11.23].
[577] de Silva Review, Volume I at [275/11.111].
[578] de Silva Review, Volume I at Figures 9 [258] and 10 [259] and [258/11.19] to [259/11.20].

Figure 9: Instances of security force leaks to loyalist paramilitaries by origin and type, 1987–89

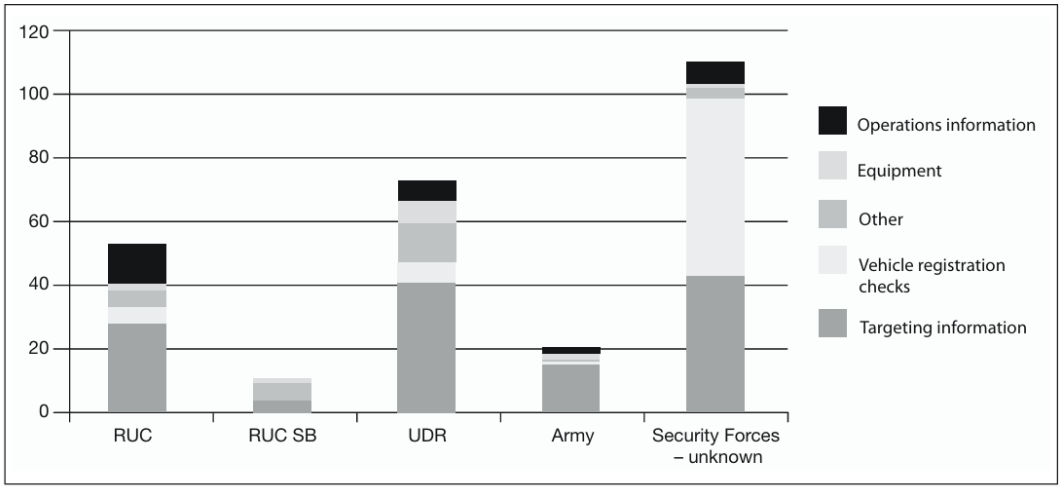
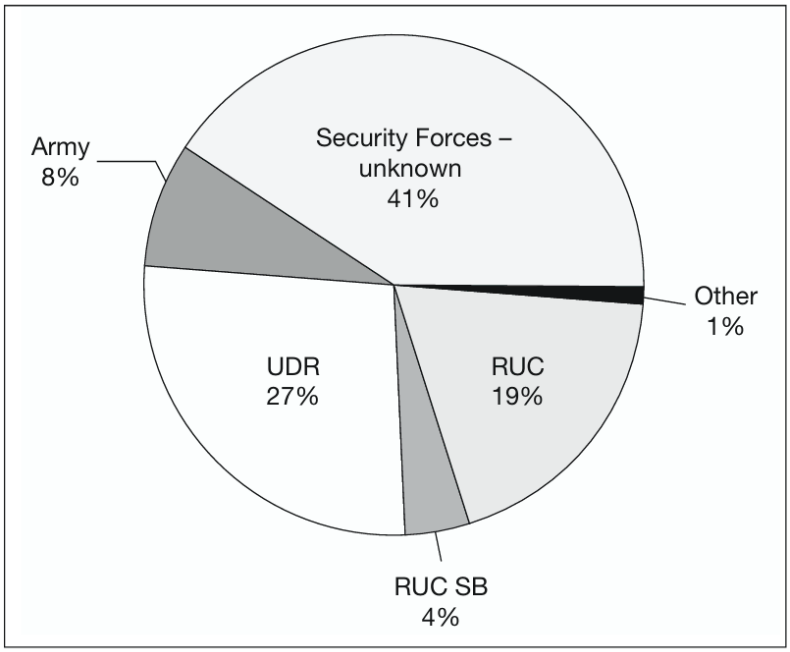


Figure 10: Origin of security force leaks, 1987–89



As can be seen, it was only possible to identify the source of the leak in 59% of the instances Sir Desmond identified (thus around 160 cases, if the percentages used in Figure 10 are applied to the figure of 270 instances of assistance that Sir Desmond recorded at para 11.15 of his report). That 59% comprised:

a. 27% from the UDR (approximately 73 instances).

b. 19% from the RUC (excluding Special Branch) (approximately 51 instances).

c. 4% from RUC Special Branch (approximately 11 instances).

d. 8% from the Army (approximately 22 instances).

e. 1% characterised as "Other" (approximately 3 instances). It is not clear what this represents, given that Sir Desmond found no evidence to suggests leaks from the Security Service in this period.[579]

9.21. Sir Desmond concluded:[580]

> *"In cases where it is possible to ascertain the source of the leak, members of the RUC and the UDR were probably responsible in broadly equal measures for the assistance provided to loyalist paramilitaries, with a significantly smaller degree of assistance provided by members of the regular British Army. I should note that I have seen no evidence to suggest that there was any leak from the Security Service during this period."*

The types of information provided

9.22. Sir Desmond adopted the following characterisations of the material that was provided to loyalist paramilitaries: operations information; equipment; vehicle registration checks; targeting information; "other"[581] Sir Desmond explained that "targeting information" often consisted of security force documents or oral information being passed to loyalist paramilitaries to provide details of an individual suspected of being a member of PIRA.[582] He added that while he separated "targeting information" from "vehicle registration checks",

[579] de Silva Review, Volume I. at Figure 10 [259] and[258/11.20].
[580] de Silva Review, Volume I at [258/11.20].
[581] de Silva Review, Volume I at Figures 9 [258] and 11 [259] and [259/11.21].
[582] de Silva Review, Volume I at [254/11.21].

"in practice many of these vehicle details would have been supplied and used for targeting purposes."[583] Counsel to the Inquiry understand "operations information" to refer to operations that the security forces had conducted or intended to conduct, including operations against loyalist paramilitaries.[584] "Equipment" included instances where weapons were provided by members of the security forces to loyalist paramilitaries.[585]

9.23. The proportions of the total represented by each of the categories was as follows.

a. Targeting information: 49%.

b. Vehicle registration checks: 25%.

c. Operations Information: 10%.

d. Equipment: 5%.

e. Other: 11%.

9.24. If these percentages are applied directly to the 270 instances of assistance identified by Sir Desmond, then it would follow that his team identified approximately 132 instances in which targeting information was provided to loyalist paramilitaries by members of the security forces in the period from 1987 to September 1989 (just short of one instance per week). There were, approximately, a further 67 instances in which vehicle registration information was provided, potentially for targeting purposes. There were also approximately 27 instances in which loyalist paramilitaries were told about operations information, and around a dozen instances on which equipment was provided. It is emphasised that these are figures extrapolated from

[583] de Silva Review, Volume I at [254/11.21].
[584]See, for example, de Silva Review, Volume I. at [258/11.44], [260/11.55] and [262/11.65].
[585] de Silva Review, Volume I, chapter 13 [280] to [284]and [280/13.1].

the de Silva Report, not figures given within it, and the methodology used will need to be tested when reviewing the underlying materials. It is also worth repeating Sir Desmond's general conclusion that the instances he identified were, *"likely to represent only a small sample of a wider problem."*[586]

9.25. The Security Service assessment of 1989 concluded that most of the montages, photographs and weapons were attributed to the UDR (and on occasion, the regular Army), whereas the RUC predominated in the passage of *"general information"* and warnings about security force operations.[587]

9.26. The "intelligence dump" held by Nelson provided examples of the type of material provided. It included:[588]

a. Photographs of individuals that could be used for targeting purposes. Sir Desmond found that these were "normally" photographs taken in police custody.[589]

b. "P file cards", which contained information about a specific individual. An example is contained in volume 2 of the de Silva Report.[590] A FRU file note (made following the provision of the intelligence dump by Nelson to FRU), included an itemised list recording *"500 A4 RUC P file cards"*, and British Army "P Cards".

c. Military maps.

d. Some examples of RUC witness statements or Garda Reports.[591]

[586] de Silva Review, Volume I at [258/ 11.18].
[587] de Silva Review, Volume I at [272/11.92].
[588] de Silva Review, Volume I at [260/11.27] to [261/11,29].
[589] de Silva Review, Volume I at [260/11.28].
[590] de Silva, Review, Volume II at [551] to [552].].
[591] de Silva Review, Volume I at [260/11.28] to [261/11.29].

9.27. Nelson himself described the source of the UDA's intelligence in a witness statement to the Stevens I investigation in a statement dated 19 February 1990:[592]

> *"Information was received in [sic] a number of methods and from a number of sources. Primary source material was in the form of montages obtained from the Military and RUC. This was classed within the UDA as High Grade information as having originated from those two sources. I never knew who originally supplied this material. Handwritten notes containing information about known players would also originate from the Military. I would say that ninety nine percent involved the UDR. Other means of information was gleaned from the use of Scanners to monitor Police Transmission. Other information came from person to person contact on the activities of certain individuals and from Republican Newspapers."*

The provision of equipment

9.28. The de Silva Report refers at various points to weapons being obtained by loyalist terrorist from the security forces.

9.29. In February 1987, weapons were stolen from the UDR barracks in Coleraine. The de Silva Review found that RUC SB had apparently been aware of the UDA's intention to raid the armoury but had not reported this to the Army. A Security Service telegram from the time suggested that this incident reinforced the Army's determination to run its own agents, including Nelson.[593]

9.30. In August 1987, a haul of weapons was taken from the armoury of the Palace Barracks in Holywood by a serving senior non-commissioned officer, Colour Sergeant A/23. He subsequently sold the weapons

[592] de Silva Review, Volume I at [261/11,30].
[593] de Silva Review, Volume I at [118/6.79] to [118/6.80].

(save for one pistol, which he retained for himself) to the UDA for £3,000. The weapons taken were: two machine guns, 13 pistols, two air rifles and a revolver. C/Sgt A/23 also stole and sold ammunition and sights. As is discussed later in this document, this raid was of particular importance to the murder of Patrick Finucane as one of the stolen weapons – a 9mm Browning pistol – was used in the attack. One of A/23's contacts within the UDA was Kenneth Barrett, the only man convicted of the murder. Barrett claimed to the journalist John Ware that he had instigated the theft. A/23 was subsequently arrested, prosecuted and sentenced to five years' imprisonment.[594]

9.31. In January 1989, four weapons were stolen from Malone Barracks in Windsor Park, Belfast. Two of these weapons were SA80 self-loading rifles, which the de Silva Report described as being particularly dangerous weapons to fall into the hands of terrorists.[595]

9.32. Sir Desmond was highly critical of the *"inadequate security"* around UDR weapons, and the failure to address these shortcomings, as evidenced by these incidents. His detailed account of the theft of weapons by A/23 in August 1987 led him to conclude that it revealed a *"woeful failure by the UDR to maintain adequate control over its weapons and prevent them from falling into the hands of terrorists."* [596] This matter is discussed later in this document, when considering the mechanics of the murder of Patrick Finucane. Sir Desmond did not conduct a similarly detailed review of other instances of security force weapons being obtained by the UDA or other paramilitary organisations. [597]

[594] de Silva Review, Volume I at [280/13.2] to [282/13.15].
[595] de Silva Review, Volume I at [284/13.22].
[596] de Silva Review, Volume I at [284/13.20].
[597] de Silva Review, Volume I at [284/13.23].

9.33. Sir Desmond concluded that there was "insufficient evidence before me to show that units within the UDR deliberately facilitated the 'theft' of weapons that then fell into the hands of loyalist terrorists … Nevertheless, it does appear to have been extraordinarily easy for loyalist terrorists to acquire weapons from UDR sources."[598]

Allegations about high-level sources within the RUC and UDR

9.34. Sir Desmond considered specific allegations of assistance being provided to loyalist paramilitaries from officers or high rank in the RUC and UDR. His published report is relatively light on detail, but he concluded that:

a. It was likely that a high-level RUC contact assisted loyalist paramilitaries to an extent in their effort to procure arms in the mid-1980s.[599] Elsewhere, this source is identified as a *"potentially very senior RUC officer."*[600] The Officers within the Security Service were sufficiently concerned about this source that they sought to limit the information provided to the RUC about loyalist arms procurement in order to protect one of their assets.[601]

b. *"[I]ntelligence reports pointing to assistance being provided by a small number of comparatively senior figures [in the late 1980s] are sufficiently compelling and consistent to lead me to believe that at least some of the reports are likely to be founded in truth."* [602]

[598] de Silva Review, Volume I at [284/13.23].
[599] de Silva Review, Volume I at [263/11.42].
[600] de Silva Review, Volume I at [262/11.37].
[601] de Silva Review, Volume I at [263/11,41].
[602] de Silva Review, Volume I at [263/11.46].

The link between the information provided to the UDA murders in the late 1980s

9.35. Sir Desmond undertook a detailed review of Nelson's role in a number of murders in the late 1980s, and the role played by material obtained from the security forces. This is considered elsewhere in this document. While he did not consider murders in which Nelson had no involvement with the same forensic scrutiny, he did conclude that: "much of the documentary evidence I have reviewed suggests that leaked security force information played a part in a number of attacks."[603]

9.36. In Sir Desmond's view, leaks from the security forces were "made even more dangerous by the fact that the UDA tended to assume that security force contacts were providing infallible and immediately 'actionable' information."[604]

The context of and response to the leaks

9.37. Sir Desmond's report is at pains to emphasise that those within the security forces providing information to loyalist paramilitaries represented a small proportion of the total personnel.[605] In 1989 there were:[606]

a. Over 11,277 full-time RUC officers;

b. 1,605 RUC officers working in the Part-Time Reserve;

c. 2,947 full-time personnel in the UDR and 3,283 part-time personnel;

[603] de Silva Review, Volume I at [264/ 11.49]. See also [265/11.52], and the extract from Nelson's Stevens 1 statement quoted above and at[256/ 11.30].
[604] de Silva Review, Volume I at [265/11.51].
[605] de Silva Review, Volume I at [255/11.3] to [256/11.8] and 261/11.54].
[606] de Silva Review, Volume I at [255/11.4].

d. 11,200 personnel serving in the regular British Army in Northern Ireland.

9.38. Sir Desmond noted that given the numbers involved and the fact that many lived within tight-knit communities, some degree of association with paramilitaries was *"almost inevitable."* He agreed with the view expressed by Sir John Stevens in 1990 that: *"It must be acknowledged, that in the present climate, leakages of information from the Security Forces may never be completely eliminated."*[607]

9.39. However, Sir Desmond was critical of the response of the security forces to the scale and seriousness of the leaks. He identified that limited action was taken, noting the following:

a. Army/Security Service: The Security Service established two leak investigations in the mid-1980s. The first resulted in an Army officer who was under suspicion being sent back to England; the second could not identify the culprit. Sir Desmond considered that the enquiries were *"rigorous and represented genuine attempts to identify the source of leaks."*[608]

b. UDR: *"Limited action"* was taken in respect of some members of the UDR in the late 1980s, including the conviction of *"several members"* for criminal offences[609] As is set out above, this includes the arrest and conviction for murder of two UDR soldiers for their role in the murder of Loughlin Maginn.[610] Other members of the UDR who were under suspicion were dismissed or transferred to less sensitive posts.[611] However, Sir Desmond's view in respect of the UDR was that *"the action taken was*

[607] de Silva Review, Volume I at [255/11.5] to [255/11.6]. See also McDonald and Cusack at [198]
[608] de Silva Review, Volume I at [266/11.58].
[609] de Silva Review, Volume I at [2616/11.59].
[610] de Silva Review, Volume I at [269/11.79].
[611] de Silva Review, Volume I at [266/11.59] to [266/11.60].

minimal in view of the scale of the problem."[612] He also identified concerns that some 351 individuals were permitted to enlist in the UDR despite adverse RUC vetting reports.[613]

c. RUC: The PSNI undertook a review of all personnel records between 1982 and 1989 and found only one investigation into officers leaking information to loyalists. That investigation led to the dismissal of an officer suspected of involvement in the possession and transportation of firearms to loyalists in 1988.[614] An important caveat is that the PSNI found it difficult to trace disciplinary records from this period.

d. The RUC also used channels other than disciplinary investigations to try to tackle the issue of leaks. The de Silva Review was provided by PSNI with 36 examples of action being taken, with some further evidence along similar lines coming from the Security Service.[615] Sir Desmond nonetheless found that for the majority of RUC leaks, he was unable to find any records of investigations being carried out. He noted that some intelligence reporting about such leaks was insufficiently precise to enable meaningful investigative action.[616]

9.40. Neither Sir Desmond nor the Stevens investigations found any evidence that action was taken in response to the recovery of a copied version of Nelson's intelligence dump. Sir Desmond stated that this was a *"particular concern"* given that the material *"would itself have illustrated the scale of security force information in the hands of the UDA."*[617] Nelson handed the copy of his intelligence

[612] de Silva Review, Volume I at [266/11.60].
[613] de Silva Review, Volume I at [266/11.61].
[614] de Silva Review, Volume I at [267/11.62].
[615] de Silva Review, Volume I at [267/11.63] to [267/11.65].
[616] de Silva Review, Volume I at [267/11.66].
[617] de Silva Review, Volume I at [267/11.67].

dump to his FRU handlers in October 1987, nearly two years before the Stevens I Investigation was established.[618]

9.41. The de Silva Review considered the assessments made by the Security Service and FRU of leaks from the security forces to loyalist paramilitaries. Among Sir Desmond's conclusions were the following:

a. Both FRU and the Security Service had long-held suspicions or expectations that elements within the RUC would disclose materials to loyalist groups, including the UDA. One example of this was a memorandum written in February 1987 by John Deverell, then the Director of Counter-Terrorism FX Branch and subsequently DCI.[619] FRU were concerned that leaks from the RUC to the UDA could place Nelson at risk.[620]

b. In October 1989, following Loughlin Maginn's murder, the Security Service undertook the assessment referred to above. This found *"some collusion and some unauthorised passage of information"* but *"no evidence … of any organised conspiracy"* (emphasis in the original).[621]

c. By the time of the Stevens I investigation, senior figures in the Regular Army were exhibiting what Sir Desmond found to be *"a highly adverse attitude towards the RUC's response to the issue."* [622] He cited a memorandum written from the Assistant Chief of Staff of the Intelligence Section (ACOS G2) to the General Officer Commanding (GOC), which stated that FRU had consistently reported to the RUC the passage of montages and other security force materials to the UDA, and questioned what

[618] Operation Kenova Interim Report at [152/54.2].
[619] de Silva Review, Volume I at [271/11.86] to [271/11.89].
[620] de Silva Review, Volume I at [271/11.89].
[621] de Silva Review, Volume I at [272/11.91].
[622] de Silva Review, Volume I at [272/11.93].

investigations were undertaken by the RUC as a result. ACOS G2 expressed the view that the Chief Constable could *"probably not"* weather an investigation into this area.[623]

d. At official level, a letter from the Office of the Secretary of State for Defence to the Attorney General's office dated 28 March 1991 recorded that Special Branch did not act on Nelson's information and it was expected that a full trial of Nelson would *"ventilate the questions of why they ignored threat warnings and reports of leaks."*[624]

UK Government Ministers' knowledge of the scale of the leaks

9.42. Sir Desmond's view was that:

> *"The leaks were undoubtedly so serious in their nature that Government Ministers should have received regular briefings on the issue.*
>
> *However, my analysis of the briefing of UK Government Ministers by the intelligence agencies suggests that Ministers were, in fact, given very little indication of the scale of the problem."* [625]

9.43. Sir Desmond found some intelligence reports were provided in the mid-1980s to the then Secretary of State for Northern Ireland, Douglas Hurd, and his successor, Tom King. However, this was limited in nature, and the Review was *"unable to find any evidence of Ministers being provided with significant intelligence briefing on the matter of leaks from members of the security forces to loyalist paramilitaries."*[626]

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[623] de Silva Review, Volume I at [273/11.95].
[624] de Silva Review, Volume I at [273/11.98].
[625] de Silva Review, Volume I at [273/11.97] to [273/11.98].
[626] de Silva Review, Volume I at [273/11.98] to [274/11.101]. See also [275/11.108] to [275/11.109].

9.44. A briefing was provided at a Security Policy Meeting (SPM) that took place on 26 September 1989, at the start of the Stevens I investigation. It was attended by the Secretary of State (Peter Brooke), the Chief Constable (Sir Hugh Annesley), the GOC (Sir John Waters), the DCI (John Deverell) and others. An extract of the record of that meeting is published in Volume 2 of the de Silva Report and was referred to earlier in this chapter.[627] Sir Desmond cited some of the information provided at that meeting, which tended to downplay the nature and extent of the leaks.

a. The Chief Constable informed the meeting that that Stevens I investigation was *"presently focusing entirely on members of 7/10 UDR [the 7ht/10th (City of Belfast) Battalion] and the signs were that no other parts of the Army or RUC or other agencies were directly implicated."*[628] It is important to read this observation in the context of the specific terms of reference given to the Stevens I investigation, which are set out in the Interim Report of Operation Kenova, and which were focused on leaks concerning Loughlin Maginn's murder, the Ballykinler break-in, and the disappearance of photographs from an RUC police station in August 1989.629 Critically, at this stage the Stevens I investigation had not been provided with the Nelson intelligence dump, Nelon's FRU Contact Forms, or the Security Service compendium, all of which informed Sir Desmond's analysis and demonstrated that RUC material had been provided to the UDA.630

[627] de Silva Review, Volume II at [824-828].
[628] de Silva Review, Volume II at [825] and Volume I at [274/ 11.105].
[629] Operation Kenova Interim Report at [152/54.2].
[630] de Silva Review, Volume I at [270/11.84]. For Sir Desmond's wider consideration of the conclusions of the Stevens I investigation, and the obstruction that it faced, see [270/11.80] to [271-11.85].

b. The GOC emphasised the need "to get the true significance of the 'leaks' in perspective." His point, which had been foreshadowed in a letter to the Secretary of State dated 24 September, was that the material provided was low-level information intended to assist members of the security forces in identifying people in whom they had an interest. He suggested that it would be helpful to refer to this as "recognition aids" as there was "no evidence that 'security' material (and certainly not security files) had gone missing." 631

c. The Chief Constable pursued a similar line of argument, suggesting that "the main issue was collusion, rather than the intrinsic sensitivity of the material itself." He suggested that the Irish Government, in raising its concerns about the issue, "knew that the material was in *the routine, low-grade category, but it was not currently in their interests to say so."* [632]

9.45. Sir Desmond commented that: "Any analysis of Brian Nelson's intelligence materials or the Security Service's papers on leaks would have quickly demonstrated that loyalists certainly had gained access on occasions to some high-level 'security materials." [633]

9.46. It can also be noted that low-level *"recognition aids"* were of particular importance to loyalist paramilitaries in identifying (and justifying) what they perceived to be "legitimate targets", such as Loughlin Maginn who had been murdered the previous month. As Sir Desmond found elsewhere, this material was *"made even more dangerous by the fact that the UDA tended to assume that security force contacts were providing infallible and immediately 'actionable' information."*[634] Nelson himself confirmed to Stevens

[631] de Silva Review, Volume I at [274/11.103] to [275/11.106]. and Volume. II at [826-827].
[632] de Silva Review, Volume I at [274/11.105] and Volume. II at[828].
[633] de Silva Review, Volume I at [275/11.107].
[634] de Silva Review, Volume I at [265/11.51].

investigators that security force material such as photo montages was "*classed within the UDA as High Grade information.*" [635]

Sir Desmond de Silva's overview

9.47. Sir Desmond concluded his analysis of the provision of material from the security forces to loyalist paramilitaries with the following observations:[636]

> *"The scale and nature of the 'leaks' from members of the security forces to loyalist paramilitaries during the late 1980s has never properly been acknowledged. The leaks of information certainly involved much contact between junior UDR and RUC officers and members of the UDA. However, there is evidence to suggest that the leaks could also originate from comparatively senior officers and, on occasions, relate to sensitive intelligence information.*
>
> *The Security Service made a detailed assessment in 1985 that 85% of the UDA's intelligence came from the security forces. Having examined a very large volume of material relating to UDA activity in the late 1980s, I am satisfied that the proportion of their intelligence originating from the security forces would have remained largely unchanged by February 1989. I have no doubt that the UDA were heavily reliant on RUC and UDR leaks to carry out its targeting and attacks during this period.*
>
> *The nature of these findings should not be held to impugn the reputation of the majority of those who served in the RUC and the UDR to uphold the rule of the law in extraordinarily difficult circumstances. Nevertheless, although only a minority of officers*

[635] de Silva Review, Volume I at [261/11.30], cited above.
[636] de Silva Review, Volume I at [275/11.110] to [276/11.113].

engaged in such activity, the leaks can only be described as widespread in their extent.

I am satisfied that leaks to loyalist paramilitaries were not institutional in the sense that there was an official or unofficial policy or strategy to authorise the provision of information to such groups. However, there was certainly an institutional failure on the part of the RUC and the UDR to take the necessary action to tackle the issue of leaks prior to the Stevens I Investigation. Both the RUC SB and Army intelligence were fully aware of the extent of leaks, but the action taken to combat such leaks was, in my view, inadequate in view of the scale of the problem."

10. BRIAN NELSON

Introduction and Chapter Overview

10.1. Understanding the role of Brian Nelson, the West Belfast Intelligence officer for the UDA and an agent of the British Army's secret FRU, is central to this Inquiry. This chapter considers not only the fact of Brian Nelson's recruitment and re-recruitment by the FRU, but the consequences of placing a man with his antecedents in a position where he could gather, organise and disseminate targeting intelligence for loyalist paramilitaries while also acting as an agent of the State.

10.2. The starting point is Brian Nelson's background. He was from the Shankill Road area of Belfast and, after periods in the Royal Navy, the Territorial Army and the Regular Army, joined the UDA in 1972. [637] Shortly afterwards, in March 1973, he was involved in the abduction and torture of Gerald Higgins, a partially sighted man, for which he was later convicted. That conviction, together with Brian Nelson's later "pivotal role" in the targeting and attempted murder of a Sinn Fein councillor, while first run by the FRU, is significant to assessing what was, or should have been, known when the FRU decided to re-recruit him in 1987.

10.3. Brian Nelson first contacted the Army[638] to offer his services as a source of intelligence. He told his FRU handler that the UDA, once "*necessary*", had "*grown evil*" and "*was behind more of the criminal activities in Protestant areas*[639]. He was then run by FRU's East "*Det*" (Detachment) in East Belfast as an agent within the UDA until he left Belfast for West Germany in October 1985. During Brian Nelson became a significant source: he met his handlers 60 times over 17

[637] de Silva Review, Volume I at [103/6.3].
[638] de Silva Review, Volume I at [104/.6.6].
[639] de Silva Review, Volume I at [104/6.6].

months and was paid more than £2,000 between May 1984 and October 1985.[640]

10.4. The significance of Brian Nelson's later re-recruitment lies in the warning signs that were already available. Sir Desmond de Silva QC in his review found that by 1987 the FRU knew, or ought to have known, of his conviction for serious sectarian violence; his role in the targeting and attempted murder of T/27 during his first period as an FRU agent; and his involvement in the 1985 South African arms episode.[641] The chapter therefore examines the publicly available material concerning whether the decision to re-recruit Brian Nelson properly accounted for those risks, and whether the priority thereafter was the prevention of attacks or the protection and continued use of Brian Nelson as a source.

10.5. The consequences of Brian Nelson's recruitment and re-recruitment, Sir Desmond assessed, were undoubtedly grave. Sir Desmond found that Brian Nelson played some part in at least four murders (Terence McDaid, Gerard Slane, James Pratt ('Jim') Craig and Patrick Finucane), ten attempted murders and numerous conspiracies to murder.[642] Journalist John Ware has reported that his own records *"indicate that at least six individual were murdered after being actively targeted by Nelson, but it is possible that he contributed to more, perhaps many more."*[643]

10.6. A Security Service Agent who had direct dealings with Brian Nelson, sometime after Brian Nelson's arrest, commented to his handlers:

[640] de Silva Review, Volume I at [104/6.7].
[641] de Silva Review, Volume I at [13/28] to [14/29].
[642] de Silva Review, Volume I at [178/7.270].
[643] Ware, Neither Confirm Nor Deny at [42].

"Nelson is a bad bastard, unreliable and dangerous. I could have told you this a long time ago and saved you all a lot of trouble."[644]

10.7. John Ware described this "*trouble*" as what followed Brian Nelson's re-recruitment into the FRU in early 1987. He described it as a "*case study in the perils of an agent-running operation freighted with foreseeable risks*".[645] Sir Desmond determined that FRU must bear a degree of responsibility for Brian Nelson's targeting activity when an handlers.[646] Sir Desmond records the Commanding Officer of the FRU (A/05) comments at Brian Nelson's trial:

"... whatever [Nelson] may or may not have done throughout his time with the UDA since 1987, he would not have done it had we in FRU not reinstated him in the UDA in the first place."[647]

10.8. The nature of Brian Nelson's involvement in Patrick Finucane's murder, and whether there is evidence that his involvement and others, could have been prevented Patrick Finucane's murder if those risks were indeed foreseen, is significant to this Inquiry's terms of reference.

10.9. Against that background, the chapter proceeds in four parts. First, it considers the material available regarding Brian Nelson's antecedents, including the kidnap and torture of Gerald Higgins, the attempted murder of T/27 and the 1985 South African arms episode. Secondly, it examines the available evidence concerning the circumstances of his re-recruitment in 1987, including the role of senior Army and Security Service personnel and the warning signs that should have been apparent. Thirdly, it considers conclusions made regarding the effect of Brian Nelson's position on the UDA's

[644] de Silva Review, Volume I at [183/7.293].
[645] Ware, Neither Confirm Nor Deny at [31].
[646] de Silva Review, Volume I, at [418/ 21.215].
[647] de Silva Review Volume I at [418/21.215].

targeting capacity. Finally, it addresses Brian Nelson's activities between 1987 and 1989, including his involvement in specific murders, attempted murders and conspiracies, and the recurring question of whether intelligence derived from Brian Nelson was used to prevent attacks or instead allowed targeting activity to continue. This latter topic will also be addressed in more detail in the following chapter of this Opening.

Antecedents

10.10. Brian Nelson's prior involvement in serious sectarian violence before his recruitment into the FRU in 1984 and his re-recruitment in 1987 is documented in detail in Sir Desmond's report. Three particular incidents are highlighted:

a. **Gerald Higgins:** In February 1974, Brian Nelson was sentenced to seven years imprisonment for firearms offences, intimidation and assault occasioning actual bodily harm committed in March 1973.[648] He was convicted of these offences, having been reported in court as acting as a "*ringleader*" in the abduction and torture of Gerald Higgins, a partially sighted man, in March 1973.[649] Brian Nelson and two other men kidnapped Gerald Higgins; took him to a UDA club where he was beaten, set on fire and electrocuted. As he was apparently being led away to be executed, an Army patrol intervened and he was taken immediately to hospital. His injuries were so severe that he was not expected to live. Although he survived, he was mentally scarred by his mistreatment. His daughter told Sir Desmond: "*My father never recovered from this horrendous ordeal. His life was left in tatters, his faith in humanity destroyed*".[650]

[648] de Silva Review, Volume I at [103/6.4] to [103/6.5].
[649] Paddy Topping, court report, 4 July 1973 cited in Ware, Neither Confirm Nor Deny at [4].
[650] de Silva Review, Volume I at [103/6.5].

b. **T/27:** Sir Desmond found that Brian Nelson "*played a pivotal role*"[651] in the targeting and the attempted murder of T/27, a Sinn Fein councillor, on 27 September 1985. Sir Desmond stated that this "*provides a clear example of Nelson's propensity for involvement in very serious violent crime during his first period as an FRU agent*".[652] The contemporaneous CFs record the following: by 19 September 1985, thanks to Brian Nelson's intelligence reporting, by the time that T/27 was attacked, the FRU were "*fully aware that he was a key target for the West Belfast UDA; that L/28 was the lead commander for the planned attack; that the UDA had identified that T/27 left his house between 7.15 and 7.30 every morning and that Nelson had positively confirmed T/27's identity in a 'recce'*".[653] Despite the FRU being aware of this, the MISR[654] dated 23 September 1985 recorded only that "*the UDA continue to target [T/27]*".[655] Sir Desmond regarded that "*[h]ad the more detailed information from the CF been circulated more widely, and had the RUC SB been willing to act on the information, it could have facilitated more effective preventative measures being taken in relation to the planned attack.*" [656] Sir Desmond, having analysed Brian Nelson's own 1990 witness statement to the first Stevens Investigation (Stevens I) and 'journal', concluded Brian Nelson knew even more about L/22's role in the planning of the attack.[657] Sir Desmond found that there was no documentary basis for concluding that T/27 was warned or protected before the attack, despite the "*very significant amount of information*

[651] de Silva Review, Volume I, at [13/28].
[652] de Silva Review, Volume I at [104/6.8].
[653] de Silva Review, Volume I at [108/6.32].
[654] An official intelligence record used by the FRU to formally record and process information gathered from secret agents and informers.
[655] de Silva Review, Volume I at [106/6.19].
[656] de Silva Review, Volume I at [106/6.19]; see also Volume I at [114/6.60].
[657] de Silva Review, Volume I at [106/6.20] to [107/6.22].

that was passed by the FRU to the RUC SB regarding the threat to T/27".[658] On 27 September 1985, T/27 was shot three times at close range. He was seriously injured but survived the shooting which had gone "*just the way it was planned*" according to L/28 in a CF.[659]

c. **UDA's attempts to obtain arms in 1985:** Sir Desmond determined that "*[t]here is no doubt that Brian Nelson visited South Africa in 1985 to discuss the putative shipment of arms to the UDA*"[660] and that, in light of the FRU CFs and Security Service documents that both the FRU and the Security Service were fully aware of Brian Nelson's visit and discussions with an arms dealer there.[661] Sir Desmond found that rather than facilitating the re-arming of loyalists as has been alleged, the aim of the FRU and the Security Service was to intercept and seize the weapons.[662] Judge Peter Cory's view was that"*[t]he Army appears to have at least encouraged Nelson in his attempt to purchase arms in South Africa for the UDA … with the intention that they would be intercepted at some point en route to Northern Ireland"*[663]. According to Brian Nelson's journal, Brian Nelson's handler told him in 1987 that it was decided to let the first consignment of weapons enter Northern Ireland untouched in order to protect Brian Nelson's cover.[664] The CFs and Brian Nelson's statement to the Stevens I Investigation in 1990, recorded that the arms deal ultimately failed because the

[658] de Silva Review. Volume I at [108/6.30].
[659] de Silva Review, Volume I at [107/6.23].
[660] de Silva Review, Volume I at [110/6.38].
[661] de Silva Review, Volume I at [110/6.38].
[662] de Silva Review, Volume I at [110/6.39].
[663] Cory Report at [26/1.53].
[664] de Silva Review, Volume I at [111/6.44]; British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), at [4.4]. See https://www.rightsandsecurity.org/unsr-on-extra-judicial/ .

UDA had failed to raise the necessary funds.[665] While loyalist paramilitaries imported arms into Northern Ireland in late 1987, Sir Desmond found this was a separate operation in which Brian Nelson and the FRU had no involvement.[666] Security Service records suggest that the RUC recovered an estimated two-thirds of the 1987 shipment, whilst the remaining third reached the Ulster Resistance.[667] Although Sir Desmond stated that he had not conducted a detailed examination of the intelligence coverage in relation to these shipments, a Security Service internal memo records that the Service were unable to intercept the shipment because of a lack of prior intelligence.[668] In Judge Cory's report, he finds the evidence is *"frail and contradictory*" relating to the completion of the arms transaction, but highlights it "*to demonstrate the trust that had been reposed in Nelson by FRU*".[669]

Re-recruitment in 1987

10.11. In his report, Sir Desmond sought to emphasise the importance of viewing Brian Nelson's activities throughout 1987-1989 in light of the fact that he was re-recruited and consciously re-infiltrated into the UDA by the FRU in 1987.[670] This re-recruitment as an FRU "*intelligence officer*" occurred despite having previously been sentenced to seven years' imprisonment for the kidnapping and torture of Gerald Higgins; and his "*pivotal*" role in the targeting and attempted murder of T/17 as an FRU agent.[671] Sir Desmond found that "*there were clear warning signs that should have raised serious questions about his suitability to be employed as an agent of the*

[665] de Silva Review, Volume I at [111/6.46] to [111/6.48].
[666] de Silva Review, Volume I at [111/6.49] and [112/6.52].
[667] de Silva Review, Volume I at [112/6.52].
[668] de Silva Review, Volume I at [112/6.50].
[669] Cory Report at [26/1.54].
[670] de Silva Review, Volume I at [179/7.272].
[671] de Silva Review, Volume I at [13/28] and [109/6.34].

State".[672] Sir Desmond concludes that "*[t]he subsequent running of Brian Nelson as an Army agent is a matter which has caused me grave concern*".[673] Sir Desmond concluded that Brian Nelson's re-recruitment "*had the net effect of serving to increase the UDA's capacity to target and attack republicans*".[674]

10.12. The Lawyers Committee for Human Rights concur, describing Nelson bringing "*new order and professionalism to the UDA's information gathering*".[675] A CF dated 3 May 1988 states that "[s]*ince 1637 [Nelson's agent number] took up his position as intelligence officer, the targeting has developed and is now more professional*".[676] The BBC reported that with FRU assistance, Brian Nelson introduced a system in which all details about a possible UDA target was recorded on a "personality" card, or "P-card",[677] which would then be handed to the murder team in the UDA. Judge Cory records that the primary source material for these P cards consisted of photo montages and hand-written information from either the Military or the RUC.[678] In his 1990 statement, Brian Nelson estimated that 90% of the material he worked with had come from the Ulster Defence Regiment (UDR).[679]

10.13. British Irish Rights Watch report that after 1988, the FRU's capacity for murder increased dramatically and their targeting of victims became much more precise. British Irish Rights Watch conclude

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[672] de Silva Review, Volume I at [13/28].
[673] de Silva Review, Volume I at [14/29].
[674] de Silva Review, Volume I at [179/7.272].
[675] Lawyers Committee for Human Rights, "*Beyond Collusion*" (February 2002).
[676] John Ware, "Time to Come Clean Over the Arm's Role in the 'Dirty War'" New Statesman at [16] (24 April 1998) cited in Lawyers Committee for Human Rights, "*Beyond Collusion*" (February 2002) at [25].
[677] Peter Taylor, "Dark Side of the War", BBC News, 31 May 2000 cited in Lawyers Committee for Human Rights, *"Beyond Collusion"* (February 2002); see also the Cory Report at [27/1.57].
[678] Cory Report at [27/1.58].
[679] Cory Report at [27/1.58].

that "*There seems very little doubt that FRU played a systemic role in this*".[680]

10.14. Sir Desmond drew a number of conclusions from the evidence concerning Brian Nelson's re-recruitment by the FRU.

The FRU actively and determinedly re-recruited Brian Nelson

10.15. The FRU actively pursued Brian Nelson in order to persuade him to re-join the UDA with a view to gaining the position of Intelligence Officer.[681] Sir Desmond remarked that this was unusual since in the more typical scenario an individual is already positioned within a terrorist organisation.[682] "*Such was the FRU's determination to re-recruit him*", they pursued him for a number of months and offered him a substantial financial deal in February 1987 to return to Northern Ireland from West Germany.[683] A/07 had sought HQ approval for £7,200 in capital expenditure to give to Brian Nelson for a house and taxi, plus £200 monthly[684] payments.[685] Sir Desmond also highlighted the financial benefit that Brian Nelson received from the Ministry of Defence (MoD).[686] He was paid a total sum of £46,428 (around £120,000 today)[687] from the point of his re-recruitment in 1987 until his arrest in January 1990.[688]

10.16. In October 1985, Brian Nelson had left Belfast for West Germany to work as a floor layer, but only a few months later, in December 1985,

[680] British Irish Rights Watch, '*Deadly Intelligence: State Involvement in Loyalist Murder in Northern Ireland*', Summary, February 1999 (accessed 12.08.2026).
[681] de Silva Review, Volume I at [121/6.97].
[682] de Silva Review, Volume I at [121/6.97].
[683] de Silva Review, Volume I at [121/6.97].
[684] Cory Report at [25/1.49].
[685] de Silva Review, Volume I at [118/6.81].
[686] De Silva Review, Volume I at [179/7.272].
[687] Bank of England inflation calculator: https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator (accessed 25.09.2026), using 1990 as the base year (calculation using the Consumer Price Index).
[688] de Silva Review, Volume I at [179/7.272].

the FRU had already met him to seek to re-recruit him.[689] FRU and Security Service officers attempted to meet Brian Nelson in person in West Germany (May 1986),[690] telephoned him (20 December 1986),[691] and met him in person at Heathrow airport (14 January 1987).[692] Although seemingly reluctant to return at first, citing family reasons, CFs and Brian Nelson's own 'journal' suggest that he changed his mind, describing himself as "*being bitten by a bug*" and becoming *"... enmeshed in a web of intrigue, conspiracies, confidences, danger and the power of being aware of things that others around you aren't.*"[693] Sir Desmond found that the re-establishment of contact with Brian Nelson "*ultimately promoted a bitter and acrimonious tussle between the FRU and the Security Service*" mostly based on procedures and clearances required to recruit and personalities involved.[694] Eventually, A/05 "*briefed CLF [Commander Land Forces] and ACOS [Assistance Chief of Staff] G2 on the case and outlined the [Security Service] interest*" and cleared the FRU's re-recruitment of Brian Nelson through army chain of command.[695]

Brian Nelson's re-recruitment was sanctioned by very senior members of the British Army and Security Services

10.17. Sir Desmond established that:

> "*Both ACOS G2 and the CLF, Major General Jeapes, were directly involved in, and sanctioned, A/05's attempts to re-recruit Nelson as a FRU agent. The Director General of the Security Service, Sir*

[689] de Silva Review, Volume I at [112/6.54] to [113/6.56].
[690] de Silva Review, Volume I at [1146.62].
[691] de Silva Review, Volume I at [114/6.63].
[692] de Silva Review, Volume I at [115/6.64].
[693] de Silva Review, Volume I at [115/6.68].
[694] de Silva Review, Volume I at [116/6.71].
[695] de Silva Review, Volume I at [118/6.79].

Anthony Duff, had also been involved in discussions about the re-recruitment."[696]

10.18. According to documentary records studied by Sir Desmond, the Security Service were heavily involved in the discussions about Brian Nelson's re-recruitment, although strongly opposed the manner in which the FRU re-recruited him.[697] At first, they had been "*most enthusiastic*" about Brian Nelson becoming a Security Service agent and even after he was re-recruited, "*kept their options open in that regard*".[698] Perhaps most significantly, Sir Desmond observed that the Security Service "*never raised with the FRU any of the key concerns they should have had about Nelson, namely his previous involvement in sectarian violence; his involvement in the attempted murder of T/27; and his willingness to act as an agent provocateur*."[699]

<u>There were major warning signs</u>

10.19. Sir Desmond was satisfied that "[t]here were also major warning signs during Nelson's re-recruitment that should have been clearly apparent to both the FRU and the Security Service".[700] A/05 gave evidence at Brian Nelson's trial that they "obviously" looked at the previous files and therefore were "made aware of his previous activities".[701] Sir Desmond recorded that the files would have revealed that:

a. Brian Nelson had kidnapped, held at gunpoint and tortured a partially sighted Catholic man, Gerald Higgins;[702]

[696] de Silva Review, Volume I at [122/6.101].
[697] de Silva Review, Volume I at [122/6.102].
[698] de Silva Review, Volume I at [122/6.102].
[699] de Silva Review, Volume I at [122/6.102].
[700] de Silva Review, Volume I at [121/6.99].
[701] de Silva Review, Volume I at [121/6.99].
[702] de Silva Review, Volume 1 at [122/6.100].

b. He was involved in the attempted murder of T/27 in 1985 and would have known that his information was not being exploited by the RUC.[703] The Security Service were also aware of Brian Nelson's involvement in the targeting of T/27, and that the intelligence was not being exploited, it having been reported by Brian Nelson during August to September 1985.[704]

c. The UDA's intelligence capacity appears to have been significantly weakened by Brian Nelson's departure to Germany and therefore his return to his previous role as "*Intelligence Officer*" would strengthen their intelligence capacity. Sir Desmond noted that "*immediate concerns within the FRU as to whether Nelson might, in fact, improve the UDA's 'intelligence' capacity if he returned*"[705] should have been raised in light of an FRU CF dated 3 January 1986:

> *"[L/28] … admitted that the 'Int' had 'gone down hill' since source's departure. In actual fact the UDA are still unable to use the Intelligence files created by … [Nelson] on the computer because he withheld part of the password."*[706]

d. He played the role as an agent provocateur in seeking to initiate an arms smuggling operation from South Africa, without prior authorisation from the FRU, in which he attempted to stipulate that his handlers must allow one shipment of weapons to get through.[707] Sir Desmond found that "*his confidence in dictating such stipulations would suggest that he wished to have a significant, and perhaps unhealthy, degree of control over the exploitation of his intelligence*."[708] Furthermore, Sir Desmond

[703] de Silva Review, Volume I at [122/6.100].
[704] de Silva Review, Volume I at [114/6.60].
[705] de Silva Review, Volume I at [113/6.58].
[706] de Silva Review, Volume I at [113/6.57].
[707] de Silva Review, Volume I at [122/6.100].
[708] de Silva Review, Volume I at [116/6.70].

recalled evidence that although Brian Nelson was rebuked by his handlers for his behaviour and told "*no more 'free lancing' will be tolerated*",[709] the "*covering text of the CF significantly underplays the seriousness of this incident*", the CF simply stating that Brian Nelson had *"... a tendency to be a little over enthusiastic*".[710] Sir Desmond concluded that:

> "*It seems to me that for an agent of the State, without any reference to his handlers, to be seeking to instigate an arms purchase from an international terrorist group is significantly more serious than just a* "little" *over-enthusiasm."*[711]

FRU's priorities when re-recruiting Brian Nelson was to install him as an Intelligence Officer for the UDA and to ensure his security

10.20. Sir Desmond took the view that FRU's aim in re-recruiting Brian Nelson was to install him as an Intelligence Officer for the UDA, and for the UDA's targeting to be centralised through Brian Nelson.[712] He considered that the FRU's priority was to protect Brian Nelson's security rather than protect lives. Judge Cory was of the same view finding that Brian Nelson's "*involvement in violent activities was of concern to his handlers only to the extent that this exposed him to risk of apprehension by the police*".[713]

10.21. Sir Desmond refers to "*a particularly significant section in the CF dated 20 April 1987*" which reinforces other comments around concerns for Brian Nelson's security. A/07 recorded that:

[709] de Silva Review, Volume I at [119/6.84].
[710] de Silva Review, Volume I at [119/6.85].
[711] de Silva Review, Volume I at [119/6.86].
[712] de Silva Review, Volume I at [120/6.93].
[713] Cory Report at [93/1.261].

"*In the past when [Nelson] targeted [sic] people for the UDA he of course would be aware that the victim would be 'hit' some time or other and based on his information. However, he never knew the identity of the 'hit' team or actually when they would strike. It is hoped these arrangements will continue as it leaves [Nelson] virtually above suspicion if a job goes wrong*."[714]

10.22. Sir Desmond found this entry particularly significant since it showed, in his view that "*rather than the use of Nelson's intelligence to prevent loss of life, the FRU's priority appeared to be Nelson's security*".[715] The MoD's own internal 'Problem Areas'[716] notes are cited by Sir Desmond and seem to recognise that this "*could be interpreted as the Army approving of paramilitary murders*".[717] This is a theme which reappears in several reports and commentaries, which will be returned to.

10.23. The consequences of Brian Nelson's re-recruitment, in light of his known antecedents, Sir Desmond found, were obvious:

"*In the light of the attempted murder of T/27, it should have been clear to the FRU that, whilst Nelson could of course remain "above suspicion", his activities had the potential to pose a severe danger to those individuals on whom he was to gather targeting information*".[718]

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[714] de Silva Review, Volume I at [120/6.94].
[715] de Silva Review, Volume I at [121/6.95].
[716] Sir Desmond describes this as a "substantial document" which he understands was recovered by the third Stevens Investigation from the Army in 2000 (see de Silva Review, Volume I at [128/7.26]). He goes on to outline the submissions received to his Review regarding the authorship of that document (de Silva Review, Volume I at [128/7.26] to [129/7.30]), concluding that it is "highly likely" that it was produced by A/16, the later successor to A/05 (the CO of the FRU) (de Silva Review, Volume I at [129/ 7.30]) prior to Brian Nelson's trial.
[717] de Silva Review, Volume I at [121/6.95].
[718] de Silva Review, Volume I at [121/6.96].

Brian Nelson was acting in a position equivalent to an MoD employee

10.24. Sir Desmond took the view that:

> "*To all intents and purposes therefore, in tasking Nelson to target Provisional Irish Republican Army activists for the UDA and paying him accordingly, Nelson was acting in a position equivalent to an employee of the MoD. His subsequent actions as an agent of the State must be seen in this light.*"[719]

Brian Nelson's activities between 1987-1989

10.25. Sir Desmond's focus in relation to Brian Nelson's activities after his re-recruitment by the FRU and between 1987 – 1989 concerns two issues which will be explored below:

a. Brian Nelson's dissemination of targeting material to loyalist paramilitaries which led to a number of murders and attempted murders, and the question as to whether his handlers ever provided him with such targeting material; and

b. Brian Nelson's involvement in a series of murders and other attacks, and how the security services responded to the threat intelligence that he provided.[720]

Brian Nelson's involvement in several murders

Terence McDaid

10.26. Terence McDaid was murdered by the UDA on 10 May 1988 in Belfast, having been mistaken for his brother Declan McDaid.[721] In 1992, Brian Nelson was sentenced to ten years' imprisonment for the conspiracy

[719] de Silva Review, Volume I at [121/6.98].
[720] de Silva Review, Volume I at [123/7.1].
[721] de Silva Review, Volume I at [151/7.127].

to murder Declan McDaid. British Irish Rights Watch report that the MoD have paid compensation to the McDaid family.[722]

10.27. Sir Desmond found that Brian Nelson played a "*pivotal role*" in Terence McDaid's murder.[723] This included Brian Nelson, along with L/27, choosing Declan McDaid as a target;[724] and carrying out 'recces' of several premises including Declan McDaid's house on Oceanic Avenue.[725] He also found that the FRU were "*fully aware*" that their agent had played an important role in the murder by providing the UDA hit team with the Newington Street address where he was killed.[726] In his 1990 statement to the Stevens I Investigation, Brian Nelson admitted to an even greater role, which included checking the Electoral Register on 4 May having already carried out visual surveillance the previous month which showed that Declan McDaid was staying at the Newington Green address; and providing L/22 with the 'P' card containing Declan McDaid's photograph.[727] In light of Brian Nelson's contradictory accounts, and the contemporaneous evidence in the CFs, Sir Desmond was not able to resolve the issue of whether FRU handlers provided Brian Nelson with the Newington Green (wrong) address.[728]

10.28. Sir Desmond concluded that the FRU were also aware that he was only reporting his most recent targeting actions to them after the murder, by which time the security services would have been in no position to protect Terence McDaid.[729] Sir Desmond found that despite Brian Nelson's self-confessed central role in targeting Declan

[722] British Irish Rights Watch, '*Deadly Intelligence: State Involvement in Loyalist Murder in Northern Ireland: Summary*', February 1999 (accessed 12.08.2026).
[723] de Silva Review, Volume I at [154/7.139].
[724] de Silva Review, Volume I at [150/7.122] and [151/7.125].
[725] de Silva Review, Volume I at 151/7.124].
[726] de Silva Review, Volume I at 154/7.139]; see also Volume I at [150/7.122].
[727] de Silva Review, Volume I at [153/7.130] to [153/7.132].
[728] de Silva Review, Volume I at [153/7.135] to [154/7.138].
[729] de Silva Review, Volume I at [154/7.139] and [151/7.128].

McDaid,[730] the FRU showed "*no concern at all*" for Brian Nelson's actions.[731] They expressed no warning, admonishment or alarm in respect of Brian Nelson's involvement in the murder and instead appeared to reassure him by linking Terence McDaid to PIRA,[732] despite the fact that Terence McDaid had no connection with PIRA or any other terrorist group. [733]

10.29. Sir Desmond noted that although Declan McDaid was not actually attacked, *"it is nevertheless of grave concern that the RUC took no action to warn or otherwise protect him despite the intelligence passed to them by the FRU indicating a serious threat to his life*".[734] That intelligence included information from Brian Nelson that the UDA intelligence team had a photo of Declan McDaid; that he and L/28 had carried out a 'recce' of his home on Oceanic Avenue;[735] and direct information that the North Belfast UDA were seeking to assassinate Declan McDaid.[736]

Gerard Slane

10.30. Gerard Slane was murdered by the UDA on 23 September 1988 at his home in West Belfast. In 1992 Brian Nelson pleaded guilty to the collection of information likely to be of use to a terrorist in relation to this attack. British Irish Rights Watch report that the MoD have paid compensation to the Slane family.[737]

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[730] de Silva Review, Volume I at [154/7.139].
[731] de Silva review, Volume I at [154/7.140].
[732] de Silva Review, Volume I at [154/7.140].
[733] Statement to Inquest, 11 September 1989 from author 2002 notes, cited in Ware, Neither Confirm Nor Deny at [51].
[734] de Silva Review, Volume I at [154/7.140]; see also Volume I at [151/7.126].
[735] de Silva Review, Volume I at [150/7.122] and [151/7.124].
[736] de Silva Review, Volume I at [150/7.123].
[737] British Irish Rights Watch, '*Deadly Intelligence: State Involvement in Loyalist Murder in Northern Ireland: Summary*', February 1999 (accessed 12.08.2026).

10.31. Sir Desmond made the following findings in relation to Brian Nelson's role in Gerald Slane's murder:

a. Sir Desmond was "*satisfied*" that Brian Nelson played a "*key role*" in Gerard Slane's murder.[738] He considered that there was no evidence that the FRU were particularly concerned about Brian Nelson's role in the murder.[739] Sir Desmond highlighted the Director of Public Prosecution (Northern Ireland)'s analysis of Brian Nelson's involvement in the murder: "*It is noted that the Army continued to use Nelson as an agent after this murder*".[740]

b. Sir Desmond determined that this case "*provides the most serious example of the FRU failing to pass on important intelligence to the RUC SB prior to a UDA attack taking place*".[741] Sir Desmond recorded that Brian Nelson provided important intelligence with regard to the targeting of Gerald Slane on two occasions: 12 and 21 September 1998.[742]

i. On 12 September 1998, in a CF Brian Nelson stated that he had checked the Electoral Register and found Gerald Slane was living at Waterville Street and that he had provided 'Tucker' Lyttle and L/28 with Gerald Slane's address.[743] On 13 September 1998, before the murder, the FRU told the RUC that Gerard Slane was being targeted but made no attempt to warn or protect him.[744] The MISR stated that: "*West Belfast Bde UDA are targeting [T/14] in order to carry out an attack in retaliation for the murder of William Quee. Witnesses have identified [T/23], [T/43] and Gerard Slane as*

[738] de Silva Review, Volume I at [158/7.161].
[739] de Silva Review, Volume I at [158/7.161].
[740] de Silva Review, Volume I at [158/7.161].
[741] de Silva Review, Volume I at [157/7.153].
[742] de Silva Review, Volume I at [157/7.153].
[743] de Silva Review, Volume I at [155/144] to [155/145].
[744] de Silva Review, Volume I at [158/7.162]; see also Volume I at [157/7.154] to [157/7.155].

being involved in the murder. These people are now being targeted."[745]

ii. Sir Desmond concluded that "*the more serious omission, however, was in respect of the failure to pass on the intelligence provided by Nelson to his handlers on 21 September 1998*" [two days before the murder][746] which included that the UDA, and in particular Brian Nelson were intensively targeting Gerard Slane.[747] The MISR sent as a result of the debrief dated *the day of Gerard Slane's murder (but almost certainly received after it, Sir Desmond finds)*[748] was, according to Sir Desmond, "*remarkably vague and non-specific*".[749] It did not record the fact that Gerard Slane had been singled out as a target; that Brian Nelson had confirmed his address using the Electoral Roll, or that the UDA intended to conduct a 'recce' of Gerard Slane's home.[750] It simply stated: "*West Belfast UDA are interested in all IPLO members in Belfast. They want three attacks to be carried out on IPLO members before the end of October which will be claimed collectively by the UFF*."[751]

c. Further, importantly for this Inquiry, and a possible area of investigation is that despite the RUC being subsequently directly told that "[*L/20*][752] *planned the murder of Gerard Slane*"[753], they did not take any steps to arrest him or any of the other suspects identified by Brian Nelson[754]. L/20 was never

[745] de Silva Review, Volume I at [157/7.154].
[746] de Silva Review, Volume I at [157/7.156].
[747] de Silva Review, Volume I at [155/7.147].
[748] de Silva Review, Volume I at [157/7.156] and [158/7.612].
[749] de Silva Review, Volume I at [157/7.156], see also Volume I at [158/7.162].
[750] de Silva Review, Volume I at [157/7.157].
[751] de Silva Review, Volume I at [157/7.156].
[752] A UDA ring-leader.
[753] de Silva Review, Volume I at [158/7.158].
[754] de Silva Review, Volume I at [158/7.162].

arrested in connection with the Gerard Slane murder and went on to play a critical role in directing and organising the murder of Patrick Finucane.[755] Sir Desmond recorded that the RUC's failure to take any action as a result of the intelligence was recognised by the DPP(NI) in March 1991: "*It was noted that the RUC had taken no action in respect of the suspects identified by Nelson*".[756]

James Pratt Craig

10.32. James Pratt Craig, a notorious and long-standing member of the UDA suspected to have links with PIRA**,** was murdered by the UDA on 15 October 1998. Sir Desmond highlighted this murder because it served to demonstrate two themes: (i) the flow of information to the UDA from the RUC SB in relation to this individual and the role of Brian Nelson in inciting James Pratt Craig's murder and (ii) the reaction of his FRU handlers to the murder.[757]

a. **Flow of information to the UDA from the RUC SB and Brian Nelson's role:** The FRU CFs suggested that loyalist paramilitaries had begun to suspect James Pratt Craig as having links with PIRA as early as 1985.[758] Brian Nelson reported that L/28 had asked him to put together a comprehensive file on James Pratt Craig in May 1985[759]; and was asked again by L/27 on 8 July 1987 to continue building the file to 'prove' that James Pratt Craig was an informer.[760] The RUC SB had been monitoring James Pratt Craig and his suspected links to PIRA since the early 1980s.[761] Sir Desmond found that the documentary record

[755] de Silva Review, Volume I at [158/7.159] and [158/7.162].
[756] de Silva Review, Volume I at [158/7.159].
[757] de Silva Review, Volume I at [159/7.163].
[758] de Silva Review, Volume I at [159/7.165].
[759] de Silva Review, Volume I at [159/7.165].
[760] de Silva Review, Volume I at [160/7.170].
[761] de Silva Review, Volume I at [159/7.166].

showed that from at least June 1987, the RUC SB ran an operation designed to 'discredit' James Pratt Craig by feeding information to the UDA about his links to PIRA.[762] The 11 June 1987 CF recorded Brian Nelson's reporting on information being fed by RUC SB to the UDA regarding James Pratt Craig's links with PIRA, including information that he lived with a member of PIRA.[763] Brian Nelson became most heavily involved in the conspiracy to entrap and murder James Pratt Craig in Summer 1998.[764] This included proposing a series of bizarre means of entrapment; using facial disguises to aid close-quarter surveillance and electronically bugging a bungalow apparently used by James Pratt Craig.[765] Brian Nelson also helped to produce a document about the possibility of someone in the UDA providing information to PIRA which L/28 "*agreed that it pointed the finger at Craig*".[766] Sir Desmond records that the CF dated 11 July 1998 provided a lengthy account of Brian Nelson's attempts to convince senior UDA figures that James Pratt Craig was 'guilty' of talking to PIRA.[767] Later that month, on 27 July 1998, the CF reports that 'Tucker' Lyttle had told Brian Nelson to target James Pratt Craig but that the FRU handlers had discouraged him from doing so given the dangers involved.[768] Importantly, Sir Desmond notes that throughout this period, the FRU provided MISRs to the RUC SB pointing to the UDA's intention to kill James Pratt Craig.[769] Sir Desmond records that the RUC SB's provision of information to the UDA on James Pratt Craig appears to have had "*a significant degree of success in*

[762] de Silva Review, Volume I at [160/7.167] to [160/7.168].
[763] de Silva Review, Volume I at [160/7.168].
[764] de Silva Review, Volume I at [160/7.172].
[765] de Silva Review, Volume I at [160/7.172].
[766] de Silva Review, Volume I at [160/7.172].
[767] de Silva Review, Volume I at [161/7.173].
[768] de Silva Review, Volume I at [161/7.174].
[769] de Silva Review, Volume I at [161/7.175].

distracting and diverting the UDA",[770] as a CF dated 4 August 1998 noted that the West Belfast UDA had become "*preoccupied*" with the internal dispute.[771] However, the RUC SB's operation had an "*unexpected side effect*" which was Brian Nelson's interrogation involving his electrocution with cattle rods, due to his suspected links to PIRA.[772] This led to Sir Desmond making a finding that "*Nelson's interrogation was also an illustration of the dangers of the operation mounted by the RUC SB: the paranoia it caused in UDA ranks had the positive effect of reducing their operational capacity but also led them to contemplate attacks on their own members and unintentionally led to an Army agent being placed in jeopardy.*"[773]

b. **Reaction to the murder:** Sir Desmond observed that important intelligence, in particular two RUC intelligence source reports (SB50s) with important intelligence about those responsible for the attack was withheld from the CID murder investigation team and marked with the phrase "*CID not informed*".[774] However, Sir Desmond found that there is evidence to suggest that the RUC SB did take steps to reduce the risk of the UDA mounting further attacks against other loyalists with suspected PIRA links.[775] Sir Desmond also records the FRU and Brian Nelson's reaction to the murder. The FRU CF dated 17 October 1988 recorded L/28 having told Brian Nelson that it was his document on James Pratt Craig's activities that had been "*instrumental*" to his murder.[776] The CF further noted that Brian

[770] de Silva Review, Volume I at [161/7.176].
[771] de Silva Review, Volume I at [161/7.176].
[772] de Silva Review, Volume I at [161/7.177].
[773] de Silva Review, Volume I at [162/7.179].
[774] de Silva Review, Volume I at [163/7.183].
[775] de Silva Review, Volume I at [163/ 7.183].
[776] de Silva Review, Volume I at [163/7.184].

> Nelson "*was in good spirits at the meeting*" since "*his document*" was "*instrumental in the case against Craig and his execution*. [Nelson] *was somewhat dismayed that handlers had not brought a celebration drink to the meet but handler explained that it was not right to celebrate anyone's death in such a way. This was an excuse and had handler known that* [Nelson]*'s efforts had contributed then perhaps a drink would have been taken*."[777]

Brian Nelson's involvement in other UDA attacks

10.33. Sir Desmond considered that Brian Nelson's involvement in a number of instances of attempted murder and conspiracies to murder both before and after the murder of Patrick Finucane "*illustrate vividly* [a] *very clear pattern of criminal behaviour*" during this period as an FRU agent.[778] These instances, Sir Desmond observed, also demonstrate the level and depth of information that the securities forces had at the material time, and the many instances in which UDA targets went unwarned, despite their lives being at risk.[779] Sir Desmond relies heavily on the Stevens Investigation since it had access to evidence held within the RUC SB Threat Book an RUC SB files on UDA targets, and collator cards held at RUC stations in which the provision of warnings should have been logged.[780]

Attempted murder of T/28 on 18 August 1998

10.34. Brian Nelson participated in one of the targeting teams by following T/28's van in July 1987. He was also aware, and reported information to the FRU that the "*job*" was likely to "*take place pretty soon*" in July

[777] de Silva Review, Volume I at [163/7.184].
[778] de Silva Review, Volume I at [164/7.187].
[779] de Silva Review, Volume I at [164/7.187].
[780] de Silva Review, Volume I at [164/7.188].

1987,[781] although information about a second targeting team was omitted from the MISR.[782] In addition, Brian Nelson reported that in late September, J/27 had shown him printouts of PIRA personalities, including photographs on T/28 and T/29 (his brother), which Brian Nelson believed were from an Army computer, although this was denied.[783] UVF interest in T/28 was communicated to the RUC SB.[784] In October and November 1987 Brian Nelson reported that L/22 had taken over targeting; he had provided all of his intelligence to L/22 who had done a 'recce' of T/28's addresses; that 'Tucker' Lyttle had asked for the brothers' addresses, and that L/37 had given the go-ahead to carry out a close quarter attack.[785] In March 1988, Nelson reported that L/28 had asked him where he could source a postman's uniform which he suspected for use in this attack, and Brian Nelson passed about 20 photographs of potential targets to L/04 of the UVF, which may have included T/28 and T/29.[786] In May, Brian Nelson told his handlers that there was plan to use a bomb on a van which the targets used[787] and in June he informed his handers that L/20 and others had been trying to locate the brothers at work and find out where they worked.[788]

10.35. On 17 August 1988, T/28 was injured in his home when gunman fired shots through the front door. L/28 subsequently told Brian Nelson that the UVF had been responsible, and that they had beaten the UDA to it, as the UDA had planned to mount the attack two days later.[789] However, an RUC CID file suggested the gun used had previously been used in the killing of Terence McDaid, which might

[781] de Silva Review, Volume I at [164/7.189].
[782] de Silva Review, Volume I at [164/7.189].
[783] de Silva Review, Volume I at [164/7.190].
[784] de Silva Review, Volume I at [164/7.191].
[785] de Silva Review, Volume I at [165/7.192].
[786] de Silva Review, Volume I at [165/7.192].
[787] de Silva Review, Volume I at [165/7.193].
[788] de Silva Review, Volume I at [165/ 7.193].
[789] de Silva Review, Volume I at [165/7.194].

point to the UDA as being responsible.[790] In any event, Sir Desmond identified that there were no entries in the Threat Book originating from Brian Nelson's intelligence and no record of T/28 or T/29 being warned that they were being targeted.[791]

Conspiracy to murder Thomas Keenan: August 1987 to July 1989

10.36. Sir Desmond came to the view that Brian Nelson took part in the following targeting activities in relation to Thomas Keenan.[792] Brian Nelson conducted a number of 'recces' of Thomas Keenan's home between January and May 1988, as well as a restaurant, hospital and Students Union; he proposed to L/04 that the UVF target Thomas Keenan and suggested the method of assignation (car bomb); and he provided L/20 details, a photograph and forged student card to assist L/20 with a 'recce'.

10.37. Sir Desmond considered that Brian Nelson provided the following information to FRU regarding the targeting of Thomas Keenan: Thomas Keenan was assigned as a republican personality for the West Belfast Brigade to target;[793] the UDA had an address for Thomas Keenan in December 1987;[794] that between January and July 1988 the UDA were carefully monitoring Thomas Keenan and his wife;[795] that at different times between August 1987 and June 1988 there would be a hit carried out by named individuals; that in January 1988 there was a plot to assassinate Thomas Keenan, the method and that the weapons were sourced or would be shortly;[796] and that Brian Nelson provided repeated detailed reports that an attempt on

[790] de Silva Review, Volume I at [165/7.194].
[791] de Silva Review, Volume I at [165/7.195].
[792] de Silva Review, Volume I at [166/7.201].
[793] de Silva Review, Volume I at [165/7.196].
[794] de Silva Review, Volume I at [166/7.197].
[795] de Silva Review, Volume I at [166/7.197].
[796] de Silva Review, Volume I at [166/7.198].

Thomas Keenan's life was imminent (11, 19 and 25 January 1988 and 3 March 1988),[797] although the attack never in fact took place.

10.38. Sir Desmond established that 37 MISRs were sent containing information on the targeting of Thomas Keenan,[798] yet there were no entries in the Threat Book and, Sir Desmond noted, the Stevens team found no evidence of any warning provided to him that his life was in danger.[799]

10.39. Sir Desmond concluded that not only had the RUC SB failed to act, but that there "*was the suggestion that information was being provided to the UDA by RUC 'contacts'*".[800] This information included a policeman telling 'Tucker' Lyttle that they were aware that he was targeting Thomas Keenan but that Brian Nelson had the wrong first name;[801] the RUC telling L/41 that the local RUC station reacted slowly to shootings of PIRA members; and the RUC supplying detailed information concerning Thomas Keenan's weekly meetings at a university.[802]

10.40. In 1992 Brian Nelson pleaded guilty to conspiracy to murder Thomas Keenan and was sentenced to ten years' imprisonment, and a terrorist-related offences for which he was sentenced to four years' imprisonment was to be served concurrently with other sentences.[803]

Conspiracy to murder Brian Gillen: November 1987 to October 1989

10.41. Sir Desmond established that Brian Nelson took part in targeting Brian Gillen. On 12 December 1988, Brian Nelson reported that he and

[797] de Silva Review, Volume I at [166/7.200].
[798] de Silva Review, Volume I at [166/7.201].
[799] de Silva Review, Volume I at [167/7.202].
[800] de Silva Review, Volume I at [166/7.199].
[801] de Silva Review, Volume I at [166/7.199].
[802] de Silva Review, Volume I at [166/7.199].
[803] de Silva Review, Volume I at [167/ 7.203].

L/22 carried out another 'recce' of Brian Gillen's sister's house,[804] and then provided a written and verbal briefing on Brian Gillen respectively to the UVF and the Ulster Defence Force (UDF), another loyalist paramilitary group.[805]

10.42. Sir Desmond recorded that Brian Nelson provided the following information to his FRU handlers regarding the targeting of Brian Gillen: that he was under surveillance and a photograph of him in November 1987;[806] in 1988 that the UDA had obtained a details of Brian Gillen's car; Brian Gillen's sister's address and pattern of staying there; that the attack would go ahead sooner rather than later;[807] that Brian Nelson had called off Brian Gillen's assassination as he could not see anyone in the house when L/20, L/33, L/25 and Kenneth Barrett, another UDA member, were in the car on their way to shoot him.[808] In addition, on 25 January 1989 Brian Nelson told his handlers that Brian Gillen had been named as one of eight men in a joint Special Active Service Unit on PIRA and Irish People's Liberation Organisation (IPLO) members whose task was to target senior loyalists, and that 'Tucker' Lyttle had told Brian Nelson to compile a document on the group.[809] The targeting of Brian Gillen continued until October 1989 and included following Brian Gillen's movements around Lisburn and discussion of a sub-machine gun. [810]

10.43. Brian Nelson claimed in an interview with John Ware that his handlers gave him information too, and on this occasion they gave him Brian Gillen's address because his handler wanted to convince him that it was too dangerous to stake out. [811] Sir Desmond recites

[804] de Silva Review, Volume I at [167/7.206].
[805] de Silva Review, Volume I at [167/ 7.206].
[806] de Silva Review, Volume I at [167/7.204].
[807] de Silva Review, Volume I at [167/7.205].
[808] de Silva Review, Volume I at [167/ 7.206].
[809] de Silva Review, Volume I at [168/7.207].
[810] de Silva Review, Volume I at [168/7.207].
[811] Author interview, 13 June 1991 cited in Ware, Neither Confirm Nor Deny at [49].

this allegation in his report but does not appear to make a determination on the issue. [812]

10.44. Sir Desmond found that 30 MISRs were sent containing information on the targeting of Brian Gillen, but that there were no entries in the Threat Book originating from Brian Nelson's information.[813] Brian Gillen was warned of a threat to life in October 1989 but this was thought to be due to the Stevens Investigation and unconnected with the information provided by Brian Nelson. [814]

10.45. Nelson pleaded guilty to conspiracy to murder Brian Gillen and was sentenced to ten years' imprisonment, to be served concurrently. [815]

Attempted murder of T/14 on 7 December 1987

10.46. Sir Desmond noted that in November 1987 Brian Nelson had reported to his handlers that L/22 had picked T/14 and another Sinn Féin member from a list which was passed on to the RUC SB the same day.[816] Brian Nelson admitted to the Stevens Investigation that he had also prepared an intelligence card for T/14 which he had handed to L/22.[817] On 7 December 1987, gunmen shot through T/14's front door. The following day, 'Tucker' Lyttle met with Brian Nelson with the 'P card' for T/14 which 'Tucker' Lyttle then tore up.[818]

10.47. The Stevens Investigation found no evidence of any attempt to warn T/14.[819]

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[812] de Silva Review, Volume I at [139/7.65].
[813] de Silva Review, Volume I at [168/7.208].
[814] de Silva Review, Volume I at [168/7.208].
[815] de Silva Review, Volume I at [168/ 7.208].
[816] de Silva Review, Volume I at [168/7.209].
[817] de Silva Review, Volume I at [168/7.209].
[818] de Silva Review, Volume I at [168/7.210].
[819] de Silva Review, Volume I at [168/7.210].

Attempts to murder Alex Maskey on 22 May 1987 and 17 July 1988

10.48. Sir Desmond regarded Brian Nelson's involvement in targeting Alex Maskey between 1987 and 1989 to be "*considerable*".[820] Indeed, Sir Desmond cites the prosecution at Brian Nelson's trial as in agreement. Brian Nelson's activities:

> *"...could only be construed as demonstrating not only willingness, but indeed determination on the part of Nelson that an attack be made on Maskey*".[821]

10.49. Sir Desmond determined that this involvement included Brian Nelson telephoning his handlers on 18 July 1988 to report that Alex Maskey had been seen at a hotel and that the UDA hit team had missed him by 20 seconds.[822] If Alex Maskey was seen there the following Sunday, another attempt would be made. L/01 had told him that he had seen Alex Maskey enter the hotel and asked Brian Nelson to tell the West Belfast Brigade UDA to carry out a close quarters attack.[823] Brian Nelson's handler confirmed that although the car registration Brian Nelson provided for Alex Maskey was not registered to Alex Maskey, it was "*probably used by him though*".[824] This is another example highlighted by Sir Desmond of the FRU passing on information to Brian Nelson.

10.50. Sir Desmond noted that some 20 MISRs were issued containing information regarding Alex Maskey's targeting, however, there were no entries in the Threat Book and the Stevens team found no evidence that Alex Maskey was provided with any warnings on the basis of Brian Nelson's intelligence.[825] Sir Desmond records that in

[820] de Silva Review, Volume I at [168/ 7.211].
[821] de Silva Review, Volume I at [169/7.217].
[822] de Silva Review Volume I at [169/7.212].
[823] de Silva Review, Volume I at [169/7.212].
[824] de Silva Review, Volume I at [141/7.81]; see also Volume I at [141/7.80] to [142/7.84].
[825] de Silva Review, Volume I at [169/7.216].

order to facilitate the attack, Brian Nelson looked for L/28, L/22 and L/03, and when he found the latter, travelled back to the first club that Brian Nelson had been to and met with L/20 and Kenneth Barrett. Alex Maskey had just left the hotel before L/20 and Kenneth Barrett had arrived with a gun.[826] Despite a MISR dated 18 July 1988 stating that Alex Maskey had come a "*priority target*",[827] a further full debrief contained no mention of the attempted murder of Alex Maskey.[828] Brian Nelson then performed a series of 'recces' on and again in late November or early December 1988[829] and subsequently passed the targeting information onto L/20.[830] Brian Nelson also put together an intelligence pack on Sinn Féin members in Belfast which included Alex Maskey.[831] In April, Brian Nelson suggested to L/04 of the UVF that Thomas Keenan and Alex Maskey were better targets than T/02. L/04 agreed and asked for all of Brian Nelson's information on Alex Maskey. Brian Nelson took L/04 to Alex Maskey's house and the florist where Alex Maskey picked up his wife. [832] In July, Brian Nelson suggested a list of republicans, which included L/28, whom he considered good targets for a car bomb.[833]

10.51. Brian Nelson pleaded guilty of conspiracy to murder Maskey on 22 January 1992.

Attempted murder of T/33 on 12 March 1988

10.52. Sir Desmond determined that on 3 March 1988, Brian Nelson informed his handlers that a member of the South Belfast Brigade UDA had given him a security force document containing the names, addresses and photographs of a number of PIRA

[826] de Silva Review, Volume I at [169/7.213].
[827] de Silva Review, Volume I at [169/7.213].
[828] de Silva Review, Volume I at [169/7.213].
[829] de Silva Review, Volume I at 169/ 7.214].
[830] de Silva Review, Volume I at [169/7.214].
[831] de Silva Review, Volume I at [169/7.214].
[832] de Silva Review, Volume I at [169/7.215].
[833] de Silva Review, Volume I at [169/7.215].

personalities, including T/33.[834] Brian Nelson had shown the list to L/28 and L/22. L/22 told Brian Nelson that he would concentrate on Pacific Avenue, where T/33 lived. [835] On 12 March two masked, armed men entered T/33's home, although T/33 was not found at the address. [836]

10.53. Sir Desmond identified two MISRs regarding the targeting of T/33 which relate to before the March 1988 attempt.[837] However, Sir Desmond observed that no entries were made in the Threat Book originating from Brian Nelson, and there was no record of T/33 being warned.[838]

Attempted murder of T/16 on 20 September 1988

10.54. Sir Desmond recorded that on 19 April 1988, Brian Nelson reported that he and L/22 had carried out a 'recce' of T/16's home, and he later prepared an intelligence document on a list of personalities including T/16.[839] There was a MISR containing this information but Sir Desmond could not find any evidence that T/16 was warned of a threat to life.[840] On 20 September gunmen broke into a house on Carlisle Square and fired six shots into a bedroom in which another family had barricaded themselves in.[841]

Attempted murder of T/12 on 2 October 1988

10.55. Sir Desmond notes that on 12 September 1988, Brian Nelson reported that earlier that day, he had become unwittingly involved in an attack on the Irish National Liberation Army (INLA), a republican

[834] de Silva Review, Volume I at [170/7.218].
[835] de Silva Review, Volume I at [170/7.218].
[836] de Silva Review, Volume I at [170/7.218].
[837] de Silva Review, Volume I at [170/7.219].
[838] de Silva Review, Volume I at [170/7.219].
[839] de Silva Review, Volume I at [170/7.220].
[840] de Silva Review, Volume I at [170/7.220].
[841] de Silva Review, Volume I at [170/7.221].

paramilitary group, when his taxi was hijacked by the Red Hand Commando (RHC), a loyalist paramilitary group.[842] Brian Nelson understood that the INLA and in particular T/12, had attempted to assassinate L/09, and that the RHC had a photograph of T/12.[843] Brian Nelson reported that L/24 had shown him a number of photographs of PIRA members, including T/12, which, Nelson noted, had come from his intelligence dump.[844] A MISR was raised on 13 September which included a comment from Brian Nelson that an attempt on T/12's life would probably be made on the following Monday,[845] yet, again, Sir Desmond could not find any evidence that T/12 was warned of a threat to life.[846]

10.56. On 2 October 1988 three loyalist gunmen smashed through the window of T/12's home and fired into the living room, but T/12 was on holiday at the time.[847]

Attempted murder of Patrick Monaghan on 9 November 1988

10.57. Sir Desmond determined that Brian Nelson conducted many acts of targeting of Patrick Monaghan which included: on 26 October 1988, going to the library to check the Electoral Register for the addresses of Patrick Monaghan and James Peter Morgan (targeting of him is discussed below)[848] and in late October and early November, conducting 'recces' of Devenish Court, where Patrick Monaghan lived.[849]

[842] de Silva Review, Volume I at [170/7.222].
[843] de Silva Review, Volume I at [170/7.222].
[844] de Silva Review, Volume I at [170/7.222].
[845] de Silva Review, Volume I at [170/7.222].
[846] de Silva Review, Volume I at [170/7.222].
[847] de Silva Review, Volume I at [171/7.223].
[848] de Silva Review, Volume I at [171/7.224].
[849] de Silva Review, Volume I at [171/7.224] to [171/7.225].

10.58. The CF of 26 October 1988 showed that L/28 told Brian Nelson that L/20 had been provided Patrick Monaghan as a target.[850] Yet, Sir Desmond observed, only one MISR relating to Patrick Monaghan was created on 28 October 1988, which in any case contained the wrong information regarding Patrick Monaghan's address despite FRU knowing that Brian Nelson and 'Tucker' Lyttle had confirmed it was incorrect. Furthermore, the MISR did not mention any attempted 'recce'.[851] The 7 November 1988 'recce' was not raised until after the attack.[852] Sir Desmond also highlights that the Stevens Investigation found no entries in the Threat Book in relation to Patrick Monaghan originating from Brian Nelson and no record of Patrick Monaghan being warned.[853]

10.59. In January 1992, Brian Nelson pleaded guilty to conspiracy to murder Patrick Monaghan. At the hearing, the prosecution stated that: *"[Nelson] knew … that his selection of Patrick Monaghan and his identification of him to [L/20] effectively targeted Monaghan for murder*."[854]

Attempted murder of James Peter Morgan on 14 November 1988

10.60. Sir Desmond found that Brian Nelson's involvement in the targeting of James Peter Morgan consisted of the following: in October 1988 checking the voter register for James Peter Morgan's address and suggesting to L/22 that James Peter Morgan was a suitable target on two occasions in early November[855]; Brian Nelson purchasing a map of James Peter Morgan's home area and passing James Peter

[850] de Silva Review, Volume I at [171/7.224].
[851] de Silva Review, Volume I at [171/7.227].
[852] de Silva Review, Volume I at [171/7.227].
[853] de Silva Review, Volume I at [171/7.228].
[854] de Silva Review, Volume I at [171/7.229].
[855] de Silva Review, Volume I at [171/7.230] to [172/7.231].

Morgan's address and photograph to L/22 who said that he would "*deal with*" James Peter Morgan.[856]

10.61. Sir Desmond records that the Stevens team found three MISRs relating to James Peter Morgan dating from before the attempt, but no entries in the Threat Book originating from Brian Nelson regarding James Peter Morgan.[857] The Stevens team concluded that the RUC had warned James Peter Morgan *after* an attempt was made and this was unconnected with Brian Nelson.[858]

10.62. In January 1992, Brian Nelson pleaded guilty to conspiracy to murder James Peter Morgan. At his trial, the prosecution described Brian Nelson's substantial involvement in the targeting, determining that his activities "*...indicated an active and indeed willing participation in the plan to murder*".[859]

Attempted murder of T/22 on 17 January 1989

10.63. Sir Desmond considered that Brian Nelson provided several pieces of important information to the FRU regarding T/22's targeting. This included that in October 1987, T/22 was being targeted by L/26,[860] and in March 1988 that an East Belfast Brigade UDA team had driven to T/22's address to assassinate him but had been forced to flee after being opened fire upon.[861] Consequently, Brian Nelson agreed that the West Belfast Brigade would pick up targeting of T/22.[862] Brian Nelson later gave L/28 14 of his intelligence cards on Sinn Féin members, one of which was "*presumably*" T/22.[863] The day after the

[856] de Silva Review, Volume I at [172/7.231].
[857] de Silva Review, Volume I at [172/7.233].
[858] de Silva Review, Volume I at [172/7.233].
[859] de Silva Review, Volume I at [172/7.234].
[860] de Silva Review, Volume I at [172/7.235].
[861] de Silva Review, Volume I at [172/7.235].
[862] de Silva Review, Volume I at [172/7.235].
[863] de Silva Review, Volume I at [172/7.236].

failed attack on T/22 in his home on 17 January 1989, L/22 returned the 'P card' on T/22 to Brian Nelson.[864]

10.64. Sir Desmond notes that the Stevens team found two MISRs relating to T/22 dating to before the attack, but again, there were no entries in the Threat Book arising from Brian Nelson, and no record of any warning being provided relating to Brian Nelson's information.[865]

Attempted murder of T/25 in April 1989

10.65. Sir Desmond found that Brian Nelson's role in the targeting of T/25 consisted of providing L/22 with his intelligence on T/25 and providing a photograph on 14 March.[866] L/22 said he had been monitoring T/25's street.[867]

10.66. Sir Desmond records that Brian Nelson had informed his handlers that an attempt had been made on T/25's life but they had missed him by seconds and that the UDA were trying to find out where he worked and would try again as T/25 was unaware of the attempt.[868]

10.67. Sir Desmond identified two MISRs relating to T/25, one before and one after the attempt. However, he was unable to find any evidence that T/25 was warned of a threat to his life.[869]

Conclusion

10.68. Brian Nelson's recruitment, re-recruitment and subsequent activities as both a UDA intelligence officer and an FRU agent clearly resulted in him playing a direct or supporting role in the numerous murders, attempted murders and conspiracy to murders by the UDA

[864] de Silva Review, Volume I at [173/7.237].
[865] de Silva Review, Volume I at [173/7.238].
[866] de Silva Review, Volume I at [173/7.239].
[867] de Silva Review, Volume I at [173/7.239].
[868] de Silva Review, Volume I at [173/7.240].
[869] de Silva Review, Volume I at [173/7.241].

and UVF, as set out in detail above. A review of the publicly available material on this topic, in particular of the reports by Sir Desmond and Judge Cory raise important questions for this Inquiry regarding the FRU and security agencies priorities and willingness to accept foreseeable risks for perceived operational gains during this period.

10.69. The next Chapter of Counsel to the Inquiry's Opening will provide a detailed analysis of the publicly available material in more detail concerning the extent to which the intelligence provided by Brian Nelson was acted upon, and not acted upon by the FRU, RUC SB, the Army chain of command and the Security Service.

11. THE USE MADE OR NOT MADE OF INTELLIGENCE PROVIDED BY BRIAN NELSON

Introduction

11.1. This chapter considers the publicly available material concerning the extent to which the intelligence provided by Brian Nelson was acted upon, and was not acted upon by the FRU, RUC SB, the Army chain of command and the Security Service.

11.2. First, the central factual dispute between the FRU and the RUC is outlined: the FRU's position was that it passed significant and exploitable intelligence from Brian Nelson to the RUC for action, whereas the RUC maintained that the FRU withheld the information necessary to protect those under threat. Second, this chapter examines Sir Desmond de Silva's conclusion that neither position fully accounted for the evidence, giving rise to an "*accountability gap*" in which both the Army and the RUC had prior notice of planned UDA attacks but effective protective action was very rarely taken.[870] Third, and against that background, the chapter analyses Sir Desmond's findings on Brian Nelson's motivation, his dissemination of targeting material to the UDA and UVF, the provision of targeting information by FRU handlers to Brian Nelson, the failure to restrain Brian Nelson despite his criminal activity, and the limited counter-measures taken to protect those targeted. Finally, the chapter also considers the wider responsibility of senior Army officers, the adequacy of Security Service oversight, and the extent to which Judge Cory and other commentators go further than Sir Desmond in characterising the FRU's conduct as collusive.

[870] de Silva Review, Volume I at [15/39] and [185/8.1].

The FRU's position

11.3. The FRU's contention, as stated by the Commanding Officer of the FRU (A/05), was that the purpose of using Brian Nelson as an agent was to pass on the names of individuals targeted for assassination to the RUC SB, who enjoyed primacy regarding the use of intelligence, through MISRs so that they could take appropriate action to frustrate crime, save lives and carry out arrests.[871] The overall aim was said to frustrate loyalist terrorism.[872] A/05 in his 2002 statement to the second Stevens investigation ('Stevens II') stated that "*FRU's aim was always to get sufficiently detailed information to allow the RUC not only to prevent substantive crime but also to arrest the terrorists and thus cause attrition to the organisation*".[873] A/05 gave evidence that FRU's expectation was that the RUC would take appropriate action.[874] Further, he said that given Brian Nelson's intelligence was "*detailed, clear and exploitable. If action was not taken to prevent the attacks, the fault does not lie with the FRU*".[875]

The RUC's position

11.4. The RUC's contention was that information required by them to discharge their duties was withheld from them by the FRU.[876] Sir Desmond considered in detail the accounts of Sir John Hermon, the former Chief Constable who refuted A/05's evidence given in court in the Brian Nelson case, and other RUC officers working in the Source Unit, which Sir Desmond found provided a "*broadly consistent*" picture as to the RUC's perspective.[877] Sir John Hermon commented on the BBC Panorama 'Dirty War' programme in 1992, that he was

[871] de Silva Review, Volume I at [185/8.2] and [186/8.11].
[872] de Silva Review, Volume I at [185/8.2].
[873] de Silva Review, Volume I at [185/8.2].
[874] de Silva Review, Volume I at [187/8.12].
[875] de Silva Review, Volume I at [187/8.13].
[876] de Silva Review, Volume I at [185/8.3].
[877] de Silva Review, Volume I at [187/8.16] to [188/8.21].

not satisfied that A/05's evidence was correct: that all information or intelligence was being passed to the RUC.[878] Sir Desmond records evidence given by R/07, a Detective Sergeant in the RUC Source Unit, to the Stevens I Investigation, who could not recall receiving any specific information relating to an imminent close quarter assassination or actionable targeting.[879] Others at the RUC Source Unit described Brian Nelson as a *"low-level informant"*,[880] with intelligence which was *"not "particularly high class""* which, Sir Desmond finds, may explain why the RUC did not act upon it.[881]

Sir Desmond's conclusions on the 'accountability gap'

11.5. Sir Desmond considered a wealth of evidence when coming to conclusions on whether and to what extent it was the FRU or RUC SB who was responsible for failing to exploit Brian Nelson's intelligence in order to save lives. He considered a number of varied sources when making the following findings.

Statements and evidence provided in support of the RUC

11.6. Sir Desmond was satisfied that Brian Nelson was not a "*low level informant*", as some RUC officers suggested. Brian Nelson was at the heart of the most dangerous UDA Brigade and was sufficiently trusted to attend UDA Inner Council meetings and clearly provided the FRU with a wealth of information relating to "*actionable targeting*".[882]

11.7. Having analysed the evidence provided in support of the RUC, Sir Desmond found there to be a contradiction in the statements and

[878] de Silva Review, Volume I at [187/8.17] and Panorama, *The Dirty War*, documentary available at https://www.youtube.com/watch?v=lUbnjCXWF94.
[879] de Silva Review, Volume I at [188/8.20].
[880] de Silva Review, Volume I at [188/8.19].
[881] de Silva Review, Volume I at [188/8.19].
[882] de Silva Review, Volume I at [188/8.21].

evidence of Brian Fitzsimons (the Deputy Head of SB 1987-1989). On the one hand, Brian Fitzsimons reported in July 1990 to the DPP(NI) that Brian Nelson provided high grade intelligence that enabled the RUC SB to mount effective operations against the UDA, and that Brian Nelson's information was actioned to frustrate assassinations of prominent republicans and innocent Catholics.[883] This was echoed in his evidence to the Stevens Investigation in October 1990 that Brian Nelson was "*an agent of major importance*" and that he was aware of a "*regular flow of intelligence from Nelson*".[884] However, this contradicts a previous private comment made by Brian Fitzsimons to a Security Service officer in September 1989 that Brian Nelson was being "*badly handled and poorly exploited*",[885] as well as a January 1991 report to the DPP(NI) that a "*considerable percentage of Nelson's reporting was not passed to the Police*".[886] Furthermore, when it was passed to the RUC, it was heavily caveated to emphasise the importance of source protection, and in any case was often post-incident, not specific and inconsistent with other source material.[887] These incongruities led Sir Desmond to express "*serious concerns*" about the accuracy of the RUC's claim that Nelson lacked value as an agent.[888]

<u>Intelligence provided by FRU to the RUC and the RUC Daily Intelligence Book</u>

11.8. Sir Desmond also undertook an extensive evaluation of the intelligence provided by the FRU to the RUC from the MISRs produced by the FRU and the RUC Daily Intelligence Book.[889] Overall,

[883] de Silva Review, Volume I at [189/8.25].
[884] de Silva Review, Volume I at [189/8.26].
[885] de Silva Review, Volume I at [188/8.23]
[886] de Silva Review, Volume II at [746].
[887] de Silva Review, Volume I at [189/8.28] and Volume II at [744] to [746].
[888] de Silva Review, Volume I at [190/8.31].
[889] Sir Desmond conducted a complete analysis of the Daily Intelligence Book from December 1988 until the start of the Stevens I Investigation in September 1989 (de Silva Review, Volume I at [192/8.43]).

Sir Desmond determined that the MISRs and Daily Intelligence Books, as well as evidence of oral reporting, provide support of the FRU's contention that they were, as a general rule, passing "*significant and exploitable intelligence*" from Brian Nelson on to the RUC.[890] Sir Desmond accepted that the FRU were regularly passing MISRs to the RUC as a result of Brian Nelson's intelligence.[891] Indeed, over the course of 1987-89 period, Sir Desmond was unable to find any examples of FRU meetings with Brian Nelson which did not subsequently result in a MISR of some description being sent to the RUC.[892] Sir Desmond found threat intelligence of UDA targeting in relation to over 400 individuals that was passed to the RUC through MISRs.[893] Sir Desmond concurs with Judge Cory's conclusion, having studied the Daily Intelligence book, that:

> *"... Special Branch paid virtually no attention to his [Nelson's] intelligence reports... there is only an occasional reference to Nelson in the intelligence book..."*[894]

11.9. Sir Desmond's own analysis shows that 219 entries were made in the Daily Intelligence Book in relation to information provided by Brian Nelson over this period and that intelligence originating from Brian Nelson was provided to the RUC SB on average, every four – five days.[895] Sir Desmond describes his figures as demonstrating that "*a significant quantity of intelligence from Nelson*", 28% of intelligence he produced, related to UDA targeting (as opposed to 58% general intelligence).[896]

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[890] de Silva Review, Volume I at [206/8.60] and [196/8.47].
[891] de Silva Review, Volume I at [191/8.39].
[892] de Silva Review, Volume I at [191/8.39].
[893] de Silva Review, Volume I at [191/8.39].
[894] de Silva Review, Volume I at [191/8.42]; Cory Report at [88/1.247].
[895] de Silva Review, Volume I at [192/8.43] to [195/8.44].
[896] de Silva Review, Volume I at [195/8.45] and Figure 3.

11.10. Sir Desmond also assessed the question of whether the MISRs sent to the RUC were "*diluted to such an extent that they prevented the RUC from taking any positive action to protect lives*".[897] Sir Desmond also evaluated the nature of the intelligence held by the FRU in advance of UDA attacks, alongside intelligence held by the RUC in advance of each attack.[898] He concluded that the evidence broadly supports A/05's claim that a significant amount of exploitable intelligence was passed by the FRU to the RUC.[899] Sir Desmond states that if the FRU were withholding detailed intelligence from the RUC, as claimed by Sir John Hermon and journalists such as John Ware, then he would have expected to find a clear disparity between the FRU's knowledge of UDA targeting and the RUC's 's knowledge in relation to that targeting.[900] He observed that in almost every case of murder or attempted murder outlined, the FRU had provided intelligence to the RUC indicating a UDA threat against each identified individual.[901] Further, he records that the information was so detailed that the RUC must have clearly known that the UDA had effectively completed their targeting and therefore there was potentially grave danger to an individual.[902]

11.11. Consequently, Sir Desmond determined that the impression given by the RUC to the DPP(NI) that the RUC were receiving little worthwhile intelligence through the FRU regarding Brian Nelson, was "*incorrect and misleading*".[903] Sir Desmond does, however, point to four exceptions. Although some information was passed to the RUC in the T/27, Gerard Slane, Patrick Monaghan and Alex Maskey cases, significant intelligence about the UDA's targeting, was not

[897] de Silva Review. Volume I at [196/8.49].
[898] de Silva Review, Volume I at [197/8.51] and Figure 5.
[899] de Silva Review, Volume I at [205/8.53].
[900] de Silva Review, Volume I at [205/8.53].
[901] de Silva Review, Volume I at [205/8.57].
[902] de Silva Review, Volume I at [205/8.57].
[903] de Silva Review, Volume I at [205/8.53].

passed on.[904] As summarised in the 'Brian Nelson' chapter, and set out in Chapter 7 of his report,[905] Sir Desmond concluded that the RUC took no steps to protect any of the targets highlighted in his Figure 5, [906] except for T/02. [907]

FRU's responsibility

11.12. Sir Desmond concluded *"that the FRU should have known at the material time that the RUC were not taking any action as a result of the vast majority of Nelson's intelligence"*.[908] He finds that this is in part, due to structural reasons. Each of the 'MISR supplements' (the higher classification notes alongside the MISRs which were completed in the majority of the MISRs relating to Brian Nelson) included the caveat "No... action to be taken without direct reference to OC East Det FRU".[909] This caveat demonstrates that consultation was expected before the intelligence was exploited which was necessary because the RUC's action could have implications for FRU's agents such as Brian Nelson.[910] However, Sir Desmond notes that the evidence provided by FRU personnel, supported by Ministry of Defence ('MoD') correspondence cleared by the Secretary of State for Defence, was that although they expected action to be taken by the RUC on their intelligence, they did not consider it to be their role to pursue this further with the RUC to ascertain whether the intelligence was in fact being exploited.[911] Sir Desmond was unable to find evidence of any concerns raised by the FRU with the RUC as to the non-exploitation of Brian Nelson's intelligence.[912] Sir Desmond notes the conflicting explanations for whether and why little action

[904] de Silva Review, Volume I at [205/8.54].
[905] de Silva Review, Volume I at [123/7].
[906] de Silva Review, Volume I at [200] to [204].
[907] de Silva Review, Volume I at [205/8.57].
[908] de Silva Review, Volume I at [209/8.76].
[909] de Silva Review, Volume I at [207/8.64]; also see, for example, Volume II at [527].
[910] de Silva Review, Volume I at [207/8.65].
[911] de Silva Review, Volume I at [206/8.63].
[912] de Silva Review, Volume I at [207/8.66] and [208/8.71].

was taken by the RUC.[913] However, Sir Desmond returns to the pattern of activity (outlined in Chapter 7 of his report) which persuades him that it is unlikely that the FRU were completely unaware of the fact that the RUC were not generally exploiting Brian Nelson's intelligence.[914] Sir Desmond states that he would have expected to see communication between the FRU and RUC after a UDA attack that had been accurately predicted and facilitated by Nelson, if this were the case, but he did not.[915]

11.13. Significantly for this Inquiry, Sir Desmond notes that in a Contact Form ('CF') dated 10 January 1989, a month before Patrick Finucane's murder, A/13, Brian Nelson's handler, effectively accepted that exploitation of Brian Nelson's information had been minimal.[916] This was reinforced by the conclusion in the FRU's annual report on Brian Nelson dated 31 January 1989 which, significantly, described exploitation as "*nil*".[917]

11.14. Sir Desmond does not appear to make any strong conclusions on *why* the RUC took so little action. He accepts that the RUC's attitude towards FRU was "*a factor*" but not a "*critical factor*" (our emphasis), in the failure to exploit Brian Nelson's intelligence, as Judge Cory found.[918] Sir Desmond records that from his analysis of the RUC Threat Book (in Chapter 9 of his Review), the RUC *were* taking effective action when the intelligence provided by the FRU from republican agents concerned security force personnel.[919] Support for this contention is provided by ACOS G2 (of the MoD) to the GOC

[913] de Silva Review, Volume I at [207/8.67] to [208/8.70].
[914] de Silva Review, Volume I at [208/8.71].
[915] de Silva Review, Volume I at [208/8.71].
[916] de Silva Review, Volume I at [208/8.72].
[917] de Silva Review, Volume I at [209/8.74].
[918] de Silva Review, Volume I at [209/8.79] to [209/8.80].
[919] de Silva Review, Volume I at [209/8.80].

privately in 1991, after Brian Nelson was arrested, who criticised the RUC:

> "*Were the RUC operating a policy of selective action dependent upon an individuals record?... Failure to maintain records of actions taken in this sensitive area is indictive* [sic] *of gross ineffeceincy* [sic] *or a deliberate attempt to conceal the nature and extent of operations mounted by the RUC. Could the RUC weather an investigation into the possible negligence of his [sic] Special Branch to take the appropriate action to save lives? Probably not."*[920]

11.15. Sir Desmond also notes that it was accepted by all parties that the RUC SB did not receive access to FRU CFs providing a full account of meetings with Brian Nelson and his handlers. Therefore, the nature of that relationship would only have been apparent to FRU officers.[921]

Was Brian Nelson out of FRU's control?

11.16. Crucially Sir Desmond concludes that although Brian Nelson did withhold some information from handlers, there is no suggestion that Brian Nelson was pursing an agenda of his own, or an agent "*out of control*".[922] Sir Desmond considers the key question to be whether the FRU tasked Brian Nelson to target Provisional IRA ('PIRA') figures in order, as A/05 stated, to engage the UDA in 'nugatory' activity and enable security services to take counter-measures, or because, as suggested by non-governmental organisations, the FRU themselves had a military objective to focus the UDA on PIRA targets who were a threat to the State.[923]

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[920] de Silva Review, Volume II at [811].
[921] de Silva Review, Volume I at [210/8.85].
[922] de Silva Review, Volume I at [212/8.91] to [212/8.92].
[923] de Silva Review, Volume I at [212/8.92].

11.17. British Irish Rights Watch (BIRW) suggest that the FRU's strategy to focus the UDA on active republicans rather than Catholics and to save lives had a "*bizarre rationale*" given that the conclusion was that FRU's intervention did not save lives.[924] BIRW allege that it appears that Patrick Finucane's murder "*was the product not of an isolated act of collusion, but a systematic strategy*" by FRU in seeking out Brian Nelson, infiltrating him into the UDA, "*which carried out its campaign of murder under the flag of convenience of the Ulster Freedom Fighters*".[925] The BIRW conclude that *"FRU's intervention did not save lives, it cost the lives of many people, all of whom, whatever their allegiances or activities may have been, were murdered. If the documents we have seen are authentic, FRU's actions amounted to state murder by proxy."*[926]

11.18. John Ware also considered this issue. He suggests that "at a glance", the aims of the UDA and FRU appear identical: "hunting down and killing the enemy is what armies do, after all. But was this actually FRU's agenda?"[927]

11.19. Ultimately, Sir Desmond gave A/05's explanation that FRU's aim was to save lives and frustrate loyalist paramilitary activity the benefit of the doubt, for the following reasons:

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[924] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 1.11
See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/
[925] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 1.10
See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/
[926] British Irish Rights Watch, '*Submission to UN Special Rapporteur on Extra Judicial, Summary & Arbitrary Executions Concerning the Force Research Unit*', 1 November 2000 (accessed 07.09.2026), para 1.11
See: https://www.rightsandsecurity.org/unsr-on-extra-judicial/
[927] Ware, Neither Confirm Nor Deny at [37].

a. There was precedent for a situation where Special Branch and MI5 had tasked a jointly handled loyalist agent to use similar distraction tactics in the 1980s.[928]

b. If FRU had proactively wanted 'legitimate' targets assassinated, why did FRU pass so much of his intelligence to the RUC via MISRs?[929]

c. If using Brian Nelson as a proxy for state assassinations was the FRU's real purpose, wouldn't the FRU have been expected to give Brian Nelson up to the minute intelligence on the movements of intended targets, rather than rely on leaked documents?[930]

d. If the FRU were using Nelson and the UDA for proactive means, why did the UDA kill so few leading republicans?[931]

11.20. John Ware finds Sir Desmond's conclusions to be "*fair counters*" to the view that CO FRU was waging a proxy assassination campaign but found his strategy "*reckless*" given that FRU acknowledged that "*6137 [Nelson] initiates most of the targeting*" and this led to "*chaos and multiple deaths, with none of the victims known to be active members of the IRA*".[932] John Ware poses the question of "*what the state was getting out of protecting agent criminality over locking up the known perpetrators of cold-blooded murders*?"[933] Defenders of FRU's strategy argued that the situation at least allowed intelligence services to 'build a picture' of the rival terrorist groups. One former branch officer of the intelligence services explained to John Ware this would include "*who was up, who was down, long-term strategy,*

[928] de Silva Review, Volume I at [212/8.94].
[929] de Silva Review, Volume I at [213/8.98] to [213/8.99].
[930] de Silva Review, Volume I at [214/8.101].
[931] de Silva Review, Volume I at [214/8.104].
[932] Ware, Neither Confirm Nor Deny at [42].
[933] Ware, Neither Confirm Nor Deny at [52].

that kind of thing… even if it was never going to see the light of day".[934] If agents crossing the line of criminality were stood down "*you're pretty soon going to run out of agents*". John Ware suggests Sir John Stevens supported this view and concluded that building pictures was more of a priority than saving lives.[935] He quotes a Detective Inspector who served on the Stevens Investigation and whom he interviewed as saying: "*[d]ecisions were made on the basis of expediency rather than life saving as the FRU's primary purpose.*"[936]. This finds some support in comments made by Tom King, Secretary of State for Defence at the time who told Attorney General Sir Patrick Mayhew on 3 October 1990 that "[i]*ntelligence from agents and informers is the most important source of information we have about the policy, plans and psychology of terrorist groups we are fighting*".[937]

11.21. Judge Cory also found that Brian Nelson's involvement in violent activities was of concern to his handlers only to the extent that this exposed him to risk of apprehension by the police.[938] Sir Desmond concurred with this view, finding that the FRU placed a very high priority of "*source protection*" in relation to Brian Nelson.[939]

11.22. Despite Sir Desmond accepting that the FRU tasked Brian Nelson to focus UDA targeting on PIRA figures to steer the UDA towards 'harder' targets in practice so that the lives of innocent Catholics could be saved,[940] he remained critical of the FRU's handling of Brian Nelson. Sir Desmond came to "*inescapable conclusions*" in respect

[934] Ware, Neither Confirm Nor Deny at [52].
[935] Ware, Neither Confirm Nor Deny at [52].
[936] Author Interview, Sarah Bynum, February 2002, cited in Ware, Neither Confirm Nor Deny at [52].
[937] Aaron Edwards, *Agents of Influence* (Kildare: Merrion Press, 2021) at [201].
[938] Cory Report at [1.261].
[939] De Silva Review, Volume I at [216/8.114] to [216/8.116].
[940] de Silva Review, Volume I at [213/8.97] to [214/8.105] and [216/8.117].

of Brian Nelson's motivation and how the FRU acquiesced to the fact that Brian Nelson's targeting led to UDA attacks and murders.[941]

Brian Nelson's motivation

11.23. Sir Desmond considered that Brian Nelson's objective in "*enthusiastically*" targeting republicans was to see republicans murdered (as his guilty plea in 1992 effectively acknowledged) and this aim was clearly apparent to his FRU handlers throughout at least April 1988 to April 1989.[942] Sir Desmond found that:

> "*Although the RUC SB must bear primary responsibility for the failure to exploit Nelson's intelligence, I am satisfied that A/05 and the FRU should have known that their strategy was not operating in the way A/05 described in October 1990"*[943] (i.e. target 'harder' PIRA targets because they demanded more reconnaissance and planning which gave the RUC time for to prepare counter measures).[944]

The FRU acquiesced or turned a blind eye to the consequences of Brian Nelson's targeting

11.24. Sir Desmond concluded:

> "*The FRU acquiesced in or turned a blind eye to the fact that Nelson's targeting could, and did, lead to people being attacked and killed by the UDA. Nelson continued to be retained as an Army agent despite the illegal nature of his targeting*."[945]

11.25. He found that long before Patrick Finucane's murder, the consequences of Brian Nelson's actions would have been obvious to

[941] de Silva Review, Volume I at [214/8.106] and [217/8.119].
[942] de Silva Review, Volume I at [181/7.284], [215/8.108] to [215/8.110] and [216/8.118].
[943] de Silva Review, Volume I at [215/8.107].
[944] de Silva Review, Volume I at [210/8.86].
[945] de Silva Review, Volume I at [217/8.119].

the FRU. Despite Brian Nelson's role in the murders of Terence McDaid and Gerard Slane, Brian Nelson continued to be employed as an agent.[946] A/02 told the Stevens I Investigation that it was FRU's policy never to retire an agent.[947] John Ware reports that one of Brian Nelson's handlers said to the Stevens I Investigation team that he could "*think of no scenario where Nelson's involvement in criminality would have been sufficient for the FRU to desert him.*"[948] Sir Desmond's view was that Brian Nelson "should *clearly have been stood down or withdrawn by the FRU"* in these circumstances.[949]

11.26. Sir Desmond held that on occasions, FRU handlers' behaviour was only consistent with the interpretation that they wished to facilitate Brian Nelson's targeting of republicans with a view to the UDA attacking them.[950] Sir Desmond notes that the DPP(NI)'s highly critical comments are magnified and reinforced by the evidence that Sir Desmond considered (which includes the Stevens Investigations' material). Although the DPP(NI) concluded that no FRU personnel should be prosecuted, he found:

> "(*1) The almost total absence of control exercised in relation to Nelson.*
>
> *(2) The inability (or unwillingness) of certain handlers to realise when Nelson was acting outside permitted limits.*
>
> *(3) An acceptance that Nelson would become involved in criminal activity and that this was permissible.*

[946] de Silva Review, Volume I at [215/8.111].
[947] de Silva Review, Volume I at [215/8.111].
[948] Ware, Neither Confirm Nor Deny at [30]. This reporting is not confirmed in Sir Desmond's report.
[949] de Silva Review, Volume I at [215/8.111].
[950] de Silva Review, Volume I at [217/8.120].

(4) No serious consideration was ever given to terminating Nelson's employment as an informer."[951]

11.27. Judge Cory comes to a similar conclusion to Sir Desmond and the DPP(NI) but goes a step further, describing FRU's behaviour as "*collusive*".[952] Judge Cory concludes that FRU "*fail[ed] to restrain*"[953] Brian Nelson in circumstances where his handlers were aware, or at the very least, ought to have been aware of Brian Nelson's criminal acts, and in circumstances where they took no actions to stop his criminal activity. This, Judge Cory held, meant that Army handlers and their superiors "*turned a blind eye to the criminal acts of Nelson. In doing this they established a pattern of behaviour that could be characterized as collusive*."[954]

<u>Responsibility of senior Army officers</u>

11.28. Sir Desmond considered whether A/05 could fairly shoulder the entire responsibility for the Brian Nelson case, or whether responsibility should be attributed more widely if he was reporting fully to his superior officers.[955]

11.29. He concluded that the re-recruitment of Brian Nelson as an FRU agent and UDA Intelligence Officer was sanctioned by ACOS G2 (a senior officer in charge of overseeing Army intelligence matters in Northern Ireland who reported to the Commander Land Forces (CLF)) and the CLF in 1987.[956]

11.30. Sir Desmond could not be certain of the extent to which senior army officers (in particular ACOS G2, the CLF and GOC) were aware of the details of Brian Nelson's activities since they did not receive the CFs;

[951] de Silva Review, Volume I at [215/ 8.112].
[952] Cory Report at [102/1.287].
[953] Cory Report at [102].
[954] Cory Report at [102/1.287].
[955] de Silva Review, Volume I at [217/8.123] to [217/8.124].
[956] de Silva Review, Volume I at [219/8.130] to [219/8.135] and [216/8.116].

A/05 and A/08, the Operations Officer, have acknowledged that they did not seek authorisation from these officers for Brian Nelson's involvement in criminality;[957] and the officers themselves claimed to have very little knowledge of Brian Nelson when questioned in the Stevens I and II Investigations.[958] Despite being regularly briefed by A/05 on FRU matters, the ACOS G2, A/20, could not recall Brian Nelson.[959] ACOS G2 reported to CLF, Major General R J Hodges, who recalled that he would never be told of an agent's name, only source number but denied all knowledge of criminality.[960] The CLF reported to the GOC, General Sir John Waters, who also denied knowledge of Brian Nelson.[961]

11.31. However, Sir Desmond determined that ACOS G2 should have been aware of Army 'Instructions' for him to become involved in agent cases involving criminality.[962] Specifically, Sir Desmond finds that ACOS G2 was fully aware of the major issues that had arisen in the Gerry Adams case in May 1987 and the concerns of Security Service officers in light of a Security Service telegram[963] (as discussed in detail below).

11.32. Sir Desmond considered that the subsequent reaction of the Army and the MoD to the investigation of Brian Nelson and his arrest and prosecution demonstrate that A/05 was considered a valuable officer and that they believed that the unit were justified in handling Brian Nelson in the way that they did.[964] After his position as the CO FRU, A/05 was subsequently promoted and received honours relating to his CO position.[965] Sir Desmond finds that this career trajectory would

[957] de Silva Review, Volume I at [225/8.167]; see also [221/8.140] to [221/8.142].
[958] de Silva Review, Volume I at [225/8.167].
[959] de Silva Review, Volume I at [222//8.145] to [222/8.146].
[960] de Silva Review, Volume I at [222/8.147] to [222/8.148].
[961] de Silva Review, Volume I at [222/8.149].
[962] de Silva Review, Volume I at [226/8.168].
[963] de Silva Review, Volume I at [226/8.168].
[964] de Silva Review, Volume I at [223/8.154] to [224/ 8.160] and [226/8.168].
[965] de Silva Review, Volume I at [224/8.160].

be unlikely if the Army and MoD regarded him as a maverick operating outside or in breach of Army Directives.[966] These actions, even after Brian Nelson's 1992 conviction, demonstrate, Sir Desmond held, "*at least, retrospective approval for the FRU's actions in the Nelson case*".[967] He describes the Army and MoD being "*in denial*" about the Brian Nelson case, despite the concerns raised by Sir John Stevens and the Attorney General in 1991.[968]

11.33. Sir Desmond concluded that there is "no evidence to suggest senior Army officers were aware at the material time of the extent to which Nelson was involved in criminality" or his "enthusiasm for targeting PIRA figures".[969] However, "there was a signal failure by the Army to ensure that the chain of command adequately monitored the Nelson case, particularly in the light of the concerns raised by Security Service officers over the targeting of Gerry Adams in 1987."[970]

<u>Responsibility of the Security Service</u>

11.34. In order to examine the Security Service's role in the Brian Nelson case and in FRU operations, Sir Desmond first set out the FRU 1986 Directive which included reference to Security Service supervision of its cases:

> "*The overall direction for source coverage within the Province is the responsibility of the Director and Coordinator of Intelligence (DCI), who exercises this responsibility through the various Intelligence Committees. Within HQNI the Assistant Secretary Political (ASP), who is DCI's representative, is to be kept informed of the status of current sources on a regular basis. In addition, he*

[966] de Silva Review, Volume I at [224/8.160].
[967] de Silva Review, Volume I at [226/8.168].
[968] de Silva Review, Volume I at [226/8.170].
[969] de Silva Review, Volume I at [226/8.169].
[970] de Silva Review, Volume I at [226/8.169].

is the Security Service's representative, responsible for the maintenance and safekeeping of all FRU source files."[971]

11.35. *"In addition to the DCI and ASP mentioned in the Directive, the Security Service had an officer working in the HQNI known as the Deputy Assistant Secretary Political (DASP) who worked in the Army's All-Source Intelligence Cell which was responsible for the collation and assessment of all Army intelligence."*[972] The FRU files were also generally described in evidence to Sir Desmond as technically the property of the Security Service.[973]

11.36. Sir Desmond recorded that there was no consensus between the FRU and the Security Service as to the Security Service's awareness of, and responsibility for, the handling of Brian Nelson.[974] The CO FRU, A/05, provided evidence to the Stevens Investigation that there was "close monitoring and support of our work by the Security Service"[975] and that he regularly briefed the DCI and ASP on Nelson's activities.[976] Sir Desmond noted that that two senior Security Services officers, the DCI John Deverell, and the ASP were tasked with Army Intelligence.[977] Sir Desmond relied on the DCI's account that the Security Service did not carefully monitor the Brian Nelson case, but would receive monthly briefings from A/05 which would cover 15-20 cases, one of which would have been Brian Nelson.[978] The ASP emphasised in his evidence to the Stevens Investigation that the FRU ran their own agents under their own Commanding Officer, and that

[971] de Silva Review, Volume I at [226/8.173].
[972] de Silva Review, Volume I at [227/8.174].
[973] de Silva Review, Volume I at [227/8.174].
[974] de Silva Review, Volume I at [227/8.176].
[975] de Silva Review, Volume I at [227/8.177].
[976] de Silva Review, Volume I at [227/8.178].
[977] de Silva Review, Volume I at [228/8.183].
[978] de Silva Review, Volume I at [228/8.185] to [228/8.186].

he would not become involved in running any agent engaged in unlawful acts.[979]

11.37. In light of this dispute, Sir Desmond asked the Security Service to undertake a search of their records for evidence of CFs being copied to the Service to assess how well placed the Service was to supervise the activities of Brian Nelson.[980] The Security Service submitted that their records suggested that they received only nine CFs relating to Brian Nelson, all of which were for the period 1985-1986 and none following the decision to permit the Army to run him as an agent in 1987 and beyond.[981] The Security Service stated that they would only have received CFs where they had agreed with the FRU that an operational interest existed. This, they say, is demonstrated by the fact that the CFs relate to the Security Service's lead responsibility to investigate the acquisition of arms overseas; and when Brian Nelson was in Germany when the Security Service might take the case over.[982]

11.38. Sir Desmond concluded that although the Security Service was undoubtedly aware that Brian Nelson was targeting republicans, there is no evidence to suggest that the Security Service officers had necessarily read the CFs that would have demonstrated Brian Nelson's enthusiasm for attacking such individuals (see de Silva report, Chapter 7: The activities of Brian Nelson).[983]

11.39. Sir Desmond found that there were only two occasions on which the Security Service became actively involved in discussions as to the exploitation of Brian Nelson's intelligence, and in both cases, the evidence shows that Services officers acted to frustrate the UDA

[979] de Silva Review, Volume I at [229/8.188].
[980] de Silva Review, Volume I at [230/8.193].
[981] de Silva Review, Volume I at [230/8.194].
[982] de Silva Review, Volume I at [230/8.194].
[983] de Silva Review, Volume I at [234/8.221].

committing criminal offences.[984] One such case was Brian Nelson's role in a conspiracy to murder Gerry Adams in May 1987. Sir Desmond sets out the detail of the illuminating telegram dated 21 May 1987 (as referred to below in another context) from the Head of the Security Service's agent-running station in Northern Ireland to F8 which shows that the Head of the Services' operational section, the ASP and the DCI were directly involved in the Gerry Adams case.[985] In this context, Sir Desmond argues that the telegram is important in two respects: (i) it confirms that the Service were anxious to avoid Brian Nelson's involvement in criminal offences and prevent the UDA from murdering a high-profile republican; and because (ii) it shows that it was apparent to senior officers by May 1987 that the Brian Nelson case was on the verge of being "*out of control*".[986] Sir Desmond's view was that "*in view of the DCI's responsibility for the "overall direction" of intelligence activity, the Service should…have sought to subsequently monitor the case as closely as it was possible for them to do."*[987]

11.40. The second example is when the Security Service became directly involved in discussions with the FRU about UDA plans to intimidate witnesses in August 1989.[988] A Security Service note suggested that FRU handlers were keen to prevent their source being compromised by possible involvement in a criminal act.[989] In order to encourage Brian Nelson, the Service offered Brian Nelson via FRU a £500 reward if he was able to retrieve the intimidating material.[990] Sir Desmond

[984] de Silva Review, Volume I at [234/8.221].
[985] de Silva Review, Volume I at [230/8.196] to [231/8.200].
[986] de Silva Review, Volume I at [231/8.202].
[987] de Silva Review, Volume I at [231/8.202].
[988] de Silva Review, Volume I at [234/8.219].
[989] de Silva Review, Volume I at [234/8.219].
[990] de Silva Review, Volume I at [234/8.220].

characterised this as "*undoubtedly a positive intervention*" by the Service to try and prevent a criminal offence.[991]

11.41. Sir Desmond did agree with Justice Cory that there is an absence of evidence to reveal any collusive acts on the part of the Security Service in carrying out its role.[992] However, he did find, that whilst the Security Service did not have an executive role in the handling of Brian Nelson, the Service "*failed to carry out its advisory and co-ordinating duties adequately in the Nelson case*."[993] This, Sir Desmond highlighted was evident from three particular events:[994]

a. In May 1987 the Service received intelligence highlighting the possibility that Brian Nelson could add to the UDA's military capability, as he was an active and effective UDA Intelligence Officer.[995]

b. In July 1987, the Service correctly assessed that there were major flaws in the FRU's approach to Brian Nelson.[996] Sir Desmond found that it is clear that the Security Services were aware that Brian Nelson would be directly involved in carrying out targeting for the UDA.[997]

c. In June 1988 comments were made by FRU personnel to a Security Service officer indicating that Brian Nelson had an inappropriate degree of enthusiasm for carrying out "*justifiable*" UDA targeting.[998] Sir Desmond found that in light of the Gerry Adams case, the FRU's comments about Brian Nelson's character ought to have been a "*cause for serious concern*...

[991] de Silva Review, Volume I at [234/8.220].
[992] de Silva Review, Volume I at [235/8.223], see also Volume I at [226/8.172].
[993] de Silva Review, Volume I at [235/.8.223].
[994] de Silva Review, Volume I at [235/8.222].
[995] de Silva Review, Volume I at [232/8.203].
[996] de Silva Review, Volume I at [232/8.204].
[997] de Silva Review, Volume I at [232/8.205].
[998] de Silva Review, Volume I at [235/8.222] and [233/8.211].

there does not appear to have been any consideration given as to whether to seek to advise the FRU to exercise greater control of Nelson's activities in any way".[999]

Sir Desmond's overall conclusions on Brian Nelson's conduct

11.42. The extent to which Sir Desmond's conclusions are accepted in other publicly available sources is discussed below. In summary, Sir Desmond's conclusions on Brian Nelson's activities during the period of 1987 to 1989 were as follows:

a. Brian Nelson was motivated by the desire to assassinate republicans, not save lives;

b. Brian Nelson's dissemination of targeting material to the UDA and UVF substantially increased the UDA's targeting capacity and thus deaths. Most concerning was the dissemination of information which originated from what his handlers had told him;

c. FRU very rarely took counter-measures to protect UDA targets;

d. The Army failed to provide adequate supervision of Brian Nelson;

e. The Security Service failed to carry out adequate advisory and co-ordinating duties; and

f. The RUC SB did nothing to prevent a series of murders and attempted murders which the FRU had given prior notice of.

<u>Brian Nelson's motivation</u>

11.43. When carrying out targeting for the UDA, Sir Desmond determined that Brian Nelson "was motivated by a desire to see what he

[999] de Silva Review, Volume I at [233/8.213].

perceived to be 'legitimate' republican targets killed".[1000] However, Sir Desmond went on to find that "given the nature of the tasking he received from the FRU, Nelson was unlikely to have believed there was any distinction between his objective of targeting supposedly 'legitimate' republican targets on the one hand, and the objectives of the FRU on the other".[1001]

11.44. Sir Desmond rejects A/05's evidence at Brian Nelson's trial that Brian Nelson simply *"wished to help the Army in its attempts to counter terrorism and to save life"*.[1002] Sir Desmond recites eight CFs from April 1988 to April 1989 which he states demonstrates that Brian Nelson wanted to focus the UDA's targeting on 'legitimate' terrorist targets rather than innocent Catholics.[1003]

11.45. Sir Desmond observed that Brian Nelson's desire to see what he perceived as 'legitimate' targets appeared to translate to specific cases. Sir Desmond found that Brian Nelson's targeting in the cases of particular Terence McDaid, T/02, Alex Maskey and Thomas Keenan *"... was clearly carried out with a genuine desire to assassinate republicans, and not with a view to providing intelligence to the authorities so that their lives could be saved."*[1004] A similar point could be made about James Pratt Craig, a UDA member murdered due to his perceived associations with PIRA.

<u>Targeting</u>

11.46. Sir Desmond concluded that Brian Nelson's "actions materially increased the targeting capacity of the UDA and thereby furthered their murderous objectives".[1005] Sir Desmond was "particularly

[1000] de Silva Review, Volume I at [14/29]; see also [153/7.133] to [153/7.134].
[1001] de Silva Review, Volume I at [14/32].
[1002] de Silva Review, Volume I at [179/7.275].
[1003] de Silva Review, Volume I at [181/7.284].
[1004] de Silva Review, Volume I at [183/7.290].
[1005] de Silva Review, Volume I at [14/29]; see also Volume I at [136/7.52].

concerned by the fact that, on occasions Nelson's FRU handlers provided him with information that was subsequently used for targeting purposes."[1006] This, he found, was "indicative of handlers in some instances deliberately facilitating Nelson's targeting of PIRA members".[1007]

Dissemination

11.47. Brian Nelson's role in the distribution of targeting material to other loyalist paramilitaries is not in question since in January 1992 at Belfast Crown Court, he pleaded guilty to 12 counts of aiding, abetting, counselling and procuring other individuals to possess documents containing information likely to be useful to terrorists or carrying out acts of violence.[1008] The question for Sir Desmond, was whether the FRU knowingly permitted Brian Nelson to engage in the dissemination of targeting material and if so, whether there was any justification for it.[1009]

11.48. Sir Desmond concluded that Brian Nelson's dissemination of targeting material across the UDA and UVF was a "*sustained and consistent course of conduct*".[1010] Support for this can also be found in the Stevens Investigations which recovered Brian Nelson's 'P' cards from no fewer than twelve loyalist dumps, one as far away as Derry-Londonderry.[1011] John Ware reports the FRU records document some sixteen occasions when Brian Nelson gave copies in bulk of his 'P' cards to the UDA or UVF.[1012]

[1006] de Silva Review, Volume I at [14/33].
[1007] de Silva Review, Volume I at [14/33].
[1008] de Silva Review, Volume I at [123/7.2].
[1009] de Silva Review, Volume I at [123/7.2] to [123/7.3]; see also Volume I at [14/33].
[1010] de Silva Review, Volume I at [136/7.52].
[1011] Author Interview, Vincent McFadden, January 2002, cited in Ware, Neither Confirm Nor Deny at [45].
Ware, Neither Confirm Nor Deny at [47].

11.49. An incident of particular concern to Sir Desmond was recorded in a CF dated 20 October 1987 which stated that Brian Nelson was specifically tasked by his handlers to "*copy all UDA targeting files and computer floppy discs*".[1013] Sir Desmond found that since the FRU had already received copies of Brian Nelson's "*intelligence dump*" on 14 October 1987, *"this raises the possibility that FRU were explicitly tasking Brian Nelson to copy material for the purpose of dissemination to other UDA members."*[1014] Indeed, the same CF recorded that during a UDA meeting on 15 October 1987 he told the assembled company that as of the following day, he would have updated all available targeting information and it was available when required.[1015] Sir Desmond concludes from this that although he cannot be sure whether the FRU tasked Brian Nelson to copy the intelligence dump *for the purposes of disseminating it*, the CF makes clear that the FRU were aware of Brian Nelson's intentions to hand over targeting material to other UDA members.[1016] In addition, Judge Cory records Brian Nelson's 1990 statements to the Stevens Investigation in which he says that FRU kept photocopies of his 'P' cards, and knew that these documents were being turned over to other members of the UDA.[1017] Similarly to Sir Desmond, Judge Cory finds that from the CFs it is clear that Brian Nelson's handlers were well aware of his activities pertaining to the 'P' cards.[1018]

11.50. Sir Desmond held that it would have been reasonable to expect Brian Nelson's handlers to have advised him as to the best means of minimising and controlling the distribution of the targeting information given A/05's stated aim of frustrating terrorist activity.[1019]

[1013] de Silva Review, Volume I at [126/7.18].
[1014] de Silva Review, Volume I at [126/7.18].
[1015] de Silva Review, Volume I at [126/7.18].
[1016] de Silva Review, Volume I at [127/7.19].
[1017] Cory Report at [28/ 1.60].
[1018] Cory Report at [28/ 1.60].
[1019] de Silva Review, Volume I at [127/7.20].

He found it must have been "*abundantly clear*" that Brian Nelson's aims in proliferating the material were criminal in nature.[1020]

11.51. Sir Desmond concluded that whilst "*the FRU may have been justified in permitting Nelson to disseminate such material where it was strictly necessary to maintain his cover as an agent, it would plainly have placed the targeted individuals at great risk*".[1021] Even if it had been necessary to be involved in such widespread dissemination to maintain his cover, it should, Sir Desmond found, have been obvious to Brian Nelson's handlers that it would have been almost impossible for him to be involved in each and every targeting process that the UDA selected from the material.[1022] "*By disseminating the material so extensively, he effectively relinquished his control over it*", Sir Desmond considered.[1023]

11.52. This consideration is mirrored by the author of the MoD 'Problem Areas' document also identified this problem, commenting that:

> "*The spreading of such material greatly enhanced the UDA's potential for murder, with no possible warning from Nelson. <u>The Handlers make no comment on this action</u>*." [Emphasis added by Sir Desmond].[1024]

11.53. There is further support for this in John Ware's analysis. Upon examination of the sixteen occasions in which Brian Nelson gave bulks of 'P' cards to the UDA or UVF, referred to above, John Ware found no record of Brian Nelson's handlers or co-handlers restraining or admonishing him for the inevitable consequences.[1025] On John Ware's own examination of the documents, from Brian Nelson's

[1020] de Silva Review, Volume I at [127/7.22].
[1021] de Silva Review, Volume I at [136/7.53].
[1022] de Silva Review, Volume I at [128/7.24].
[1023] de Silva Review, Volume I at [128/7.24].
[1024] de Silva Review, Volume I at [129/7.31].
[1025] Ware, Neither Confirm Nor Deny at [47].

return to the UDA in May 1987 up until February 1992, dozens of names were later recovered by Stevens from Brian Nelson's intelligence dump which were the victims of attempted murder.[1026]

11.54. In these circumstances, Sir Desmond held, it was incumbent on the FRU to ensure that Brian Nelson fully reported to them and that his reporting was exploited by the RUC to frustrate terrorist activity and save lives.[1027] Sir Desmond determined that within six months of re-joining the UDA, Brian Nelson had made a significant impact in increasing the UDA's targeting capacity.[1028] Importantly for this Inquiry, Judge Cory similarly highlighted that by February 1989, just six days before Patrick Finucane's murder, Brian Nelson's handler noted that:

> "*Nelson initiates most of the targeting, although it is often unclear when the targeting has been completed and an attack is to take place. Of late, Nelson has been more organised and he is currently running an operation against selected Republican personalities*".[1029]

11.55. Despite the FRU having advance warning of Brian Nelson's actions, Sir Desmond observes, they appear to have placed no restrictions on his dissemination of targeting information.[1030] Over the next two years, Brian Nelson's work as an FRU agent "*was characterised by his repeated dissemination of dangerous targeting information throughout the UDA, and the FRU's handling of him was characterised by a willingness to allow him to engage in such activity without proper control*".[1031] In 1990, the Assistant Chief Constable responsible for the RUC CID wrote to the DPP(NI)

[1026] Ware, Neither Confirm Nor Deny at [47].
[1027] de Silva Review, Volume I at [136/7.53].
[1028] de Silva Review, Volume I at [129/7.32].
[1029] Cory Report at [28/1.61].
[1030] de Silva Review, Volume I at [129/.32].
[1031] de Silva Review, Volume I at [129/7.33].

supporting his prosecution on the basis that: *"There is no doubt that Nelson had become an agent provocateur for he recommended targets to other members of the UDA/UFF gang and passed on highly sensitive information which was to be used to target and kill members of the public."*[1032]

11.56. Even more dangerously, Sir Desmond held, Brian Nelson further disseminated targeting material to the UVF. He found that, "*it should have been apparent to all concerned that distributing such material beyond the confines of his own organisation, the UDA, would to all intents and purposes amount to a total abandonment of control over the use to which it was then put.*"[1033] Sir Desmond provided various examples of the assistance given by Nelson to the UVF, drawn from information that Nelson himself had given his FRU handlers.[1034] One CF suggested that the UVF intended to provide the UDA with a limpet mine seemingly as a quid pro quo for Nelson's targeting information.[1035] Sir Desmond concluded that Brian Nelson provided assistance to the UVF in targeting Thomas Keenan and Alex Maskey because he actively desired their murder; Brian Nelson's handler recorded, *"[Nelson] feels that if the UDA are not going to act then it is better that the UVF do it than no one."* [1036] Sir Desmond notes that far from admonishing Brian Nelson for exchanging targeting information with the UVF, A/13 appeared actively to welcome it by commenting that:

> "*If this is successful it will enhance [Nelson's] standing with [L/28], particularly if the UVF carry out an attack on one of the targets for*

[1032]de Silva Review, Volume 1 at [477/24.116].
[1033] de Silva Review, Volume I at [131/7.37].
[1034] de Silva Review, Volume I at [132/7.38] to [134/7.38].
[1035] de Silva Review, Volume I at [132/7.38] to [133/7.38].
[1036] de Silva Review, Volume I at [132/7.38], see the second bullet point.

which [Nelson] supplied the information." [Emphasis added by Sir Desmond].[1037]

11.57. According to John Ware, Detective Superintendent Vince McFadden, Senior Investigating Officer for the Stevens I Investigation, identified that there was "ample evidence that the UVF were living off Nelson – and increasing its strike rate as a result".[1038]

11.58. Sir Desmond finds that the FRU "appear not to have sought to restrict of curtail Nelson's activity…" and they continued to employ him which shows "at the very least, tacit approval of his activity."[1039] He observes that Brian Nelson's repeated failure to provide his handlers with the names of persons whose details had been proliferated, and the failure of Brian Nelson's handler to admonish him for failing to provide that information or even asking him for it,[1040] meant that his actions could not help protect those threatened.[1041] On occasion, Sir Desmond finds, "it seems to have gone much further than that, if not to the point of actively encouraging his activity".[1042] Sir Desmond points out that this all took place whilst Brian Nelson was being supervised and directed by three successive handlers and various co-handlers within the FRU, although the same OC of East Det FRU was in place, as was A/05 who was the CO FRU for most of that period.[1043]

11.59. The BBC reporter Peter Taylor reported an interview he said was with one of Nelson's handlers, whom he anonymised as "Geoff":

[1037] de Silva Review, Volume I at [132/7.38], see the second bullet point.
[1038] Author Interview, Vince McFadden, May 2002 cited in Ware, Neither Confirm Nor Deny at [46].
[1039] de Silva Review, Volume I at [136/7.55].
[1040] de Silva Review, Volume I at [129/7.34].
[1041] de Silva Review, Volume I at [131/7.36].
[1042] de Silva Review, Volume I at [136/7.55].
[1043] de Silva Review, Volume I at [137/7.56].

"*[D]id 'Geoff' personally ever supply [Nelson] with information. 'No, not directly. But if he said, 'Is that so-and-so's registration?' I would say to him, 'You don't have that wrong.' If that was the case, I asked, and the car owner was killed, weren't he and the FRU complicit in murder? 'Geoff' was matter-of-fact. 'Well, it's a fine line you walk,' he said. I pointed out that in the end Nelson went to gaol for conspiracies to murder. 'Yes,' he replied, 'at our request.' Encouraged by him and his colleagues? 'Yes.' And by FRU? 'Yes.' And by British intelligence. 'Yes.' Geoff was astonishingly candid:*

'I'm ashamed of it. He strayed outside the law at our behest. We instructed him to carry on his job of targeting these people. There were certain risks, but it was loosely seen by my hierarchy that if he carried out an action and then reported it, it would negate his guilt. In other words he was doing his job under our direction and once he'd informed us of what he had done, it would not be illegal. Brian believed, not that he was bullet proof, but that he had protection from us and that what he was doing, he was doing at our request and therefore he had immunity. And he didn't."[1044]

11.60. The RUC SB were "*fully informed in October 1987 of the most serious example of Nelson's dissemination of targeting information*" but subsequently took no action to exploit the information that Nelson had provided, Sir Desmond found.[1045] The MISR repeated the wording of the CF almost exactly (Brian Nelson's extensive proliferation of his intelligence dump) and noted that it was the FRU's source (i.e. Brian Nelson) who was responsible for the dissemination.[1046] Sir Desmond notes that there is no record to suggest that the RUC SB did anything to object to Brian Nelson's actions, despite them being fully aware of

[1044] Peter Taylor, *Brits: The War Against the IRA* (London: Bloomsbury, 2002) at [292] to [293].
[1045] de Silva Review, Volume I at [137/7.57].
[1046] de Silva Review, Volume I at [134/7.43].

Brian Nelson's involvement in the extensive dissemination of dangerous targeting material.[1047] Sir Desmond also took the view that it is equally concerning that there is no evidence to suggest that the FRU ever even sought to query the RUC SB as to why they were not exploiting the intelligence.[1048] This is in contrast to the Stevens I Investigation which seized significant quantities of targeting material, within months of starting the investigation, and was subsequently able to charge numerous UDA members of criminal offences.[1049]

The provision of targeting information to Brian Nelson by his handlers

11.61. There is also the important question of whether targeting information flowed the other way around: from Brian Nelson's handlers to him. Sir Desmond considered that if, in fact, information was passed to Brian Nelson that could assist the UDA in its targeting of individuals, it would cause serious doubt on A/05's stated reasons for running Brian Nelson since such activity would place individuals at grave risk of assassination.[1050] It was the role of handlers to receive information from agents and, as Judge Cory notes, policy for good reason dictated that handlers were not to supply their agents with information.[1051] If a handler provided information that facilitated operations of a terrorist organisation, s/he would run the risk of being an accomplice in those activities. It may be observed that the telegram referred to above in the Gerry Adams' case appears to foreshadow that precise risk.

11.62. Sir Desmond made a clear finding with regards to the provision of information from FRU handlers to Brian Nelson. He was satisfied that

[1047] de Silva Review, Volume I at [135/7.44].
[1048] de Silva Review, Volume I at [135/7.46].
[1049] de Silva Review, Volume I at [137/7.57].
[1050] de Silva Review, Volume I at [137/7.58].
[1051] Cory Report at [53/1.153].

between October 1987 and April 1989, FRU handlers *did* share targeting information with Brian Nelson on occasions.[1052] Sir Desmond comes to this conclusion having assessed: a number of instances when Brian Nelson claimed to have received assistance from his handlers in relation to specific targeting operations as recorded in his 'journal';[1053] notes of Brian Nelson's conversations with John Ware;[1054] bare denials by FRU handlers to the Stevens Investigation;[1055] interviews by Peter Taylor and the Stevens Investigation with 'Geoff' (A/02) who was Brian Nelson's main handler between May 1987 and January 1989 (as cited above);[1056] FRU comments to a Security Service officer in July 1988[1057] and FRU documentary records.[1058]

11.63. Sir Desmond considered that the comments made by FRU officers to a Security Service officer in June 1988 in a memo dated 11 July 1988 demonstrate that Brian Nelson was perceived as having sought to use the FRU as a source of intelligence on republicans, and therefore, in Sir Desmond's view, it must have been "*abundantly clear to* [FRU handlers] *that Nelson would use any 'intelligence' gained from them to further this objective*".[1059] The memo states as follows:

> *"... FRU admitted that 6137 [Nelson] was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of "justifiable" actions, and <u>to an extent he may attempt to use his agent role to gain intelligence from FRU.</u>*" [Emphasis added by Sir Desmond].[1060]

[1052] de Silva Review, Volume I at [149/7.118].
[1053] de Silva Review, Volume I at [138/7.63].
[1054] de Silva Review, Volume I at [138/7.64] to [139/7.65].
[1055] de Silva Review, Volume I at [139/7.69] to [140/7.70].
[1056] de Silva Review, Volume I at [140/7.71] to [140/7.75].
[1057] de Silva Review, Volume I at [141/7.76].
[1058] de Silva Review, Volume I at [141/7.78] to [141/7.79].
[1059] de Silva Review, Volume I at [141/7.77].
[1060] de Silva Review, Volume I at [141/7.76]; see also Volume II at [816].

11.64. Sir Desmond found that the strongest evidence that FRU handlers passed information to Brian Nelson that was subsequently deployed for targeting purposes is to be found in the FRU's own documentary records.[1061] Sir Desmond was satisfied that the documentary evidence showed that in a number of cases, such information "*materially assisted Nelson and the UDA to target republicans*" which was *"on any view, utterly inconsistent with the objective of preventing terrorist activity and saving lives*".[1062] Sir Desmond's analysis of the FRU's records show that on at least four occasions during 1988, Brian Nelson was provided with such information from his handlers.[1063] These include:

a. One such example is that in March 1988 where Brian Nelson was given two vehicle registration numbers (VRNs) relating to **Pat McGeown, T/03 and T/06** by the FRU to pass to L/26 for 'checking' which was *"requested by RUC Source Unit"*[1064]. Brian Nelson then passed this information on to 'Tucker' Lyttle and added it to both Pat McGeown's and T/03's index cards.[1065] Sir Desmond found this to be a clear example of Brian Nelson instigating the targeting of an individual and using information provided to him by the security services.[1066]

b. Sir Desmond also analyses FRU's passing on of information relating to **Brendan Hughes**, a well-known member of PIRA. CFs from March 1988 demonstrate that Brendan Hughes' VRN was provided to Brian Nelson and that this was passed on to several members of the UDA, including L/23, a UDA Brigadier.[1067]

[1061] de Silva Review, Volume I at [141/7.78].
[1062] de Silva Review, Volume I at [149/7.118].
[1063] de Silva Review, Volume I at [141/7.79].
[1064] de Silva Review, Volume I at [145/7.99].
[1065] de Silva Review, Volume I at [146/7.102] to [146/7.104]; see also Volume II at [551] to [552] for P card' on Pat McGeown.
[1066] de Silva Review, Volume I at [146/7.105].
[1067] de Silva Review, Volume I at [144/7.88] to [144/7.92].

A Telephone Contact Form (TCF) recorded on 22 March 1988 between Brian Nelson and his handler, A/13, shows that the handler confirmed Brendan Hughes' address.[1068] Sir Desmond notes that it is not clear why this was necessary if the aim of the operation was to identify who was carrying out vehicle checks on behalf of the UDA.[1069] Sir Desmond explains that a CF dated 3 March 1988 stated that the VRN for Brendan Hughes was "*originally given to [Nelson] by this office in order to trace the origin of the checks if it was RUC*".[1070] He finds, therefore, that the aim of the exercise was to identify who in the security forces was apparently providing the UDA with the results of vehicle checks, though, Sir Desmond comments, there is no evidence to indicate that the FRU ever managed to establish this.[1071] Brendan Hughes appears to be actively targeted by Brian Nelson in August 1989 using this information.[1072] Sir Desmond states that it is "*abundantly clear from this CF that Nelson was directly using the information provided to him by the FRU to assist a dangerous UDA commander in targeting Hughes*".[1073] Sir Desmond's findings are clear: the *only* credible interpretation of the circumstances were that "*the FRU handler consciously wished to facilitate Nelson's targeting of a republican figure*".[1074] Sir Desmond believes that a) the results of vehicle checks shared by the FRU with Brian Nelson was then used for targeting purposes; and b) vehicle details shared by the FRU and RUC SB in order to help identify the source of leaks, although a valid objective, was "*highly dangerous*", and again

[1068] de Silva Review, Volume I at [144/7.93].
[1069] de Silva Review, Volume I at [145/7.94].
[1070] de Silva Review, Volume I at [144/7.90].
[1071] de Silva Review, Volume I at [144/7.90].
[1072] de Silva Review, Volume I at [145/7.97].
[1073] de Silva Review, Volume I at [145/7.98].
[1074] de Silva Review, Volume I at [149/7.118].

led to the vehicle details being used by the UDA for targeting purposes.[1075]

11.65. Brian Nelson himself, in his 'journal' and reportedly in his interviews with John Ware, has claimed that his handlers at E Det FRU actively assisted him in targeting potential victims.[1076] This finds some support in information provided in CFs and TCFs seen by Sir Desmond.

a. In summer 1987, a senior FRU handler suggested to Brian Nelson that the UDA should start a bombing campaign in Ireland, in particular the oil terminal outside Cork[1077] (although Sir Desmond comments that the relevant CFs do not corroborate this allegation).[1078]

b. In mid-August 1987, when 'Tucker' Lyttle asked Brian Nelson for information about David Clinton, who was suspected of targeting John McMichael, John Ware says that Brian Nelson's handler told Brian Nelson that the address Brian Nelson had for David Clinton was wrong.[1079]

c. In relation to targeting T/26, A/02 told him "*not to go near [T/26]'s house, he would get the photograph for me and I could give [L/49 the UFF Commander] the complete targeting pack*".[1080] The journal goes on to allege that A/02 subsequently traced an outline of a photograph of T/26's house.[1081]

d. Brian Nelson also claims that FRU gave him Brian Gillen's address, another republic targeting by UDA (Sir Desmond sets

[1075] de Silva Review, Volume I at [150/7.119].
[1076] de Silva Review, Volume I at [138/7.63] to 139/7.65].
[1077] de Silva Review, Volume I at [138/7.64] to [139/7.65].
[1078] de Silva Review, Volume I at [139/7.66].
[1079] Ware, Neither Confirm Nor Deny at [50].
[1080] de Silva Review, Volume I at [139/7.63].
[1081] de Silva Review, Volume I at [139/7.63].

out this claim in his report but does not make a factual determination on this issue).[1082]

e. A TCF shows that when Brian Nelson thought he saw Alex Maskey's car outside a restaurant on 17 July 1988, his handlers told him by telephone that the car was probably used by him.[1083]

11.66. A further example of a particularly "*worrisome*", in Judge Cory's words, incident in which handlers facilitated Brian Nelson's targeting is contained within a CF dated 12 April 1989.[1084] The CF is referred to in the de Silva Review[1085] with reference to the attempted murder of T/25 in April 1989 (and is discussed in detail above), but Sir Desmond does not recite the relevant extract which shows the handler's actions. Judge Cory records that Brian Nelson told his handlers that he was having difficulty taking photos of a UDA's target's residence because of its location. The handler then went so far as to conduct a personal reconnaissance and identified the best places for photographs to be taken from, Judge Cory records. This information was to be conveyed to Brian Nelson at his next debriefing so that he could produce a useful targeting package and "*impress*" high ranking UDA officials.[1086] Furthermore, Judge Cory reports that at about the time of Patrick Finucane's murder, Brian Nelson's handlers were anxious to have Brian Nelson rise higher and have an even greater influence in the UDA.[1087]

11.67. Judge Cory concludes that the significance of Brian Nelsons' handlers providing him with information is four-fold since it

[1082]de Silva Review, Volume I at [139/7.65]; see also Ware, Neither Confirm Nor Deny at [4949] and section on Gillen in Chapter 10: Brian Nelson.
[1083] de Silva Review, Volume I at [141/7.81].
[1084] Cory Report at [54/1.156].
[1085] de Silva Review, Volume I at [173/7240].
[1086] Cory Report at [54/1.156].
[1087] Cory Report at [55/1.161].

demonstrates that the handlers were aware or should have been aware:

a. that Brian Nelson was doing a lot of the targeting;

b. that Brian Nelson occasionally committed crimes when targeting;

c. that they were not supposed to give him information;

d. that the information they provided was to be used in targeting activities. [1088]

11.68. Judge Cory describes the passing of information by his handlers to assist him in his targeting activities as constituting a "*collusive act*".[1089] He poses the question of how these "*collusive acts*" relate to Patrick Finucane's murder:

> *"The answer to this question is twofold.. First it indicates a pattern of conduct on the part of FRU handlers that should be taken into consideration. Second, if for example a public inquiry heard and accepted evidence that was similar to William Stobie's statement to Journalist A that Nelson was "intelligence" and present at a meeting planning the Finucane murder, then the passing of information to him would become direct and telling evidence of collusion.*
>
> *Even if the handlers did not furnish any information relating specifically to Patrick Finucane, this breach of policy is relevant in that it could be taken to reveal either tacit encouragement, or even active facilitation of UDA operations and the targeting that so often led to murder."*[1090] (our emphasis).

[1088] Cory Report at [54/1.158].
[1089] Cory Report at [55/1.159].
[1090] Cory Report at [55/1.159] to [55/1.160].

11.69. Judge Cory finds that whilst there is no indication that handlers provided information that specifically related to Patrick Finucane, the breach of policy is significant since it demonstrates a pattern of behaviour by handlers that "*could be considered collusive*".[1091] Judge Cory seeks to build a picture: Brian Nelson's handlers were aware that he was a central player within the UDA; that he had considerable influence in directing targeting operations; and that Brian Nelson often played a direct and active role in reconnaissance missions.[1092] His report concludes that:

> "*The provision of information to Nelson in these circumstances may be seen as evidence of collusive behaviour that had the potential to facilitate the deadly operations planned by the UDA*."[1093]

Accountability of State Departments

11.70. Sir Desmond found that "*contradictory explanations*" which have been offered make findings of accountability "*complex*" and therefore that a "*rigorous analysis of the evidence*" was required.[1094] In summary, Sir Desmond made the following findings.

The Security Forces very rarely took counter-measures to protect UDA targets

11.71. Brian Nelson was tasked by FRU to target what the FRU's Commanding Officer referred to as 'PIRA [Provisional IRA] activists'.[1095] The stated rationale for this tasking was that these targets would be more difficult to find and therefore take the UDA longer to attack therefore giving the security services more time to protect them.[1096]

[1091] Cory Report at [102/1.286].
[1092] Cory Report at [102/1.286].
[1093] Cory Report at [102/1.286].
[1094] de Silva Review, Volume I at [14/30].
[1095] de Silva Review, Volume I at [14/30].
[1096] de Silva Review, Volume I at [14/30]; see also Volume I at [113/6.59].

However, Sir Desmond determined that this was contradicted by the evidence which demonstrates that counter-measures were "*very rarely*" taken in response to intelligence given by Brian Nelson.[1097] In fact, Sir Desmond found only three cases in which action was taken by the security forces to prevent UDA attacks, based on Brian Nelson's intelligence.[1098]

11.72. Furthermore, Sir Desmond took the view that the reaction of the FRU to Brian Nelson's involvement in UDA attacks and murder was "*wholly unacceptable*".[1099] First, when his FRU handler sought to reassure a troubled Brian Nelson after the murder of Terence McDaid (mistaken identity) by telling him that Terence McDaid was a member of PIRA and second, when one of Brian Nelson's handlers having initially expressed disapproval after the UDA murdered James Pratt Craig (a notorious loyalist believed by the UDA to have links with PIRA) suggested a celebratory drink with Brian Nelson might have been appropriate given Brian Nelson's role in inciting the attack. [1100]

11.73. Sir Desmond found that the Government's assertion to the UN Special Rapporteur for his 1998 report that Brian Nelson's information saved about 70 lives[1101] was baseless.[1102] Having examined the entirety of the documentation produced as a result of the Stevens Investigations, the RUC Threat Book and the Daily Intelligence Book, Sir Desmond concluded that in fact, action was taken in only *three* cases to protect lives as a result of Brian Nelson's reporting. [1103]

[1097] de Silva Review, Volume I at [14/31].
[1098] de Silva Review, Volume I at [14/31].
[1099] de Silva Review, Volume I at [14/34].
[1100] de Silva Review, Volume I at [14/34].
[1101] de Silva Review, Volume I at [174/7.246].
[1102] de Silva Review, Volume I at [174/7.248].
[1103] de Silva Review, Volume I at [174/7.247] to [174/7.248].

a. **Gerry Adams**

i. Sir Desmond recorded that in May 1987, the UDA planned to assassinate the President of Sinn Féin, Gerry Adams, a sitting MP for West Belfast and a candidate in the upcoming General Election. Brian Nelson was tasked to act as a trigger to the hit team, who planned to drive upon a motorcycle and plant a mine on Gerry Adams' car.[1104] The Army and the RUC SB arranged to flood the area with security forces to prevent the attack taking place, which according to a Security Service memo dated 21 May 1987 was done

> *"...in order to frustrate the operation...so that the operation would have to be aborted – this was successfully done*".[1105]

Sir Desmond finds that the security forces did take steps to frustrate the UDA's planned attack on Gerry Adams but "*the circumstances in which the UDA aborted the plan are somewhat unclear".*[1106]

ii. Sir Desmond also found that the Gerry Adams case was potentially an early example of Brian Nelson's value and was used in mitigation at Brian Nelson's 1992 trial.[1107] Sir Desmond cites the revealing telegram sent by a senior Security Service officer to the London office on 21 May 1987, Sir Desmond finds, demonstrates that "*Nelson's emerging role was clearly a cause for serious concern amongst Security Service officers*".[1108] The telegram refers to the

[1104] de Silva Review, Volume I at [174/7.249].
[1105] de Silva Review, Volume I at [175/7.250].
[1106] de Silva Review, Volume I at [175/7.254].
[1107] de Silva Review, Volume I at [175/7.254].
[1108] de Silva Review, Volume I at [175/7.255]; see also Volume II at [813] to [815].

Security Service officers and the ASP's view that the "*operation threatens to get out of control*"; expressing concern that if Nelson is involved in projects against high profile Republican targets his cover will be blown very quickly. Rather prosaically, the memo goes on to say that:

> "*...plus his links with the Army were to get into the public domain in some way (whether immediately or in the future) then British intelligence and HMG [Her Majesty's Government] could face accusations of having conspired in the murder of a prospective MP with all the attendant adverse consequences*."[1109] It states that they are concerned that the FRU has not paid sufficient attention to the wider implications of the operation and refer to it being "*possible that they themselves* [have] *been pushing* [Nelson] *to implement the Adams' plan speedily as a way of reinforcing his standing with the UDA... ACOS G2 has given a specific instruction that the attempt on Adams must not succeed*".[1110]

iii. Sir Desmond finds that this telegram demonstrates several important points in this context:

a. The FRU may have been encouraging Brian Nelson to "*implement*" the Gerry Adams plan.[1111]

b. The apparent need for both strong representations from the Security Service and a specific instruction from ACOS G2 to ensure an attack would be prevented.[1112]

[1109] de Silva Review, Volume I at [175/7.255].
[1110] de Silva Review, Volume I at [175/7.255].
[1111] de Silva Review, Volume I at [176/7.256].
[1112] de Silva Review, Volume I at [175/7.256].

c. The dangers inherent in the future employment of Brian Nelson as an army agent and "*should have served as a warning sign of the dangers of running such an agent*".[1113] Sir Desmond wryly observed that the prediction made by the Security Service officer, that Brian Nelson's activity would lead to the State becoming implicated in conspiracy to murder in the Adams case "*is precisely what later transpired*".[1114]

b. **T/02**

i. In May 1988, Brian Nelson carried out 'recces' of the place of work of T/02 who had been suggested to be involved in PIRA attacks.[1115] On 19 May, Brian Nelson told his handlers that the attack on T/02 would take place the following morning and that Brian Nelson was to drive the lead car to T/02's workplace.[1116] The CF dated 23 May reported that a security force operation was put in place to prevent the attack and it was aborted.[1117] However, Sir Desmond finds that he is "*left with a sense of some unease*" since there are "*several references in the documents implying that the attack was prevented by the security forces only because Nelson was directly involved in the lead car*".[1118]

ii. Sir Desmond concludes that "[a]*lthough I fully recognise that the T/02 case is an important example of the security forces preventing a UDA attack, it does, in my view, raise questions as to the attitude of the FRU with regard to the*

[1113] de Silva Review, Volume I at [178/7.268].
[1114] de Silva Review, Volume I at [223/8.153].
[1115] de Silva Review, Volume I at [176/7.257].
[1116] de Silva Review, Volume I at [176/7.258].
[1117] de Silva Review, Volume I at [175/7.258].
[1118] de Silva Review, Volume I at [177/7.260].

desirability of preventing UDA attacks in which Nelson was not directly involved".[1119]

c. In a third case of an **unnamed individual**, Sir Desmond held that "[t]*he information provided by Nelson about the targeting of the individual who had assisted the police appears to have prompted far greater willingness on their part to take action than was ever shown in response to the wealth of other threat intelligence provided to them in MISRs throughout the period 1987–89*".[1120]

The Army failed to provide adequate supervision of Brian Nelson

11.74. Sir Desmond concluded that "*... accountability for what went wrong in the Nelson case did not rest solely with the FRU and their Commanding Officer. Procedural provisions were in place within the Army chain of command which should have enabled senior officers to supervise such cases, but these were not applied in relation to Brian Nelson. There was, therefore, a signal failure by the Army to ensure adequate supervision in this case.*"[1121]

The Security Service failed to carry out adequate advisory and co-ordinating duties

11.75. Sir Desmond held that on two occasions when the Security Service became actively involved in discussions about the exploitation of Brian Nelson's intelligence, their intervention was aimed at disrupting the UDA's plans.[1122] However, by the summer of 1988 the Security Service was aware that Brian Nelson was motivated to see the UDA attack "*justifiable*" targets which "*failed to prompt any*

[1119] de Silva Review, Volume I at [177/7.263].
[1120] de Silva Review, Volume I at [178/7.268]; see also Volume I at [177/7.264] to [178/7.266].
[1121] de Silva Review, Volume I at [15/35].
[1122] de Silva Review, Volume I at [15/36].

effort on their part to provide a greater degree of guidance to the FRU in handling the case".[1123] Sir Desmond determined that:

> "*Whilst I agree with Justice Cory's view that there is no evidence to demonstrate collusive acts on the part of the Security Service in relation to the Nelson case, I have reached the conclusion that the Service failed to carry out their advisory and co-ordinating duties adequately in relation to Nelson and the FRU*".[1124]

The RUC SB did nothing in relation to prevent a series of murders which the FRU had given prior notice of

11.76. Sir Desmond determined that "[i] terms of accountability, however, the most serious issue of all related to the failure of the RUC SB to respond to Nelson's intelligence".[1125]

11.77. It was the RUC that was the agency involved in the exploitation of intelligence from all sources that could protect individuals under threat.[1126]

11.78. Sir Desmond resolved a factual tension within the evidence between the FRU and the RUC SB's attempts to explain why intelligence was not acted upon. Put simply, each blamed one another: the FRU complained that intelligence regarding threats to life reported by Brian Nelson was passed to RUC SB who were expected to act upon it; and RUC SB insisting that the FRU did not provide them with the necessary information.[1127] Sir Desmond concluded that neither position was sustainable on the available evidence, although the

[1123] de Silva Review, Volume I at [15/37].
[1124] de Silva Review, Volume I at [15/37].
[1125] de Silva Review, Volume I at [15/38].
[1126] de Silva Review, Volume I at [15/38].
[1127] de Silva Review, Volume I at [15/39].

overall position was probably closer to the FRU's position.[1128] Sir Desmond concluded:

> "*In almost all of the relevant murders or attempted murders that I have reviewed, it was clear that the FRU passed intelligence to the RUC SB prior to the attack indicating that the individual concerned was under threat. Nevertheless, I have also concluded that the FRU should have been aware that the RUC SB were taking no action on the bulk of the intelligence being supplied to them. Taken as a whole, an extraordinary state of affairs was created in which both the Army and the RUC SB had prior notice of a series of planned UDA assassinations, yet nothing was done by the RUC to seek to prevent these attacks.*" [1129]

[1128] de Silva Review, Volume I at [16/40].
[1129] de Silva Review, Volume I at [16/40].

12. THE FAILURE TO TAKE ACTION AGAINST THE WEST BELFAST ULSTER DEFENCE ASSOCIATION

Introduction

12.1. The intensive work in relation to the murder of Patrick Finucane carried out by the Stevens III Investigation led to the identification of a number of key UDA suspects who were believed to have been involved, in addition to Kenneth Barrett, Brian Nelson and William Stobie.[1130] However, given the passage of time, there was insufficient admissible evidence to prosecute any of this group of individuals.[1131]

12.2. Counsel to the Inquiry do not assert, and are not in a position to assert, whether the suspicions of the Stevens investigators and Sir Desmond are well founded. It is, nonetheless, necessary to consider the work undertaken by Sir Desmond's Review to trace the involvement of a number of these individuals through a series of murders and attacks by the West Belfast UDA in period prior to Patrick Finucane's murder.[1132]

12.3. Sir Desmond concluded that "*the evidence clearly show[ed] that the RUC had failed to take action"* against what he described as a *"gang"* [1133] and such action as the RUC took to investigate and disrupt the West Belfast UDA at this time was "*grossly inadequate*".[1134] There was intelligence linking the majority of those he considered likely to have been involved in the murder of Patrick Finucane to a number of murders and attempted murders from May 1987 to February 1989.[1135] While the use of such intelligence to arrest terrorist suspects was a

[1130] de Silva Review, Volume I, at [19/58].
[1131] de Silva Review, Volume I, at [19/58].
[1132] de Silva Review, Volume I, at [19/59].
[1133] de Silva Review, Volume I, at [19/60].
[1134] de Silva Review, Volume I, at [20/61].
[1135] de Silva Review, Volume I, at [330/17.26].

complex task, it supposedly formed part of the rationale for running agents such as Brian Nelson and William Stobie.[1136]

12.4. However, none of the four individuals Sir Desmond considered to be reliably linked to the murder of Terence McDaid in May 1988 and none of the six who were linked to Gerard Slane's murder in September 1988 was arrested in connection with either killing.[1137] Indeed, Sir Desmond considered that it was "*remarkable*" that individuals such as L/20 and L/28 were not arrested at any stage during this period.[1138] While Sir Desmond considered that the record of the RUC in arresting and bringing charges against loyalist terrorists across Northern Ireland during this period withstood scrutiny and was, indeed, disproportionately better than their record against republican terrorists, its response to the West Belfast UDA stood out in "*stark contrast*" to that general pattern.[1139]

12.5. In reaching this conclusion, Sir Desmond's Review considered the following four issues: (i) the use of intelligence to arrest terrorist suspects, (ii) UDA suspects linked to the murder of Patrick Finucane and the availability of intelligence relating to them, (iii) the passage of information from the SB to the CID, and (iv) the exploitation of intelligence to arrest UDA suspects. These matters are considered in turn below.

The use of intelligence to arrest terrorist suspects

12.6. In framing this issue, Sir Desmond explained that he had been mindful of:

a. First, the fact that intelligence material which linked an individual to an attack does not constitute evidence which

[1136] de Silva Review, Volume I, at [330/17.26].
[1137] de Silva Review, Volume I, at [19/60].
[1138] de Silva Review, Volume I, at [330/17.26].
[1139] de Silva Review, Volume I, at [20/61].

would be admissible in a criminal prosecution with the result that it would not necessarily be fair to criticise the RUC for failing to translate intelligence into prosecutions.[1140]

b. Second, by the late 1980s, both republican and loyalist terrorists had adopted a consistent strategy of refusing to answer questions in police custody.[1141]

c. Third, the fact that the RUC were dealing with an unprecedented number of serious crimes during this period.[1142]

d. Fourth, that intelligence must be used with care when seeking to arrest and question suspects and the protection of the source must be considered before exploiting such intelligence.[1143]

12.7. Nevertheless, Sir Desmond observed that intelligence was successfully exploited during the late 1980s to arrest terrorist suspects and that exploiting intelligence to enable the investigation and arrest of suspects was an important part of the rationale for running agents in the first place.[1144] The latter was cited explicitly by A/05 in 2002 as one of the FRU's two key objectives in running Brian Nelson as an agent.[1145] It is also correct that the law has long recognised the potential for state agents to participate in criminal activity with the aim of assisting authorities to bring criminals to justice. [1146]

[1140] de Silva Review, Volume I, at [322/17.4].
[1141] de Silva Review, Volume I, at [322/17.5].
[1142] de Silva Review, Volume I, at [322/17.5] to [320/17.6].
[1143] de Silva Review, Volume I, at [329/17.20].
[1144] de Silva Review, Volume I, at [323/17.7].
[1145] de Silva Review, Volume I, at [323/17.7].
[1146] de Silva Review, Volume I, at [323/17.8].

UDA suspects linked to the murder of Patrick Finucane and intelligence relating to them

12.8. Sir Desmond recorded that he had analysed the RUC's actions in relation to individuals in the West Belfast UDA who had been linked to Patrick Finucane's murder.[1147] This included the "*significant quantity of intelligence*" provided by Brian Nelson regarding the identities of members of the West Belfast UDA who had been involved in planning and carrying out murders. In addition, he considered intelligence provided by William Stobie and from other sources.[1148]

12.9. In Chapter 17 of his report, Sir Desmond summarised the intelligence received in respect of some of the murders and attempted murders committed by elements within the West Belfast UDA in 1988[1149], namely the murders of Terence McDaid and Gerard Slane and the attempted murders of T/17, Patrick Monaghan and James Peter Morgan. Sir Desmond was satisfied these examples accurately reflected the broad pattern. Figure 12 is reproduced overleaf.

[1147] de Silva Review, Volume I, at [323/17.10].
[1148] de Silva Review, Volume I, at [324/17.12].
[1149] de Silva Review, Volume I, at [324/17.13].

Figure 12: Intelligence received linking UDA members to a selection of attacks

Murder of Terence McDaid (10 May 1988)			
UDA suspect	**Agency receiving intelligence**	**Date intelligence received[4]**	**Source of intelligence**
L/22	FRU	11 May 1988[5]	Brian Nelson
	RUC	11 May 1988[6]	
L/28	FRU	11 May 1988[7]	Brian Nelson
	RUC	11 May 1988[8]	
L/20	RUC only	1 June 1988[9]	William Stobie
L/33	RUC only	1 June 1988[10]	William Stobie

Murder of Gerard Slane (23 September 1988)			
UDA suspect	**Agency receiving intelligence**	**Date intelligence received**	**Source of intelligence**
L/28	FRU only	12 September 1988[11] (pre-attack)	Brian Nelson
L/20	FRU	21 September 1988[12] (pre-attack)	Brian Nelson
	RUC	3 October 1988[13]	
Thomas 'Tucker' Lyttle	FRU only	12 September 1988[14] (pre-attack)	Brian Nelson
L/25	RUC only	23 September 1988[15]	RUC intelligence

Murder of Gerard Slane (cont.)			
L/33	RUC only	23 September 1988[16]	RUC Intelligence
L/30	RUC only	23 September 1988[17]	RUC Intelligence

Attempted murder of T/16 (20 September 1988)			
UDA suspect	**Agency receiving intelligence**	**Date intelligence received**	**Source of intelligence**
L/22	FRU	19 April 1988[18] (pre-attack)	Brian Nelson
	RUC	19 April 1988[19] (pre-attack)	
L/20	RUC	Unknown, but by 13 February 1989[20]	Unknown
L/33	RUC	Unknown, but by 13 February 1989[21]	Unknown

Attempted murder of Patrick Monaghan (9 November 1988)			
UDA suspect	**Agency receiving intelligence**	**Date intelligence received**	**Source of intelligence**
L/28	FRU only	26 October 1988[22] (pre-attack)	Brian Nelson
L/20	FRU	26 October 1988[23] (pre-attack)	Brian Nelson
	RUC	21 November 1988[24]	
L/30	FRU	26 October 1988[25]	Brian Nelson
	RUC	21 November 1988[26]	

Attempted murder of Patrick Monaghan (cont.)			
L/25	FRU only	7 November 1988[27] (pre-attack)	Brian Nelson
Kenneth Barrett	FRU	17 November 1988[28]	Brian Nelson
	RUC	21 November 1988[29]	
L/33	FRU	17 November 1988[30]	Brian Nelson
	RUC	21 November 1988[31]	

Attempted murder of James Peter Morgan (14 November 1988)[32]			
UDA suspect	**Agency receiving intelligence**	**Date intelligence received**	**Source of intelligence**
L/22	FRU only	26 October 1988[33] (pre-attack)	Brian Nelson
L/28	FRU only	26 October 1988[34] (pre-attack)	Brian Nelson
L/20	FRU only	26 October 1988[35] (pre-attack)	Brian Nelson
L/25	FRU	26 November 1988[36]	Brian Nelson
	RUC	1 December 1988[37]	
L/30	FRU only	26 October 1988[38]	Brian Nelson

12.10. In respect of the case of James Peter Morgan, Sir Desmond noted that the FRU failed to pass important intelligence linking UDA suspects to the attack to the RUC. [1150]

The passage of information from the SB to the CID

12.11. Sir Desmond observed that there are no records to suggest that any of the intelligence from the FRU was passed by SB to the CID. However, the documentary evidence suggested that at least some SB intelligence was passed on to the CID, namely that intelligence

[1150] de Silva Review, Volume I, at [327/17.14].

linking L/30, L/33 and L/25 to the murder of Gerard Slane was recorded on two SB50 documents.[1151] The documents recorded that the information was provided to the Grosvenor Road CID team investigating the murder. Sir Desmond noted that the SB50 which recorded Stobie's intelligence in relation to the murder of Terence McDaid also recorded that the CID had been informed. While accepting that these annotations could not necessarily be relied upon, Sir Desmond stated that the intelligence was certainly provided to the CID in the case of Terence McDaid because the information was included in a CID file.[1152]

The exploitation of intelligence to arrest UDA suspects

12.12. Sir Desmond also considered the arrest records of UDA suspects linked to Patrick Finucane's murder after Brian Nelson's return to Belfast. He considered that there was a "*marked disparity*" between the "*extensive intelligence*" received by the RUC and the custody records of individuals linked to UDA attacks prior to February 1989, as illustrated in Figure 13 of his Report (overleaf).

[1151] de Silva Review, Volume I, at [329/17.22].
[1152] de Silva Review, Volume I, at [328/17.16].

Figure 13: Arrests of UDA Suspects, May 1987 to February 1989[41]

Suspect	Date of arrest	Reason for arrest
L/22	9 November 1987	s12(1)(b) Prevention of Terrorism Act (PTA) 1984
Kenneth Barrett	22 September 1987 16 February 1988	s12 PTA 1984 (UDR Palace Barracks theft) s12 PTA 1984 (hijacking/ attempted murder at Mater Hospital on 3 February 1988)
L/25	Not arrested between April 1988 and February 1989 NB convicted on 2 June 1987 for burglary – released from prison in April 1988	N/A
L/28	Not arrested during this period	N/A
L/20	Not arrested during this period	N/A
'Tucker' Lyttle	Not arrested during this period	N/A
L/33	16 February 1988	s12(1) PTA 1984
L/30	21 June 1988	s12(1) PTA 1984

12.13. Sir Desmond described the records as painting a "*concerning picture*" which was likely to have been repeated in relation to further attempted murders and conspiracies to murder.[1153] None of the four individuals linked to the murder of Terence McDaid or the six individuals linked to the murder of Gerard Slane was arrested in connection with those crimes, nor were a number of individuals linked to the three attempted murders.[1154]

12.14. Further, Sir Desmond considered that, even taking account of the context of time, one would expect to find that most or all of the UDA suspects would have been arrest on a number of occasions in relation with those crimes.[1155] He did not consider that the protection

[1153] de Silva Review, Volume I, at [329/17.18].
[1154] de Silva Review, Volume I, at [329/17.18].
[1155] de Silva Review, Volume I, at [329/17.19].

of sources could possibly account for the failure to take sufficient action against the listed suspects.[1156] In this respect, he noted that Brian Nelson himself expressed surprise at the lack of action taken against members of the UDA in his statement to the Stevens I investigation on 3 February 1990.[1157] The PSNI explained to Sir Desmond that the reason why such individuals had not been arrested was that it was sometimes necessary to allow the situation develop in order to enable further evidence to be gathered prior to making an arrest and that the threat to the individual providing the information had to be considered. Sir Desmond recognised the importance of these points but concluded that the did not adequately explain the failure to arrest those individuals and had been unable to find any evidence of an ongoing intelligence operation which could explain why such intelligence was not exploited against these individuals. [1158]

[1156] de Silva Review, Volume I, at [329/17.21].
[1157] de Silva Review, Volume I, at [329/17.22].
[1158] de Silva Review, Volume I, at [330/17.25].

13. THE MURDER OF PATRICK FINUCANE

The Weapons Used

13.1. It appears that two weapons were used in the murder of Patrick Finucane: a 9mm Browning pistol, serial number BL67A 4931, and a .38 Special or .357 Magnum revolver. Eleven of the fourteen shots that were fired were traced by forensic investigation to the Browning pistol; two were traced to the Magnum. [1159]

13.2. The Browning pistol had been stolen from a UDR armoury by a serving UDR soldier and sold to the UDA, together with a number of other weapons. Kenneth Barrett, the only man convicted of the murder of Patrick Finucane, was at least an intermediary in this arrangement, and – on his own account – may have instigated it.[1160]

13.3. This theft was touched upon earlier in this document [Chapter 9], but it is important to set out further details here.

13.4. The weapons were stolen by a full-time serving UDR officer, Colour Sergeant A/23. A/23 was a senior non-commissioned officer who had joined the UDR in 1971, having previously served in the Royal Ulster Rifles.[1161] By August 1987, he was based at the Palace Barracks, Holywood, as a soldier of Ulster Defence 10th Regiment (C Company).[1162] He was one of several designated persons entitled to draw weapons from the armoury.[1163]

13.5. In the early hours of 25 August 1987, C/Sgt A/23 returned to Palace Barracks after a night of heavy drinking. Dressed in civilian clothes,

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[1159] de Silva Review Volume I at [278/ 12.5] and [279/12.9]. The de Silva Review does not explain the absence of a trace for the final bullet but there is no suggestion that a third weapon was used, and hence it is presumed that no trace was possible for reasons that are not explained in the de Silva Review.
[1160] de Silva Review Volume I at [280/13.2] to [282/ 13.11].
[1161] de Silva Review Volume I at [282/13.12].
[1162] de Silva Review Volume I at [280/ 13.2].
[1163] de Silva Review Volume I at [282/ 13.15].

he obtained the key to the armoury from the Regimental Police, removed a stash of weapons and placed them in a van. He returned the key to the Corporal on duty and drove the van towards the barracks gate. The Corporal noticed that the rear doors were not securely fastened and alerted the gate sentry, who in turn stopped A/23 to tell him. A/23 secured the rear doors and continued out of the barracks. He took with him 18 weapons: two machine guns, 14 pistols, two air rifles and a revolver. He also stole ammunition and sights.[1164]

13.6. C/Sgt A/23 drove to Cavehill Road, where he contacted members of the UDA, including Kenneth Barrett. He sold most of the weapons, ammunition and sights to the UDA for £3,000, retaining one revolver and 25 rounds of ammunition. The market value of the weapons sold was estimated to be £7,700. C/Sgt A/23 crossed the border and went to a hotel in Dundalk.[1165]

13.7. The theft of the weapons was discovered on the following day, 26 August 1987. C/Sgt A/23 was arrested by the Garda the same day. He was subsequently tried, convicted and sentenced at Belfast Crown Court to five years' imprisonment.[1166]

13.8. Kenneth Barrett was arrested following the Stevens III investigation and was charged with handling stolen goods in relation to these weapons. He pleaded guilty.[1167]

13.9. Two conflicting explanations were given for the theft. C/Sgt A/23 told the Garda that the theft was an impulsive reaction to being reprimanded by his Company Commander and was intended to cause embarrassment to his battalion.[1168] Kenneth Barrett told journalist John Ware that he had instigated the theft and that an

[1164] de Silva Review Volume I at [280/13.2] to [280/13.5].
[1165] de Silva Review Volume I at [280/13.5] to [281/13.6].
[1166] de Silva Review Volume I at [281/13.7].
[1167] de Silva Review Volume I at [281/13.8].
[1168] de Silva Review Volume I at [281/13.10].

RUC officer had called someone in the UFF to say the weapons were on their way.[1169]

13.10. Sir Desmond de Silva QC did not express a firm view on this dispute, beyond observing that it would seem unlikely that C/Sgt A/23 would have stolen the weapons without at least some understanding of how he was going to dispose of them and what reward he would receive (noting that he was in debt at this time). These factors, Sir Desmond felt, *"tend to suggest that some prior planning of the theft had taken place."*[1170]

13.11. Sir Desmond also considered various "warning signs" about C/Sgt A/23 prior to the theft.

a. In 1971, A/23 had been a vigilante in the Woodvale Defence Association, a group central to the formation of the UDA. In the late 1980s, Kenneth Barrett was also associated with the Woodvale Defence Association.

b. A/23 joined the UDA and was a member in 1972. He claimed to have ceased his activities at the end of that year and let his membership lapse in 1973. As is noted above, he had enlisted with the UDR in 1971.[1171]

c. On two occasions in the mid-1970s, A/23 had been "robbed" of personal protection weapons. The first was a privately purchased Browning pistol, for which he held a firearms permit. He claimed that in February 1974, on his way to a UDR camp, he was stopped by two men who took the pistol. Two years later, in January 1976, he was robbed of his UDR-issued personal protection weapon while drinking in a UDA club that was

[1169] de Silva Review Volume I at [281/13.10].
[1170] de Silva Review Volume I at [282/13.11].
[1171] de Silva Review Volume I at [282/13.12].

frequented by members of paramilitary organisations. It was a breach of his orders to have taken the weapon to the club. C/Sgt A/23 had initially reported that he lost the weapon when two masked men forced their way into his home. This was a lie.[1172]

d. A military investigation in 1976 concluded that A/23 was not thought to be a member of the UDA and was considered a conscientious member of the UDR. He was found not to have taken sufficient care to protect his personal protection weapon, and he was not issued with another one. He was also warned against drinking in known paramilitary clubs.

e. By August 1987, C/Sgt A/23 was known to have considerable financial concerns, exacerbated by heavy drinking and gambling.[1173]

13.12. Sir Desmond concluded that, "it is extremely surprising that such an individual was entrusted as one of [the] signatories for the key to the UDR armoury at Palace Barracks."[1174] He thought the August 1987 theft to be "a story of warning signs being ignored."[1175] More generally, he considered that the theft from the Palace Barracks represented "a woeful failure by the UDR to maintain adequate control over its weapons and prevent them from falling into the hands of terrorists."[1176]

13.13. The journalists Henry McDonald and Jim Cusack made the following generic observation in their book on the UDA about the interaction of members of the UDR and loyalist paramilitaries:[1177]

[1172] de Silva Review Volume I at [282/13.13]; see also [283/13.19].
[1173] de Silva Review Volume I at [282/13.15].
[1174] de Silva Review Volume I at [282/13.15].
[1175] de Silva Review Volume I at [283/13.19].
[1176] de Silva Review Volume I at [283/13.20].
[1177] Henry McDonald and Jim Cusack, *UDA: Insider the Heart of loyalist Terror* (Dublin: Penguin, 2005), [198] to [199] (first published 2004).

"Security force collusion with the UDA appeared to work on two different levels. On the one hand, there were numerous cases of individuals serving in the RUC and British army offering their services to the terror group. On the other hand, these men were usually part-time soldiers or policemen living in loyalist working-class areas and often drinking in UDA- and UVF-controlled pubs and social clubs. Although in many instances these rogue troops and police officers claimed they were forced under duress to leak intelligence files to loyalists, the vast majority were in fact willing participants in the conspiracy."[1178]

13.14. It is emphasised that the authors were not discussing C/Sgt A/23's case and there is no evidence in the de Silva review that he intentionally provided loyalist paramilitaries with the two personal protection weapons that were taken from him in the mid-1970s.

13.15. As is discussed in a previous section of this document, Sir Desmond concluded that he had insufficient evidence to conclude that *"units within the UDR deliberately facilitated the 'theft' of weapons"* for the UDA, but that it was *"extraordinarily easy for loyalist terrorists to acquire weapons from UDR sources."*[1179]

13.16. The Browning pistol was recovered in July 1989 from an address in Bellevue Street, Belfast, and was subjected to forensic testing by the RUC (hence the link being established with the murder of Patrick Finucane). In what the de Silva Review describes as an *"extraordinary"* and *"extremely regrettable"* development, it was subsequently returned to Army service and altered, such that it could not be used as a physical exhibit in criminal proceedings. Sir Desmond found that this was in line with the extant RUC procedures

[1178] The journalists went on to describe an incident from 1990 when a Royal Navy radio operator was charged with keeping guns for the UDA. His defence that he had been forced to hide them was not accepted and the sailor was jailed for ten years.
[1179] de Silva Review Volume I at [284/13.23].

and that he had seen *"no evidence to suggest that this failure to preserve the murder weapon intact as a potential exhibit was due to any sinister ulterior motive."*[1180]

The sequence of events

13.17. The following chronological sequence is intended as an overview of the events that led to the murder of Patrick Finucane on Sunday 12 February 1989. It is based on the analysis presented in the de Silva Review and is intended to reflect the findings of Sir Desmond about the direct events that led to the murder. It should not be read as suggesting that other matters did not cause or contribute to Patrick Finucane's death, or that all the events listed were of equal importance. It is, nonetheless, helpful to have a narrative taken from Sir Desmond's findings, that helps to anchor the detailed discussion that follows on the knowledge and roles of different individuals and organisations in these events.

Targeting

13.18. Five clients of Patrick Finucane have stated that RUC officers made threats to his life in 1988 and January 1989. [1181] Sir Desmond found that these allegations were made by people linked to PIRA, *"an organisation that would have readily distorted the truth in order to support its broader objective."* [1182] He concluded that he was unable to make a finding on whether these specific threats were made,[1183]

[1180] de Silva Review Volume I at [281/13.9], and [283/13.16] to [283/13.18]. See also Brown at [177] (first published 2005). In this account, the weapons were found in the home of a suspected UFF member, whose brother was present at the time. The brother took responsibility for possession of the weapons and was subsequently prosecuted and sentenced. Johnston Brown wrote of his suspicions that the wrong brother had been imprisoned.
[1181] de Silva Review Volume I at [333/18.10] to [334/18.12]. These accounts were provided to the Lawyer Committee for Human Rights as part of their report, *"Beyond Collusion"* (2003).
[1182] de Silva Review Volume I at [335/18.19] to [336/18.23].
[1183] de Silva Review Volume I at [336/18.24].

though he did not think this issue significantly altered his findings about state involvement in the murder.[1184]

13.19. Patrick Finucane's partner, Peter Madden, has also stated that Mr Finucane had received threats to his life for *"months before his death"*, which he (Peter Madden) had kept in a filing cabinet.[1185]

13.20. On 8 December 1988, L/03 – *"a prominent military figure in UDA's A Company based in the Highfield area of Belfast"*[1186] – was arrested under the Prevention of Terrorism Act 1984. Over two days he was interviewed on nine occasions at the RUC detention centre at Castlereagh. Sir Desmond concluded it was *"likely"* that during this detention, an RUC officer or officers proposed Patrick Finucane and at least one other individual (T/05) as a target.[1187]

13.21. Tommy "Tucker" Lyttle, the Chairman of the Inner Council of the UDA and West Belfast Brigadier, told a journalist that he learned of this suggestion and raised it with a contact that he had in RUC SB. In the conversation that followed, Tommy Lyttle said that his contact *"didn't discourage the idea that Finucane … should be shot. And if a man in his position doesn't discourage it then that amounts to approval."*[1188] Sir Desmond did not find evidence to corroborate this account but said that he *"certainly cannot exclude that Lyttle did, as he told John Ware, discuss the targeting of Mr Finucane with an SB contact."* [1189]

13.22. In or around this period, Sir Desmond found that the UDA received a degree of intelligence about Patrick Finucane from an RUC source.[1190] The UDA interpretation of this intelligence linked Patrick

[1184] de Silva Review Volume I at [336/18.25].
[1185] de Silva Review Volume I at [334/18.13].
[1186] de Silva Review Volume I at [340/18.44].
[1187] de Silva Review Volume I at [343/18.62].
[1188] de Silva Review Volume I at [370/20.11].
[1189] de Silva Review Volume I at [379/20.63].
[1190] de Silva Review Volume I at [349/19.28] to [358/19.82] and [367/19.124].

Finucane with issues concerning PIRA intelligence and finances. Sir Desmond noted that the UDA's intelligence read as *"an exaggerated and embellished version of the references found in RUC documents and files."*[1191] He reiterated his finding that he had seen no evidence to displace the finding of Judge Cory and others that Patrick Finucane was not a member of PIRA.[1192]

13.23. This provision of further information from an RUC officer *"would have served to confirm to the UDA the supposed legitimacy of their conspiracy to murder him."*[1193]

13.24. Figures within the UDA began to actively consider Patrick Finucane as a target for an attack. L/20 and L/28 were identified by Sir Desmond as *"key players"*, with the former identified by Kenneth Barrett and Brian Nelson as having *"effectively instigated the targeting of Mr Finucane."*[1194]

13.25. Brian Nelson later told his FRU handlers that the targeting of Patrick Finucane was a response to Tommy Lyttle's decision to stop the targeting of a Catholic priest, T/21. That had happened towards the end of November 1988, seemingly because L/28 had been told the RUC knew of the UDA's efforts.[1195] FRU had passed on Brian Nelson's reporting about the threat to T/21 to RUC SB.[1196]

13.26. In or around mid-December, approximately two months before the murder, L/28 told Brian Nelson to target Patrick Finucane. Despite

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[1191] de Silva Review Volume I at [358/19.79]; see also [357/19.77] in which Sir Desmond states his view that the UDA would *"have drawn no distinction between Sinn Féin and IRA finances, nor would they have been likely to appreciate the difference between, on the one hand, providing legal advice on grants and re-mortgaging, and, on the other, being 'involved' in republican finances."*
[1192] de Silva Review Volume I at [356/19.70].
[1193] de Silva Review Volume I at [367/19.125].
[1194] de Silva Review Volume I at [354/19.56].
[1195] de Silva Review Volume II at [525/17].
[1196] de Silva Review Volume I at [179/7.277], [354/19.57] to [354/19.58], [386/21.41] and [401/21.144] to [405/21.146]; Volume II at [525/17].

Brian Nelson's denials, Sir Desmond was satisfied that he did begin work targeting Patrick Finucane and at some point, undertook some form of reconnaissance of the Finucanes' home.[1197]

13.27. In the week before the murder, on Tuesday 7 February 1989, Brian Nelson provided L/28 and Kenneth Barrett with a photograph from a UDA-published magazine that showed Patrick Finucane leaving court with his client, Patrick McGeown.[1198] Sir Desmond found that Brian Nelson did this knowing that L/28 wanted a photograph of Patrick Finucane. According to the account given by Brian Nelson to Stevens I investigations in January 1990, Kenneth Barrett took the photograph, saying *"That will do fine."*[1199]

Preparations for the attack

13.28. William Stobie's role in the murder, and his varied accounts of it, is discussed in more detail later in this document. Sir Desmond concluded that William Stobie was entrusted by the UDA with several weapons, including the 9mm Browning pistol used in the murder of Patrick Finucane.[1200] On the evening of 6 February 1989, William Stobie was asked by L/03 at the weekly UDA meeting to provide him with a 9mm pistol. Although William Stobie's accounts of what he did in response varied, Sir Desmond found that on Sunday 12 February, the day of the murder, he provided the 9mm Browning used in the attack to the UDA team involved.[1201] The de Silva Review does not come to a view about how the second weapon, the Magnum, was procured and transferred.[1202]

[1197] de Silva Review Volume I at [381/21.8] and [401/21.127], Volume II at [554] and [555].
[1198] de Silva Review Volume I at [394/21.88] to [395/21.98].
[1199] de Silva Review Volume II at [556] .
[1200] de Silva Review Volume I at [419/22.7].
[1201] de Silva Review Volume I at [420/22.7 to 22.9], [423/22.25 to 22.29], [424/22.36 to 425/22.39], [426/22.45 to 22.46], and [428/22.62].
[1202] de Silva Review Volume I at [426/22.46].

13.29. The two weapons used in the murder were moved to a "safe house" in the Shankill Road area, around four miles from Patrick Finucane's home, during the evening of 12 February 1989. This was organised by L/30, described by the de Silva Review as the local UDA Quartermaster.[1203]

13.30. At around 7pm that evening, three members of West Belfast UDA hijacked the car that was to be used in the murder, a Ford Sierra mini-cab. Sir Desmond recorded that L/22 and L/05 *"may have been"* involved in the hijack. The mini-cab was delivered to the safe house.[1204]

13.31. By that stage, the team responsible for the murder were present at the safe house, with the weapons. Sir Desmond identified a three-man team, comprising Kenneth Barrett, L/25 and L/29. This identification is stated as a fact without caveats in the Review.[1205]

<u>The murder</u>

13.32. On Sir Desmond's account, Kenneth Barrett drove the mini-cab the four miles to Patrick Finucane's house, which was just off the Antrim Road. They arrived at around 7.25pm. Kenneth Barrett remained in the vehicle, while L/25 and L/29 took the weapons and approached the house. Inside, the Finucane family – Patrick, Geraldine and their three children – were eating dinner in the kitchen.[1206]

13.33. L/25 and L/29, who were wearing masks, entered the house and kicked through the inner front door. On hearing the noise, Patrick Finucane got up and opened the kitchen door. Geraldine Finucane saw one of the murderers and activated a panic alarm. Patrick Finucane tried to close the kitchen door but was fatally shot by the

[1203] de Silva Review Volume I at [278/12.5] .
[1204] de Silva Review Volume I at [278/12.6].
[1205] de Silva Review Volume I at [279/12.7] .
[1206] de Silva Review Volume I at [279/12.7].

two men. In total, fourteen shots were fired, including two through the glass-panelled door. Six of the bullets hit Patrick Finucane in his head, one or more of which was fired at a range of 15 inches or less. Geraldine Finucane was hit in the ankle by a bullet. Eleven of the bullets were traced forensically to the Browning pistol and two to the Magnum.[1207]

The aftermath

13.34. L/25 and L/29 returned to the mini-cab, where Kenneth Barrett was waiting. He drove them south, and then to the Woodvale area where the mini-cab was abandoned. The men then drove off in a back-up car to L20's house in Highfield, where they changed clothes.[1208]

13.35. Sir Desmond found that at some stage in the evening, L/25 and L/29 returned the guns, *"probably to either L/30 or L/33, who subsequently gave them to L/20."*[1209] *William* Stobie later collected at least the Browning pistol from L/20's house, possibly on Tuesday 14 or Wednesday 15 February 1989.[1210] He may have been instructed to do this by L/03.[1211]

Summary of the involvement of different members of the UDA

13.36. The use of ciphers in the de Silva Review makes it difficult to grasp the respective involvement of different members of the UDA in Patrick Finucane's murder. It may, therefore, assist to set this out in summary form below. This summary is based solely on Sir Desmond's findings and, where relevant, reflects the caveats that he gave in his Review on the degree of certainty with which he came to

[1207]de Silva Review Volume I at [279/12.8] to [279/12.9]. The de Silva Review does not comment on why the other bullet was not traced to either weapon, but there is no suggestion that a third weapon, or a third gunman, was involved.
[1208] de Silva Review Volume I at [279/12.10].
[1209] de Silva Review Volume I at [279/12.10].
[1210] de Silva Review Volume I at [426/22.48], [428/22.57] and [428/22.61].
[1211]de Silva Review Volume I at [428/22.57].

his conclusions. As is noted below, other sources give different accounts. The list that follows should not be read as a comprehensive list of those involved in the murder.

a. L/03: A *"prominent military figure in UDA's A Company based in the Highfield area of Belfast"*, who was arrested and held at Castlereagh detention centre on 8 and 9 December 1988. Sir Desmond concluded it was *"likely"* that during this detention, an RUC officer or officers proposed Patrick Finucane and at least one other individual (T/05) as a target. On 6 February 1989, L/03 asked William Stobie to provide him with a 9mm Browning pistol, which was later used in the attack. He may also have told William Stobie to take the pistol back from L/20 following the attack.

b. L/20: Identified by Sir Desmond as a *"key player"* in the targeting of Patrick Finucane, and by Kenneth Barrett and Brian Nelson as the instigator of it. The murder team travelled to his house in Highfield to change clothes following the murder. He held the murder weapons after the attack before giving at least the Browning pistol to William Stobie.

c. L/28: Also identified by Sir Desmond as a *"key player"* in the targeting of Patrick Finucane. He appears to have been lower in the hierarchy to L/20 and L/03, at least in August 1987.[1212] L/28 instructed Brian Nelson to target Patrick Finucane sometime around mid-December 1988. In the week before the murder, on 7 February 1989, he asked Brian Nelson for, and was provided with, a photograph of Patrick Finucane, who was shown leaving court with his client, Patrick McGeown.

[1212]de Silva Review Volume I at [126/7.15].

d. L/25: One of the two gunmen who committed the murder.

e. L/29: One of the two gunmen who committed the murder.

f. Kenneth Barrett: Part of the team who committed the murder, who drove and remained with the vehicle. Also, a contact of C/Sgt A/23 when the Browning 9mm used in the murder was procured by the UDA in August 1987, Kenneth Barrett claimed to have instigated the theft.

g. William Stobie: Sir Desmond was *"satisfied"* that he provided the Browning 9mm to the UDA team involved in the murder on the evening of 12 September. William Stobie collected this weapon from L/20 after the murder, possibly on the instruction of L/03. It is not clear from the de Silva Review if William Stobie also collected the second weapon used in the murder. William Stobie was, at the time, an agent for RUC SB.

h. L/30: local UDA Quartermaster who moved the murder weapons to the safe house in the Shankill, from where they were collected by the team who conducted the murder. The guns were *"probably"* returned to him or L/33 after the murder and were subsequently given to L/20.

i. L/33: Following the murder, the weapons used were *"probably"* given to L/33 or L/30 before being passed to L/20.

j. L/22: *"may have been"* involved in hijacking the mini-cab used in the attack.

k. L/05: *"may have been"* involved in hijacking the mini-cab used in the attack.

13.37. The specific roles of William Stobie, Brian Nelson and Tommy "Tucker" Lyttle in relation to the murder, and prior intelligence about the murder, are discussed in detail later in this document.

13.38. On 14 February 1989, Brian Nelson told his FRU handlers that he had seen Tommy Lyttle, L/28, L20, L/05, L/33, Kenneth Barrett, L/25 and L/28 meet in the backroom of the UDA headquarters in Gawn Steet, Belfast. He stated that he thought they were involved in Patrick Finucane's murder.[1213] Sir Desmond commented that *"other intelligence suggests that the list of names Nelson provided on 14 February was essentially accurate."*[1214]

13.39. On 15 February 1989, William Stobie met his RUC SB handlers. According to the ensuing report, William Stobie told them that two meetings or gatherings took place in a UDA club on Sunday 12 February 1989.[1215]

a. The first was at 1pm, and was attended by L/20, L/25, L/33, L/28 and L/11.

b. The second occurred from around 7.55pm, thus approximately half an hour after Patrick Finucane's murder. It was attended by L/20, L/25, Kenneth Barrett, L/33 and later L/22, who had arrived with L/28. L/22, L/20 and L/28 subsequently left together.

<u>Other accounts</u>

13.40. Numerous other accounts of the murder and its aftermath have been given in the secondary literature, some containing extensive and distressing detail.[1216] As most rest, at least in part, in documents considered by the de Silva Review but not necessarily made public,

[1213] de Silva Review Volume II at [525/19] and [525/20].
[1214] de Silva Review Volume I at [400/21.118].
[1215] de Silva Review Volume II at [600] to [605].
[1216] Simpson at [28] to [29]; Ware, Neither Confirm Nor Deny at [53]; McKittrick et al, *Lost Lives*, at [1159] to [1162]; Ingram and Harkin, [197] to [200].

little purpose is served here by recounting them. They will fall to be considered and analysed against the totality of the evidence. It may be helpful, however, to point out some of the more important elements of some of these accounts.

13.41. The most significant difference with the findings of the de Silva Review comes from an account of the murder contained in Johnston Brown's book, *"Into the Dark: 30 Years in the RUC"*.[1217] As is discussed elsewhere in this statement, Johnston Brown was a CID officer to whom Kenneth Barrett "confessed" his role in the murder in 1991.[1218] In his book, he states that Kenneth Barrett told him that he was one of the two men who shot Patrick Finucane, rather than the driver of the car (who Kenneth Barrett said was a *"wee lad from Rathcoole."*)[1219] Johnston Brown's recollection of the account is supported by his handwritten notes of the encounter, and the record made of the meeting by a SB officer who was also present; both of these are published (in redacted form) in volume II of the de Silva Review.[1220] In his "confession", Kenneth Barrett named L/14 as the other gunman, although in a later statement to the Stevens investigation in April 2006 he stated that L/14 had nothing to do with the killing.[1221]

13.42. Sir Desmond considered Kenneth Barrett's 1991 account, as given to Johnston Brown. He accepted that some of the detail given closely matched information obtained from the crime scene.[1222] However, he considered that it would be *"unwise to treat Barrett's intelligence on this issue as being reliable without testing it further."* He noted the

[1217] Dublin: Gill and Macmillan, 2006, at [176] to [181], first published 2005.
[1218] de Silva Review Volume I at [345/19.6].
[1219] Johnston Brown, at [177]. In the book that he co-authored, the journalist Greg Harkin has reported that he was told by William Stobie that *"it was decided that Barrett and 'M' would do the shooting while 'X' would drive."*: see Martin Ingram and Greg Harkin, *Stakeknife: Britain's Secret Agents in Ireland* (Dublin: O'Brien Press, 2004), at [199].
[1220] de Silva Review Volume II at [618] to [624].
[1221] de Silva Review Volume II at [691].
[1222] de Silva Review Volume I at [345/19.6] and [349/19.32].

inconsistent accounts given by Kenneth Barrett about the involvement of L/14 and stated that on his analysis of the broader evidential and intelligence picture, he was satisfied that the allegation about L/14 being one of the gunmen was untrue.[1223] Further, Kenneth Barrett's conviction in 2004 for the murder of Patrick Finucane was based on his admission that he had been responsible for driving the two gunmen to Patrick Finucane's home.[1224]

13.43. The journalist Greg Harkin has reported that he was told by Tommy Lyttle that Lyttle held a "celebration" party at his house after the murder. [1225] Sir Desmond recorded that among the purported attendees were Brian Nelson, Kenneth Barrett and L/20.[1226] Sir Desmond expressed some doubt about the account provided by Tommy Lyttle to Greg Harkin and noted that there was no corroboration for the claim that UDA members attended such a party.[1227]

13.44. The detective who led the investigation into the murder, Chief Superintendent Alan Simpson, gave a harrowing account of attending the Finucane's house in the aftermath of the murder:

> *"At that stage in my career, I had attended the scenes of some two hundred murders, suicides or sudden deaths, but what lay before me was a picture of ferocity the likes of which I had encountered few times before."* [1228]

[1223]de Silva Review Volume I at [350/19.34].
[1224]de Silva Review Volume I Executive Summary and Principal Conclusions at [24/86].
[1225] Ingram and Harkin, at [204].
[1226] de Silva Review Volume I at [369/20.7].
[1227] de Silva Review Volume I at [369/20.8].
[1228] Alan Simpson, at [29]. See also *Lost Lives*, at [1160, which records an unnamed Detective Superintendent telling Patrick Fiucane's inquest that the killing was, *"the most ferocious murder I have come across."*

14. THE ROLE OF ROYAL ULSTER CONSTABULARY OFFICERS IN ENCOURAGING THE TARGETING OF PATRICK FINUCANE

Introduction

14.1. An overview of the targeting of Patrick Finucane was provided in Chapter 13 of this document. At this point, it is convenient to provide further exposition of some of these issues. As will be discussed in more detail later, Sir Desmond noted that there did not appear to have been any allegation made by Patrick Finucane that he was directly threatened by an RUC officer, rather alleged threats were made by RUC officers to his clients.[1229] While he did not make specific findings about whether threats were in fact made,[1230] Sir Desmond was not persuaded that this issue would significantly influence his findings with respect to State involvement in the murder.[1231] Instead, Sir Desmond considered that the critical issue was whether RUC officers incited loyalists to attack Patrick Finucane.[1232]

14.2. In analysing this issue, Sir Desmond considered two distinct but related matters:

a. First, the accounts provided by loyalist paramilitaries who claimed that the UDA was encouraged to attack Patrick Finucane by RUC officers. This included Kenneth Barrett's account which Sir Desmond analysed in some detail before concluding that the information Kenneth Barrett had provided on 3 October 1991 that the UDA received 'intelligence' on Patrick Finucane from an RUC source was "*essentially accurate.*"[1233]

b. Second, whether RUC officers proposed Patrick Finucane as a target to UDA members in Castlereagh, and in particular to L/03.

[1229] de Silva Review, Volume I, at [333/18.9] to [334/18.12], [335/18.19].
[1230] de Silva Review, Volume I, at [336/18.24].
[1231] de Silva Review, Volume I, at [336/18.25].
[1232] de Silva Review, Volume I, at [336/18.26].
[1233] de Silva Review, Volume I, at [358/19.81].

In this respect, Sir Desmond found that the murder was likely to have been instigated as a result of suggestions made by RUC officers in Castlereagh to L/03 on 8 or 9 December 1988.[1234]

14.3. Sir Desmond also considered and ultimately dismissed a number of other allegations related to the RUC's involvement in inciting or facilitating Patrick Finucane's murder, including (i) Barrett's accounts from 2001 onwards implicating named RUC officers, including an officer referred to as 'McWhirter', (ii) allegations that a roadblock had been deliberately lifted to facilitate the murder and (iii) an allegation that an RUC officer was present in the stolen mini-cab driven to Mr Finucane's home by the UDA members responsible for his murder.[1235] These issues will be considered in turn below.

Allegations of incitement of loyalists by the RUC

14.4. The day after the murder of Patrick Finucane, the Ambassador of the Government of Ireland met the Cabinet Secretary to provide an advance copy of the Taoiseach's statement about the murder.[1236] The Cabinet Office's note of the meeting of recorded the Ambassador as having stated that:

> *"His [the Irish] Government's concern had been increased by information that the police in Castlereagh were encouraging Protestant paramilitaries to attack Republican lawyers. In this context, the names of Messrs Finucane, McGrory and Kelly had been mentioned. The murder of Mr Finucane had shown that these concerns were justified."*[1237]

[1234] de Silva Review, Volume I, at [344/18.68] to [344/18.69], [364/19.125].
[1235] de Silva Review, Volume I, at [367/19.126] to [367/128].
[1236] de Silva Review, Volume I, at [337/18.28].

14.5. Sir Desmond observed that RUC intelligence raised the possibility that this reporting may have originated from loyalist sources but, as the report were hearsay, he sought to examine the evidence more closely.[1238] This included the accounts provided by four loyalist paramilitaries who claimed that members of the UDA were encouraged to attack Patrick Finucane by RUC officers: (i) Sammy Duddy, (ii) Thomas 'Tucker' Lyttle, (iii) Brian Nelson and (iv) Kenneth Barrett.[1239]

(i) Sammy Duddy

14.6. On 17 June 1991 as part of ITV's World in Action programme broadcast, Sammy Duddy, who was described as the ex-editor of *Ulster* magazine (a publication associated with the UDA),[1240] commented that *"... prior to Pat Finucane's murder, Loyalists had been called into Castlereagh Interrogation Centre, had been told by the RUC that Pat Finucane was a well known IRA member."*[1241] When asked whether this had contributed to his murder, Duddy said "*I would say with all sincerity, that it probably did."*[1242]

(ii) Thomas 'Tucker' Lyttle

14.7. In an article published in the *New Statesman* in 1998, John Ware, an experienced journalist, summarised a conversation he had with 'Tucker' Lyttle, the UDA's West Belfast 'Brigadier' on 24 December 1993:

> *"Lyttle ... confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA gunman was being held in Castlereagh, an officer entered the*

[1238] De Silva Review, Volume I, at [337.18.29].
[1239] de Silva Review, Volume I, at [337/18.30] to [339/18.41].
[1240] McDonald and Cusack at [124], Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [60].
[1241] de Silva Review, Volume I, at [337/18.30].
[1242] de Silva Review, Volume I, at [337/18.31].

interrogation room and said to his colleague: 'Have you put it to him yet?' They then suggested that the UDA shoot Finucane." [1243]

14.8. John Ware's interview notes, which Sir Desmond saw no reason to doubt, recorded that the prominent UDA gunman was L/03 and the suggestion was made by two officers based in Grosvenor Road RUC station. In his submission to the de Silva Review, John Ware explained why he assessed Lyttle's allegations as credible:[1244]

"When I went to Belfast in September 1989 (seven months after Finucane was murdered) to make the first of several Panorama programmes on collusion I was told that a few weeks before his murder, Lyttle had asked to meet two individuals whom he trusted and both of whom I know. Lyttle had said to them words to this effect: 'You'll never guess what the cops are now suggesting we do. Kill Finucane'.

This was recounted to me by one of the individuals whom I have known since 1975, who is a friend and whom I trust implicitly. This individual was conscience stricken because he felt he should have acted upon what Lyttle had told him, perhaps by telling Finucane himself."

14.9. As John Ware's source was confidential, Sir Desmond did not place weight on the aspect of the account relating to comments prior to the murder. However, he noted that other aspects of the information imparted to Mr Ware by Lyttle were accurate. [1245]

14.10. Evidence relating to 'Tucker' Lyttle, his role in Patrick Finucane's murder, and his alleged sources within the RUC are considered in a separate chapter of this document.

[1243] de Silva Review, Volume I, at [337/18.32].
[1244] de Silva Review, Volume I, at [338/18.35].
[1245] de Silva Review, Volume I, at [338/18.36] and [38/1.40].

(iii) Brian Nelson

14.11. On 18 April 1991, John Ware's notes of an interview with Brian Nelson recorded his belief that RUC officers had encouraged loyalists in Castlereagh to attack Patrick Finucane but he could not remember the loyalist to whom this had been suggested. He thought it might have been L/28 or L/22.[1246] John Ware's notes also contained evidence that the UDA believed Patrick Finucane to have been involved in providing assistance to PIRA on financial matters. This is a matter which arises in other intelligence evidence, which is discussed in further below. In relation to the account provided by Nelson, John Ware's note was as follows:

> *"They were going for Adams but [L/28] was told – I don't know by whom – don't bother with Adams: Finucane is the man who really counts. He's the brains; he's the man who organises all the money to be laundered; he's the man who gives them advice. I assume that that came from the cops. I don't know but ['Tucker' Lyttle] had a very, very good police source."*[1247]

(iv) Kenneth Barrett

14.12. On 3 October 1991, Barrett met with RUC officers, during which he made an 'admission' to being involved in the murder of Patrick Finucane. This issue will be discussed in greater detail in Chapter 23 but for present purposes R/06's written note, one of the individuals present at the meeting, included the following account:

> *"The intelligence for this job came from the police but source [Barrett] could not elaborate any further as to whom. Intelligence given was that Finnucane [sic] was laundering money for PIRA*

[1246] de Silva Review, Volume I, at [339/18.41].
[1247] de Silva Review, Volume I, at [353/19.51].

[Provisional Irish Republican Army] and that he was an officer in PIRA. He met with Gerry Adams and [T/13].

Finnucane [sic] had also been seen in the company of other suspect PIRA members, one of whom was a builder who owned … Construction Co [referred to as CD] and was shot by the UVF [Ulster Volunteer Force] … Apparently a brother of this person did a prison sentence of 15 years for attempted murder. This intelligence was good enough to get the go-ahead to carry out the hit. It took 6 weeks to plan as Finnucane [sic] was hard to tie down to his home address."[1248]

14.13. Sir Desmond observed that R/06's written note was broadly consistent with DS Brown's recollections of the conversation.[1249] He noted that, although Barrett's account of RUC involvement became more detailed and varied in his later statements, his accounts consistently suggested some form of 'police' instigation and facilitation of the murder.[1250]

14.14. In 2001, Barrett made the following comments to a BBC Panorama team: [1251]

"Finucane would have been alive today if the peelers hadn't interfered…"

"… the killing of Pat Finucane was organised by the police. Right. The dogs on the street know that. Everyone knows it."

"Eamon Hardy [BBC journalist]: Well I suppose all the information about Finucane was coming via the security services, the RUC …

[1248] de Silva Review, Volume 2, at [618] to [620].
[1249] de Silva Review, Volume I, at [349/19.31].
[1250] de Silva Review, Volume I, at [351/19.37].
[1251] de Silva Review, Volume I, at [351/19.38].

Ken Barrett: Via the RUC, it can't come from anywhere flipping else…"

"… the peelers wanted him whacked, we whacked him and that's the end of the story as far as I'm concerned."

14.15. During intrusive police surveillance in 2002, Barrett stated: *"Yes I would be the first to tell you … there was collusion, do you know what I mean as I once told you, you didn't pick these names out of the phone book."* Later in the conversation he stated, "*I had information on a Republican terrorist which I acted on."*[1252]

14.16. On 19 June 2002, the first instalment of the Panorama programme 'A Licence to Murder" was broadcast, in which Barrett described the reaction of UDA members after their release from Castlereagh:[1253]

"They'd have come out and said to us they [the RUC] said about Finucane, they say this and they say that, and they must have said it because kids wouldn't come out and say. They [the RUC] said it about Finucane because why would they [the UDA kids] mention Finucane? You understand what I mean? Finucane wouldn't have been a name in their [the UDA kids'] head."

14.17. Barrett provided two accounts to the Stevens III Investigation team: an 'intelligence only' debrief in 2002 and a statement made in the presence of his solicitor in 2006.[1254] In 2002, he claimed that the plan to murder Mr Finucane started with "*detectives questioning people in Castle Reagh [sic]*". He said that the "*one particular one I can remember, [L/03] was being questioned*".[1255] Barrett claimed that the RUC officers proposed Patrick Finucane as a target in "*roughly '88*" and said he was "*nearly sure*" of the identity of one of the officers who

[1252] de Silva Review, Volume I, at [351/19.39], de Silva Review, Volume 2, at [168] to [169].
[1253] de Silva Review, Volume I, at [339/18.38].
[1254] de Silva Review, Volume I, at [361/19.90].
[1255] de Silva Review, Volume 2, at [657] to [671].

he named.[1256] Barrett provided a similar statement in 2006 to Stevens III that "*...police officers at Castlereagh were putting the word out that Finucane should be hit (during interviews with loyalist detainees)*".[1257]

14.18. Sir Desmond regarded it as significant that Barrett had maintained an account of RUC involvement in a number of different contexts.[1258] Although he took a "*highly cautious*" approach to his evidence, Sir Desmond considered it was difficult to conceive of him being capable to maintain an elaborate misinformation campaign for over a decade.[1259]

14.19. Sir Desmond went on to consider whether Barrett's description of the UDA's supposed 'intelligence' on Patrick Finucane was accurate. He concluded that intelligence reports from the security forces that he reviewed largely corroborated Barrett's description of the UDA's 'intelligence' on Mr Finucane.[1260] In doing so, he analysed RUC and FRU intelligence:

a. The RUC records included intelligence received shortly after the murder which referred to L/28's comments about the attack. The Daily Intelligence Book included the following note: *"[L/28] claimed responsibility for Finnucane's [sic] murder ... he [Finucane] was an I.O. [Intelligence Officer] and had been seen with G. Adams + other top PIRA at a meeting."*[1261] The SB50 included the following text: *"[L/28's] team was responsible and ... FINNUCANE [sic] was an Intelligence Officer for 3rd Batt PIRA*

[1256] de Silva Review, Volume I, at [339/18.39].
[1257] de Silva Review, Volume I, at [339/18.40], Volume 2, at [668] to [691].
[1258] de Silva Review, Volume I, at [351/19.42].
[1259] de Silva Review, Volume I, at [351/19.43].
[1260] de Silva Review, Volume I, at [353/19.52].
[1261] de Silva Review, Volume I, at [352/19.46].

and laundered money for PIRA through FINNUCANE'S firm of Solicitors."[1262]

b. The FRU CFs outlined Brian Nelson's discussions with other UDA members regarding his draft statement claiming UFF responsibility for the murder. The CFs again made reference to Patrick Finucane's meeting with Gerry Adams at a hotel which Sir Desmond referred to as 'the AB Hotel'.[1263] In the CF dated 9 March 1989, Nelson provided further information regarding the AB Hotel meeting. The CF stated that Nelson "*reports that this information came from [L/28] after the assassination and was on Finucane's personality*".[1264]

c. The most specific details regarding Patrick Finucane's alleged meeting with Gerry Adams were contained in further intelligence received by the SB on 16 February 1989.[1265] The SB50 produced as a result recorded:

> *"Recent UDA intelligence indicated that [Pat Finucane] met with Gerry Adams and [T/13] last week in the [AB] Hotel … and discussed PIRA politics, finance and future policy.*
>
> …
>
> *Pat Finnucane [sic] was shot by a joint team from A & B Coy, WDA [Woodvale Defence Association]. [L/28] was the operations officer and [L/20] and Ken Barratt [sic] were also involved … Barratt may have been one of the gunmen."*[1266]

14.20. Sir Desmond concluded that Barrett's October 1991 account of the UDA's 'intelligence' on Patrick Finucane was "*largely accurate*", in

[1262] de Silva Review, Volume I, at [352/19.46], de Silva Review, Volume II, at [610].
[1263] de Silva Review, Volume I, at [352/19.47]; de Silva Review, Volume II, at [530].
[1264] de Silva Review, Volume II, at [535].
[1265] de Silva Review, Volume I, at [353/19.50].
[1266] De Silva Review, Volume I, at [611].

the sense that Barrett was correctly reporting the UDA's interpretation of the information that it had received. It is important to note that Sir Desmond did not find that the UDA's intelligence was itself an accurate reflection of reality. He stressed that even on its own terms, the intelligence *"does of course fall far short of establishing that Patrick Finucane laundered money for the IRA"*, and that it was *"unclear on precisely what basis Patrick Finucane was considered to be an 'intelligence contact'"* for PIRA. Sir Desmond repeated that he had *"not seen any evidence which would persuade me to displace the findings already made by Justice Cory and others that Patrick Finucane was not a member of PIRA."*[1267]

14.21. Sir Desmond went on to consider, and subsequently found, that the UDA had a number of police sources at the time who could have passed on such 'intelligence'.[1268] In particular, he took into account contact with L/20 and L28 and between section E4A of the RUC and the UDA:

a. First, in relation to L/20 and L/28, both of whom appeared to be "*key players*" in Patrick Finucane's murder, the intelligence suggested that they were receiving information from the security forces; [1269] most of L/28's security force 'contacts' detailed in FRU CFs appeared to refer to members of the UDR but there was also a reference implying that he received information from RUC sources.[1270] While there were no direct references in respect of L/20, one passage from a FRU CF implied that he may have been receiving information from a RUC contact which he passed on to L/28. [1271]

[1267] de Silva Review, Volume I, at [356/19.70], [357/19.75] and [357/19.77].
[1268] de Silva Review, Volume I, at [356/19.67].
[1269] de Silva Review, Volume I, at [354/19.56].
[1270] de Silva Review, Volume I, at [354/19.57].
[1271] de Silva Review, Volume I, at [354/19.59].

b. Second, Sir Desmond observed that the UDA's "*clear belief*" that Patrick Finucane met with Gerry Adams and T/13 at the AB hotel was "*striking*", particularly that the UDA intelligence appeared to have been based not only on a sighting of the three men but the broad content of their discussion.[1272] It was clear to Sir Desmond that UDA intelligence did not have the means to independently collate such information: the UDA had *"not demonstrated a capacity to conduct their own electronic monitoring of conversations, nor did they run their own agents within PIRA."*[1273]

c. In this respect, Sir Desmond also noted that it was potentially significant that the UDA appeared to be in receipt of intelligence information from the E4A surveillance section of the RUC in January 1989 relating to the movements of republicans near the EF building site, an area in close proximity to the AB hotel.[1274] The CF noted that an RUC 'contact' had provided this information to a senior UDA figure. It was recorded on a piece of paper passed through a number of UDA members to Nelson, as follows:

> *"[The name and home town of a republican]*
>
> *Red Ford Cortina VOI [registration number given]*
>
> *Working in [EF] building site*
>
> *(Man arrives in overalls and drives car away to collect Gillen, [T/19] and two others). Gillen has been followed by E4A, seen*

[1272] de Silva Review, Volume I, at [354/19.60].
[1273] de Silva Review, Volume I, at [354/19.60].
[1274] de Silva Review, Volume I, at [355/19.61].

in Dunmurry and Seymour Hill, [T/01] as well. Gillen seen talking [to another member of PIRA], Hatfield St." [1275]

14.22. Whilst Sir Desmond noted that there was no evidence in the intelligence material to suggest that the RUC 'E4A contact' ever provided intelligence on Patrick Finucane to the UDA, he considered it was "*potentially significant*" that the UDA was receiving such sensitive information about meetings involving Patrick Finucane that took place in close proximity to the EF building site. [1276]

14.23. Finally, Sir Desmond analysed whether the UDA 'intelligence' correlated with RUC records, namely that, aside from the AB hotel meeting, the evidence suggested the UDA believed that Mr Finucane was a PIRA Intelligence Officer, that he laundered money for PIRA and, according to Barrett, that he had links to someone from CD Construction.[1277] Sir Desmond's analysis of RUC records showed that this information appeared to bear "*a significant resemblance to material contained within their intelligence files."*[1278] For example, he noted:

a. SB officers routinely annotated Patrick Finucane's name with the work 'PIRA' or 'PIRA solicitor'.[1279]

b. A high-level SB assessment produced after Patrick Finucane's murder included a section on PIRA's intelligence 'contacts' and noted that PIRA were seeking "*Another link into the Legal Profession to replace Pat Finnucane [sic]"*.[1280]

c. SB records showed that Patrick Finucane was being linked to CD Construction and republican finances in the months before

[1275] de Silva Review, Volume I, at [355/19.61].
[1276] de Silva Review, Volume I, at [355/19.65].
[1277] de Silva Review, Volume I, at [356/19.72].
[1278] de Silva Review, Volume I, at [356/19.73].
[1279] de Silva Review, Volume I, at [356/19.73].
[1280] de Silva Review, Volume I, at [357/19.74].

his murder.[1281] Intelligence received on 9 November 1998 suggested:[1282]

> *"T/29, [CD] Construction who is presently renovating the PSF [Provisional Sinn Fein] Centre in Leper Street will hand over all monies from the NIO [Northern Ireland Office] to PSF because PSF members are doing the work on the Centre themselves. [CD] Construction have the contract to renovate the Centre and PSF have a grant from the NIO.*
>
> *PSF will have to get in touch with Pat Finnucane [sic], Solicitor for advice on the re-mortgaging of the PSF Centre, Leper Street. [The republican] also said that someone will have to impersonate [a republican] to arrange for the premises to be re-mortgaged. [The republican] is in jail at present and the premises are in his name."*

d. Links between Patrick Finucane and the issue of 'republican finances' are also evidence in SB50s produced in October 1987 and January 1988. Both linked Patrick Finucane to NORAID, an American organisation widely known to be involved in fundraising activities for Sinn Féin and PIRA.[1283]

14.24. In his book, *"Ireland, 'Shoot to Kill' and 'the 'Affair'"*, John Stalker, the author of the Stalker Report previously referred to, recalled a conversation with a uniformed RUC sergeant who approached him after he had a short conversation with a solicitor representing Martin McCauley in Crumlin Road Court. In the Finucane family's submissions to this Inquiry in June 2026, it was noted that this "would

[1281] de Silva Review, Volume I, at [357/19.76].
[1282] de Silva Review, Volume I, at [357/19.76].
[1283] de Silva Review, Volume I, at [357/19.78].

have been Patrick Finucane." John Stalker recounted that the sergeant came up to him and said,

> *"The solicitor is an IRA man - any man who represents IRA men is worse than an IRA man. His brother is an IRA man also and I have to say that I believe a senior policeman of your rank should not be seen speaking to the likes of either of them. My colleagues have asked me to tell you that you have embarrassed all of us in doing that. I will be reporting this conversation and what you have done to my superiors."* [1284]

14.25. Stalker noted that the conversation with the sergeant showed him how easy it would be to have one's name included in SB files as having 'possible Republican sympathies' and that an open conversation with a solicitor was, it seemed, probably sufficient evidence of such sympathies.

14.26. Having considered the evidence as a whole, Sir Desmond was struck by the correlation between the UDA's description of their 'intelligence' and the material contained in RUC records on Patrick Finucane.[1285] While acknowledging that, in itself, the degree of correlation does not prove that the UDA received information from the RUC, this had to be considered alongside (i) Barrett's statement that the UDA received the intelligence from a police source, (ii) the evidence that they had a number of police contacts at the time who were providing intelligence on republicans, (iii) their reliance on RUC or UDR 'leads' for their attacks, (iv) and the fact that the UDA did not have the ability to independently gather intelligence on issues such as republican finances. Ultimately, Sir Desmond was persuaded that Barrett's account on 3 October 1991 that the UDA received

[1284] John Stalker, *Ireland, 'Shoot to Kill' and 'the 'Affair'* (Penguin October 1998) at [49].
[1285] de Silva Review, Volume I, at [358/19.79].

'intelligence' on Patrick Finucane from an RUC source was "*essentially accurate*".[1286]

The Arrest of L/03 by the RUC

14.27. An additional issue considered by Sir Desmond was whether RUC officers proposed Patrick Finucane as a target to UDA members in Castlereagh and the identity of those potentially involved. In doing so, Sir Desmond examined the custody records for every UDA member suspected of having at least an awareness of the conspiracy to murder Patrick Finucane between December 1988 and February 1989.[1287] The only UDA member with such awareness who was arrested and interviewed at Castlereagh during that period was L/03, a prominent military figure in 'A' Company based in the Highfield Area of Belfast.[1288] Following his arrest on 8 December 1988, L/03 was interviewed six times on the same day while three further interviews were conducted on 9 December 1988.[1289] Sir Desmond noted that it was "*entirely possible*" that RUC officers other than the four individuals identified as interviewing officers in the records may have been involved in interviewing L/03 and that other officers involved in his arrest and detention could realistically had been in a position to speak to him at some stage.[1290]

14.28. It is of note that, in 1988, there were no cameras in police interview rooms and no video or audio recording of what was discussed. Written interview notes were made but these were not a contemporaneous account and were the officer's summary of the interview. In L/03's case, Sir Desmond observed that the notes were "*very brief and somewhat vague*".[1291] No RUC officer or loyalist

[1286] de Silva Review, Volume I, at [358/19.81].
[1287] de Silva Review, Volume I, at [339/18.42].
[1288] de Silva Review, Volume I, at [340/18.43].
[1289] de Silva Review, Volume I, at [340/18.44].
[1290] de Silva Review, Volume I, at [340/18.49].
[1291] de Silva Review, Volume I, at [341/18.50].

interviewed by the Stevens team admitted to having been involved in a conversation about targeting Patrick Finucane.[1292] It was therefore unsurprising that the Stevens III Investigation was unable to present evidence to a criminal standard of proof against any individual RUC officer in respect of these allegations.[1293]

14.29. Against that background, Sir Desmond considered the likelihood of the broader allegation that, at some point during L/03's detention in Castlereagh, Mr Finucane was proposed as a target by an RUC officer or officers.[1294] In considering whether other available intelligence material could lend support to the claim, he observed that two additional intelligence reports were relevant:[1295]

a. First, Security Service intelligence received after the World in Action programme in 1991: this suggested that members of the UDA were alarmed by Sammy Duddy's television appearance, referred to above, and that they questioned what business he had incriminating the RUC. Sir Desmond considered that Duddy's comments were, therefore, "*highly unlikely*" to have been part of a UDA disinformation operation and, while the intelligence did not establish the truth of his comments, it did lead Sir Desmond to place a greater degree of weight on his allegations.[1296]

b. Second, FRU intelligence that L/03 was provided with targeting information on a republican during his detention in Castlereagh. A CF, dated 31 January 1989, recorded discussions between L/03 and Nelson regarding targeting:[1297]

[1292] de Silva Review, Volume I, at [341/18.51].
[1293] de Silva Review, Volume I, at [341/18.51].
[1294] de Silva Review, Volume I, at [341/18.53].
[1295] de Silva Review, Volume I, at [342/18.58].
[1296] de Silva Review, Volume I, at [342/18.60].
[1297] de Silva Review, Volume I, at [343/18.62].

"[Nelson] also met [L/03] at UDA HQ Shankill on Sat 28 Jan 89. [L/03] spoke to 'Tucker' Lyttle then to [Nelson]. [L/03] arranged with [Nelson] to meet him at [Nelson]'s house at 1300 hrs on Sun 29 Jan 89. [Nelson] was to give [L/03] a lift …

En route [L/03] explained to [Nelson] and [L/23] that whilst in RUC Castlereagh recently [L/03] had been told some information. The RUC had commented on how easy it was to carry out an attack on [T/05] as he parks his mobile snack van …

They did not see a snack van … but on the way back they saw a mobile snack van at 'Seven Arches' car park at Dundrum. They stopped and [L/03] bought a drink of coke. [L/03] told [Nelson] and [L/23] that one of the two men in the snack van was almost certainly [T/05]." [1298]

14.30. While the report did not mention Patrick Finucane, Sir Desmond considered that it was important as it provided the only (reported) account that L/03 had given of his experience in RUC Castlereagh on 8 and 9 December 1988 and that it was difficult to understand why either L/03 or Nelson would have invented this account.[1299] In addition, Sir Desmond noted that, in light of his other findings that Nelson did not provide his handlers with information about the targeting of Patrick Finucane, that it is possible that L/03 mentioned Mr Finucane but this was not passed on by Nelson to his handlers.[1300] While Sir Desmond acknowledged that L/03's comments did not necessarily imply Patrick Finucane would have also been proposed as a target, it "*strongly suggest[ed]*" that L/03's interviews on 8 and 9 December 1988 did not solely represent a desire on the part of the

[1298] de Silva Review, Volume II, at [513] – [518].
[1299] de Silva Review, Volume I, at [343/18.63-18.64].
[1300] de Silva Review, Volume I, at [343/18.65].

RUC officers concerned to establish his involvement in loyalist terrorist activity.[1301]

14.31. Ultimately, Sir Desmond considered that it was not possible to establish with certainty whether RUC officers proposed Patrick Finucane as a target to UDA members in Castlereagh.[1302] The evidence was insufficient, even on the balance of probabilities, to ascribe responsibility to any RUC officer or group of officers, save for the comments must have been made by an officer with access to L/03 at some stage during his detention.[1303] However, Sir Desmond concluded that, when the circumstantial evidence was considered cumulatively, it was likely that an RUC officer or officers did propose Patrick Finucane, along with at least one other individual (T/05), as a target when speaking to L/03 in RUC Castlereagh on 8 or 9 December 1988.[1304]

14.32. The evidence concerning 'Tucker' Lyttle's purported knowledge of RUC encouragement to murder Patrick Finucane is considered in detail in the chapter of this document dealing with Lyttle's role in the murder.

Other allegations of Security Force involvement in the murder of Patrick Finucane

(i) Barrett's accusations against identified RUC officers

14.33. While the note of the meeting on 3 October 1991 recorded that Barrett was 'unable' to elaborate further on the police source for the UDA's intelligence on Patrick Finucane, in his later accounts he identified police officer known as 'McWhirter' who he claimed had

[1301] de Silva Review, Volume I at [344/18.66].
[1302] de Silva Review, Volume I, at [344/18.67].
[1303] de Silva Review, Volume I, at [344/18.68].
[1304] de Silva Review, Volume I, at [344/18.68].

been primarily responsible for passing on information. [1305] These accounts were provided to the Panorama journalists, John Ware and Eamon Hardy in 2001 and to the Stevens III Investigation Team. A number of key allegations about McWhirter centred on the murder of Patrick Finucane and included an account that McWhirter instigated the murder by the UDA.[1306]

14.34. Having conducted a detailed analysis of the RUC records, Sir Desmond was satisfied that Barrett was in contact with a SB officer known to him as 'McWhirter' in 2001, namely an SB officer known as Detective Inspector R/02.[1307] In a statement to the Stevens III Investigation dated 3 February 2004, R/02 outlined his conversations with Barrett in 2001.[1308] Sir Desmond observed that R/02's *"proper and detailed recording"* of his interactions with Barrett did not suggest an officer seeking to conceal criminal behaviour, in contrast with the powerful figure at the centre of a complex web of corruption presented by Barrett.[1309] This was in addition to a number of inaccuracies and weakness in Barrett's account, coupled with the contradictory statements he made to the Stevens III Investigation at a similar time. [1310]

14.35. As a result, Sir Desmond was satisfied that Barrett's claims regarding McWhirter were "*so unreliable and contradictory so that no weight can be placed on this aspect of his account.*" In particular, there was no evidence to suggest that the officer known to Barrett in 2001 as 'McWhirter' was known to Barrett in 1989, or indeed was involved in any way in Mr Finucane's murder.[1311] This led him to conclude that whilst circumstantial evidence and a pattern of UDA reliance on RUC

[1305] de Silva Review, Volume I, at [358/19.83].
[1306] de Silva Review, Volume I, at [359/19.84-19.94].
[1307] de Silva Review, Volume I, at [362/19.96].
[1308] de Silva Review, Volume I, at [362/19.97, de Silva Review, Volume II, at [684]-[687].
[1309] de Silva Review, Volume I, at [363/19.102].
[1310] de Silva Review, Volume I, at [363/19.102].
[1311] de Silva Review, Volume I, at [363/19.103].

or UDR 'leads' for their attacks supported Barrett's general proposition that the UDA received intelligence on Mr Finucane from an RUC source, an allegation he has made consistently since 1991, his later allegations made to the Stevens team and to journalists where he seeks to name specific individuals did not stand up to scrutiny.[1312] In light of this finding, Sir Desmond was inclined to treat Barrett's accounts to Panaroma containing accusations against other named RUC officers with scepticism and concluded that no weight could be placed on them, namely in respect of R/04, DS Brown and DC R/06.[1313]

(ii) Allegations that a vehicle checkpoint had been deliberately removed to facilitate the murder

14.36. In a British Irish Watch's (BIRW's) Report, as cited by Sir Desmond, it was alleged that *"Patrick Finucane's murder was procured by members of the RUC"* and that *"according to neighbours, police roadblocks in place up to an hour before the murder in close proximity to Patrick Finucane's home were removed, thus affording the murderers unfettered access to and escape from the house."*[1314]

14.37. Justice Cory concluded that there was no evidence that the suspension of those activities was a sinister or collusive act.[1315] The allegation was also examined by officers from the Stevens III investigation who were unable to recover any evidence supporting or refuting the allegation but did discover that there had been intensive Army activity approximately 1.5 miles from Mr Finucane's home on 12 February 1989 which had ceased around 70 to 80 minutes prior to the murder.[1316] The search operation was conducted by the Army at the instigation of the RUC and the RUC also had a

[1312] de Silva Review, Volume I, at [363/19.105].
[1313] de Silva Review, Volume I, at [363/19.106-112].
[1314] de Silva Review, Volume I, at [365/19.114].
[1315] de Silva Review, Volume I, at [365/19.115].
[1316] de Silva Review, Volume I, at [365/19.116-19.117].

presence.[1317] In 2000, A/22, an experienced officer analysed the available Army records and transmissions; he noted that such operations were normally carried out during daylight hours and this particular operation was completed at 18:14, after which the unit withdrew which would have been immediately apparent to the local community. Shortly after the Army withdrew, the RUC radio net broadcast a report of the shooting at Mr Finucane's home.[1318]

14.38. Sir Desmond noted that the only other evidence on the point came from what Barrett told John Ware and Eamon Hardy. However, as noted previously, he did not consider that any weight could be placed on Barrett's allegations relating to the specific involvement of an RUC officer in allegedly helping to 'lift' the vehicle checkpoint.[1319]

(iii) Allegations that an RUC officer was in the mini-cab

14.39. Sir Desmond noted that allegations had been made that an RUC officer was present in the mini cab when the UDA team drove to Patrick Finucane's home on 12 February 1989.[1320] Justice Cory found no evidence to support this allegation.[1321]

14.40. Sir Desmond found only one piece of evidence that could potentially support that allegation, namely Security Service intelligence, which was graded as reliable at the time, indicated that "*...there is a rumour in the UDA the fourth person in the car was a member of the security forces.*" [1322] However, he did not believe that the report was sufficiently strong to enable any weight to be attached to it,

[1317] de Silva Review, Volume I, at [365/19.117].
[1318] de Silva Review, Volume I, at [365/19.118].
[1319] De Silva Review, Volume I, at [366/19/120].
[1320] de Silva Review, Volume I, at [366/19.121].
[1321] de Silva Review, Volume I, at [366/19.121].
[1322] de Silva Review, Volume I, at [366/19.122].

particularly in circumstances where it was received 12 years after the murder and that it was a rumour circulating in the UDA. [1323]

[1323] de Silva Review, Volume I, at [366/19.122].

15. THE ROLE OF TOMMY 'TUCKER' LYTTLE IN THE MURDER OF PATRICK FINUCANE AND HIS RELATIONSHIPS WITH RUC OFFICERS

15.1. Tommy "Tucker" Lyttle was the UDA's West Belfast "Brigadier" and, by 1989, the Chairman of the Inner Council of the UDA. [1324] He was, in theory, one of the most powerful figures within the UDA, particularly in the battalion considered responsible for Patrick Finucane's murder. Various questions have been raised about his role in the murder.

a. First, it has been alleged and asserted that he was an informer or agent for the RUC Special Branch (SB). If that is correct, did he share prior knowledge of Patrick Finucane's murder with RUC SB, and was he directed or influenced in his actions concerning the murder by RUC SB?

b. Second, there is evidence that he had contacts within the RUC, including within SB. The extent and nature of those contacts may be relevant both to the murder of Patrick Finucane and more generally. In particular, Tommy Lyttle gave interviews to the journalists Greg Harkin and John Ware in which he suggested that the UDA had been encouraged by RUC officers to murder Patrick Finucane.

c. Third, it is in any event important to establish, as a point of fact, what his role was in the murder to fulfil the Inquiry's Terms of Reference.

15.2. These matters are considered below, after a brief overview of some of the secondary sources about Tommy Lyttle.

[1324] de Silva Review, Volume I, at [368/20.1].

Tommy "Tucker" Lyttle

15.3. Tommy Lyttle rose to the position of Chairman of the Inner Council of the UDA in 1988 after a period of fierce and bloody infighting within the organisation. The previous year had seen the murders of John McMichael and James Pratt Craig (Jim Craig) and the ousting of the long-standing "Supreme Commander", Andy Tyrie.[1325] Tommy Lyttle's more limited status at the head of the UDA was reflected by his less grandiose title. He was, at most, primus inter pares rather than leader, a point reinforced by the replacement of Andy Tyrie's *"imposing long table"* at UDA headquarters with an *"unprepossessing round table"*.[1326]

15.4. Tommy Lyttle's position as Brigadier in West Belfast was of longer standing, with one source stating that he emerged in that role in 1986.[1327] However, even here he was, by 1989, coming under pressure from younger, more militant members. Tommy Lyttle was associated with a relatively moderate strand of loyalism, which included a political element shaped by Andy Tyrie, John McMichael and the New Ulster Political Research Group.[1328] The journalist Ed Moloney described him as, *"probably the last of a generation of so-called 'moderate' UDA leaders who were as interested in politics as war."*[1329] Sir Desmond de Silva QC said he was *"generally considered to be one of the older-generation, less militaristic figures on the Inner Council."*[1330]

[1325] McDonald and Cusack at [158] to [159]; Ian S. Wood, *"Crimes of Loyalty: A History of the UDA"* (Edinburgh: Edinburgh University Press, 2006), at [123] to [137]; Ware, Neither Confirm Nor Deny at [131]-[134]; David McKitterick et al at [1103] to [1104] and [1148] to [1151]; Ed Moloney, "Who was Bertie Scott, the UDA's Special Friend in the RUC Special Branch?", *Broken Elbow*, 11 July 2015; de Silva Review at [368/20.2] to [368/20.3] and [58/2.18] to [60/2.25].
[1326] Wood, at [137]. See also Peter Taylor, *"Loyalists"* (London: Bloomsbury, 2000), at [199] to [200], first published 1999.
[1327] Wood, at [351].
[1328] Wood, at [90]-[97].
[1329] Moloney, "Who was Bertie Scott?"; see also Ware, at [132] and Wood, at [144].
[1330] de Silva Review, Volume I at [365/20.2].

15.5. The contradictions in Tommy Lyttle's character are reflected in two accounts given by "outsiders" who met him at the time of his ascendancy. The journalist John Ware wrote in a recent book:

> *"You couldn't help liking Lyttle – at least I did. He had a gentle manner for one who presided over an organisation that dealt in death, racketeering and unspeakably brutal punishments meted out to those who offended the organisation's raw political sensibilities or became too greedy. That was the side of Lyttle you never saw but you knew was there."* [1331]

15.6. Lord Stevens wrote:

> *"Tucker Lyttle turned out to be a relatively gentle person … Unlike the real thugs of the movement, the trigger-men, he had met politicians and liked to talk at high level; he fancied himself as a kind of Protestant Gerry Adams."* [1332]

15.7. The juxtaposition of Tommy Lyttle's presentation and actions is shown by the circumstances of this meeting. Tommy Lyttle was in an interrogation room following his arrest for handling materials likely to be of use in terrorism, a charge for which he was later convicted and imprisoned. Lord Stevens elsewhere refers to him as the *"head"* of the UDA, and a *"leading suspect"* and *"prime target"* for his investigation.[1333]

15.8. The views of Tommy Lyttle among UDA members, academics and journalists appear influenced by hindsight in two important respects. First, the allegations that he was a British agent; as discussed below this became the prevalent view, which undoubtedly coloured some judgments. Second, the knowledge of the sectarian

[1331] Ware, "*Neither Confirm Nor Deny*", at [132].
[1332] John Stevens, *Not for the Faint-hearted* at [189].
[1333] Stevens, at [10].

violence and racketeering that emerged from elements in the UDA and UFF in the 1990s. In comparison to the *"new breed"* who emerged following the arrest or removal of Tommy Lyttle and others in the *"old guard"*, Tommy Lyttle appears "moderate" notwithstanding his deep involvement in paramilitarism.[1334]

Was Lyttle an RUC agent or informer?

15.9. The journalist Ed Moloney wrote that, *"By the time of his death, there was hardly a figure in the Belfast media who didn't believe that Tommy Lyttle was a tout."*[1335] This is supported by a number of secondary sources that suggest, and at points state unequivocally, that Lyttle was an agent or informer for RUC SB.[1336] Ed Moloney was *"one of the few exceptions"*.[1337] In an article from 2015, associated with a television documentary on collusion, he set out his view that Tommy Lyttle was not an agent, but instead someone who was involved in *"a collusive alliance from which both parties, UDA and RUC gained."*[1338] This was informed by a tape Tommy Lyttle gave to him in 1994, shortly before his death, which is discussed further below.

15.10. In his report, which predated Ed Moloney's article, Sir Desmond stated the following about the allegations that Tommy Lyttle was an RUC SB agent:

> "*It has been widely alleged in media reporting and in published books that 'Tucker' Lyttle was an RUC SB agent. Many of these allegations appear to be purely speculative and need to be*

[1334] Wood, at [146] to [147] and [154] to [155]; Taylor, at [209-210]; Colin Crawford, *"Inside the UDA: Volunteers and Violence"* (London: Pluto Press, 2003), at [157].
[1335] Moloney, "*Who was Bertie Scott?*"
[1336] Wood, at [144] and [147] to [148]; McDonald and Cusack, at [198]; Ingram and Harkin at [197].
[1337] Moloney, "Who was Bertie Scott?"
[1338] Moloney, "Who was Bertie Scott?"

treated with great caution. I am satisfied that there is no sound evidential basis for these reports.

However, I also recognise that, in the context of Northern Ireland in the late 1980s, there was a broad spectrum of possible relationships between paramilitary figures and members of the security forces. The officially sanctioned link between a handler and a paid agent represents only one such type of relationship."[1339]

15.11. Sir Desmond went on to consider the extent of the links between Lyttle and RUC officers, as is discussed below. Ed Moloney considered that Sir Desmond *"subscribed to the 'collusive alliance' explanation rather than the informer version of Tommy Lyttle's UDA life."* [1340]

Lyttle's contacts with RUC officers

Sir Desmond's findings

15.12. Sir Desmond's report sets out in detail the evidence of Tommy Lyttle's relationship with RUC officers.[1341] That detail is not repeated here. Sir Desmond's salient findings were as follows.

15.13. Security Service and FRU reports suggest that, from at least 1986 onwards, Lyttle had access to a number of RUC "contacts" who could provide him with assistance. This reporting included:

a. Security Service intelligence from 1986 that Tommy Lyttle was receiving assistance from an RUC contact at Superintendent level. [1342]

[1339] de Silva Review at [369/20.23] to [369/20.24].
[1340] Moloney, *"Who was Bertie Scott?"*
[1341] de Silva Review at [369/20.23] to [379/20.61].
[1342] de Silva Review at [373/20.27].

b. FRU reports from July and December 1987 that Tommy Lyttle had a source who was able to supply large quantities of RUC photographs of republicans. Tommy Lyttle provided some of this material to Nelson in December 1987. [1343]

c. FRU documentation shows that Tommy Lyttle obtained material indirectly from the RUC via another member of the UDA from May 1988, which related to the RUC SB operation to discredit UDA member Jim Craig. [1344]

d. FRU records suggest Tommy Lyttle received information from an RUC source that allowed him to warn L/28 that houses were due to be searched by the RUC in late January 1989. As Sir Desmond noted, this is very close in time to the murder of Patrick Finucane, and at a time when the plan to murder him was being formulated. [1345]

e. There is some evidence to suggest that Tommy Lyttle was receiving detailed RUC information shortly after the murder, on 2 March 1989, concerning republicans suspected of targeting members of the UDA. [1346]

f. Nelson repeatedly said in statements and comments that Tommy Lyttle had a SB source. [1347]

g. Sources from the RUC and the Security Service suggest that at least in the period from September 1988 to February 1989, Tommy Lyttle was receiving or checking information with an RUC source. [1348] The Security Service records suggested that the source was from RUC SB and was offering information on the

[1343] de Silva Review at [373/20.28].
[1344] de Silva Review at [373/20.29] and Chapter 7 from [123/7.1] onwards.
[1345] de Silva Review at [373/20.30].
[1346] de Silva Review at [373/20.31].
[1347] de Silva Review at [374/20.33]; see also at [261/11.31].
[1348] de Silva Review at [372/20.25] to [374/20.36].

links between elements of the UDA and PIRA. This may relate to Ed Moloney's reporting and the expulsion of L/39, both of which are considered further below.

15.14. The documentary evidence seen by Sir Desmond also suggested that FRU were concerned about Tommy Lyttle's relationship with RUC officers, and the effect that this could have on Brian Nelson's position as a FRU agent in the UDA. Sir Desmond was, however, wary of placing too much weight on this evidence, which may have been used to excuse a reluctance by FRU to pass on information to SB. [1349]

15.15. Sir Desmond found that in or around November 1988, Tommy Lyttle was provided with information by an RUC SB officer about L/39, a UDA member who admitted to providing intelligence to PIRA. [1350] In 1994, Tommy Lyttle told the journalist John Ware about this matter, saying that the SB officer was motivated by a desire to *"get [L/39] out of the way so as to disrupt PIRA intelligence."*[1351] On this account, the SB officer imposed the condition that the man should not be harmed. L/39 was subsequently interrogated by the UDA and expelled from Northern Ireland. [1352]

15.16. Sir Desmond identified a FRU CF which recorded a conversation on 16 February 1989 between Brian Nelson (the source of the intelligence provided to FRU), Tommy Lyttle, and L/28. The CF, which is dated 22 February 1989, is published in redacted form in volume 2 of the de Silva Review. [1353] It includes intelligence that:

a. PIRA had held a meeting on 15 February 1989 and were *"cracking up"*. [1354]

[1349] de Silva Review at [379/20.61].
[1350] de Silva Review at [374/20.37] to [376/20.45] and [379/20.62].
[1351] de Silva Review at [374/20.38].
[1352] de Silva Review at [374/20.38] to [375/20.39].
[1353] de Silva Review, Volume II at [528] to [529].
[1354] de Silva Review at [376/20.47].

b. That Seamus Finucane was the Intelligence Officer for Brian Gillen, who the UDA suspected of being a leading figure in PIRA and who had been the subject of several conspiracies to murder. [1355]

c. Several other named individuals were also *"members of Gillen's team"*. [1356]

d. That PIRA wanted to carry out an operation involving a limpet mine. [1357]

15.17. Tommy Lyttle was not reported to have given a source for this information. However, Sir Desmond found that it was essentially accurate and, in the case of the limpet mine, reflected information contained in the SB Daily Intelligence Book.[1358] Sir Desmond said he had also seen intelligence that provided "circumstantial support for the proposition that Lyttle received this information from an SB 'contact' shortly after Patrick Finucane's murder." [1359]

15.18. Sir Desmond drew the general conclusion that Tommy Lyttle's relationships with RUC officers during the period relevant to the murder of Patrick Finucane was:

> *"a source of serious concern. I do believe that Lyttle was being improperly assisted by RUC contacts in the period before and after Patrick Finucane's murder and that one of these contacts was an SB officer with access to intelligence information. In my view, Lyttle's links to some RUC officers during this period were so significant that they provided him with an entirely improper*

[1355] de Silva Review at [167/7.204] to [168/7.208], [213/8.97], [318/16.68]. Brian Gillen was one of the clients of Patrick Finucane who alleged that RUC officers made threats against Mr Finucane's life: see at [333/18.10].
[1356] de Silva Review at [376/20.47].
[1357] de Silva Review at [376/20.47].
[1358] de Silva Review at [377/20.49] to [377/20.51].
[1359] de Silva Review at [377/20.52].

degree of protection and assistance in conducting his activities as the 'Brigadier' for the West Belfast UDA." [1360]

The information provided by Lyttle to Ed Moloney

15.19. Ed Moloney's article on Tommy Lyttle's contacts within the RUC was published in 2015, after the de Silva Review. Although Mr Moloney said that he had been in possession of a tape of Lyttle's account since 1994, it does not appear that he (or anyone else) provided it to the de Silva Review or the Stevens investigation. In the article, Ed Moloney states that he *"never had reason to release the tape – until now."* [1361]

15.20. The context is important to any analysis of the information contained on the tape. Ed Moloney says that it was given to him by Tommy Lyttle following the latter's release from prison in 1994, with the request that he make it public *"if anything ever happens to me."* [1362] At this time, Tommy Lyttle was facing allegations that he had been an informer and the contents of the tape are, in Ed Moloney's words, *"his answer to the charge that he was a British agent."* [1363] Tommy Lyttle died of a heart attack the following year, and Ed Moloney and Tommy Lyttle's widow agreed that the tape would be made public if the right opportunity occurred. [1364] Tommy Lyttle may also have been motivated by animus to the RUC given the alleged circumstances of his arrest (discussed below).

15.21. Ed Moloney reported that in the tape, and in conversations with him, Lyttle gave an account of "*inheriting*" an RUC SB source from Alan Snoddy, a UDA member who died in August 1988. This source was initially known as "Bertie Scott" (though he may also have gone by a different name at certain points). In the tape, Lyttle emphasised that

[1360] de Silva Review at [379/20.64].
[1361] Molony, *"Who was Bertie Scott?"*.
[1362] Molony, *"Who was Bertie Scott?"*.
[1363] Molony, *"Who was Bertie Scott?"*.
[1364] Molony, "*Who was Bertie Scott?*".

he made other members of the UDA aware of his contact and that: *"There is NO one, absolutely no-one in prison because of anything I have said or done."* [1365] He claimed that "Bertie Scott" had offered him £50,000 to become an agent, which he refused.[1366] Lyttle said that this approach took place on the weekend that Jim Craig was shot, which would suggest the weekend of 15 – 16 October 1988. [1367] He claimed that despite his refusal, "Bertie Scott" continued to *"pester"* him about becoming an agent until Christmas 1988, and again into the summer of 1989. [1368]

15.22. According to the transcript of the tape reproduced by Ed Moloney, and Ed Moloney's article, "Bertie Scott" provided Tommy Lyttle and the UDA with the following information. [1369]

a. Tommy Lyttle said that Alan Snoddy told him in June 1988 that "Bertie Scott" had passed on *"vital information"* and in return wanted to know about a military operation carried out by the West Belfast Brigade of the UDA against a taxi depot. Tommy Lyttle confirmed that there had been such an operation, and he was warned (seemingly by Alan Snoddy) not to *"go back near it."* Tommy Lyttle spoke to those involved in the operation, who said that it had been compromised. Ed Moloney added his own comment, that this operation had been facilitated by intelligence provided by Brian Nelson, but that the UDA gunmen involved had found the area flooded by British troops, suggesting that the security forces knew of the operation and wanted it stopped. Brian Nelson was, according to Ed Moloney, interrogated by the UDA over this matter. This may relate to information contained in the de Silva Review about an

[1365] Molony, "*Who was Bertie Scott?*".
[1366] Molony, "*Who was Bertie Scott?*".
[1367] McKitterick et al at [1148]. See also de Silva Review at [159/7.163] to [163/7.185].
[1368] Molony, "*Who was Bertie Scott?*".
[1369] Molony, "*Who was Bertie Scott?*".

interrogation in August 1988, though Sir Desmond concluded that the UDA suspicions were about possible links between Brian Nelson and PIRA, not the security forces. [1370]

b. Following Alan Snoddy's death in August 1988, and with the knowledge of others in the UDA, Lyttle and "Bertie Scott" went *"back and forward with tit-bits, eh, asking the odd time about something and I would say yay, or nay, depending on the question."* [1371]

c. Tommy Lyttle gave an account of "Bertie Scott" passing on information about a UDA member providing information to PIRA. This appears to relate to L/39 and is broadly consistent with the information contained in the de Silva Review, as summarised above. [1372]

d. Tommy Lyttle said that "Bertie Scott" told him that the murder of Jim Craig had *"spoiled a lot of plans for a big show trial where everything would be revealed and a lot of damage done."* [1373]

e. Tommy Lyttle said that "Bertie Scott" continued to contact him into the summer of 1989. By that time, Tommy Lyttle had been deposed as Chairman of the Inner Council but was (on his own account) Head of Intelligence of the UDA. Tommy Lyttle said he *"totally refused to see him or have anything more to do with him."* [1374]

15.23. Tommy Lyttle defended his dealings with "Bertie Scott", saying he *"had to be followed out and investigated and seen what he was at, when I seen what he was at, I then wouldn't have anything further*

[1370] de Silva Review at [161/7.176] to [162/7.179]. See also [176/7.257] to [177/7.263], concerning a compromised attack on T/02 at his place of work in May 1988.
[1371] Molony, "*Who was Bertie Scott?*".
[1372] de Silva Review at [374/20.37] to [376/20.45] and [379/20.62].
[1373] Moloney, "*Who was Bertie Scott?*".
[1374] Moloney, "*Who was Bertie Scott?*".

to do with him." [1375] Ed Moloney thought that Lyttle had downplayed the extent of his relationship with "Bertie Scott", based in part on an assumption that he was the unnamed SB officer referred to in the de Silva Review. [1376]

15.24. Ed Moloney also recorded in his article that "Bertie Scott" suggested a joint UDA-UVF ceasefire in 1989. It is not clear if this suggestion was made to Lyttle. [1377]

15.25. Reflecting on what he saw as a *"clearly … collusive relationship"*, Ed Moloney made a number of observations. He considered whether "Bertie Scott" was acting as a rogue agent or with official sanction. He asked what the Security Service and the Joint Intelligence Committee know about his links with the UDA. He also reflected on why the UDA operation against the taxi firm was compromised and whether this was a consequence of the British Army not wanting the target – who Ed Moloney referred to as an *"IRA leader"* – killed: *"was the UDA shepherded towards killing some but not others?"* Ed Moloney did not seek to answer these questions but did express the view that it was *"difficult not to conclude that the relationship had been approved elsewhere in the Special Branch."*[1378] He also felt that: *"Whatever the truth it was evident from what Lyttle told me that 'Scott' was less interested in doing the UDA damage and more in using it to common advantage."* [1379]

15.26. There is a further example in the article of Tommy Lyttle's alleged contacts with the RUC, although there is no suggestion these related to "Bertie Scott". According to Ed Moloney, part of the evidence that convicted Lyttle was matches between his fingerprints and some of

[1375] Moloney, "*Who was Bertie Scott?*".
[1376] Moloney, *"Who was Bertie Scott?"*
[1377] Moloney, *"Who was Bertie Scott?"*.
[1378] Moloney, *"Who was Bertie Scott?"*.
[1379] Moloney, *"Who was Bertie Scott?"*.

those found on stolen RUC SB documents. Those documents had been stolen by an *"ordinary criminal"* from an unmarked RUC car, along with a handgun and two radio sets. Ed Moloney reported that:

> *"A desperate Special Branch proposed a deal with the UDA: if the Loyalists could recover the guns and radios from the guys who stole them, then they could keep the intel on the IRA; the guns & radios mattered but not the documents.*
>
> *It was a great deal which Tommy Lyttle accepted; within days the haul was retrieved by the UDA in East Belfast which initially refused to return it until two of their men were also released from police custody. The Branch agreed, got their stuff back and the UDA was allowed to keep the documents. A few years later John Stevens charged Lyttle with possession of the very same documents and for that (and other documents donated by various security force members), he went to jail."* [1380]

15.27. For completeness, there is evidence in secondary sources that Lyttle was tipped off about his arrest, and those of Brian Nelson and others, in 1990.[1381] John Ware attributed this to a different UDA man being given information from a source in RUC SB. [1382] Lord Stevens wrote that:

> *"A clear audio-track that we followed up showed that a warning of the big raid had been leaked by the RUC to the FRU, and gone from the FRU to their agents."* [1383]

[1380] Moloney, *"Who was Bertie Scott?"*. Other sources suggest that Lyttle was also convicted of offences connected with witness intimidation: Wood, at [146].
[1381] Ingram and Harkin at [203]; Ware, Neither Confirm Nor Deny at [138] to [139] and [154] to [155]. See also de Silva Review at [470/24.81-24.86].
[1382] Ware, Neither Confirm Nor Deny at [139].
[1383] Stevens, at [10].

Lyttle's evidence on whether RUC officers encouraged the targeting of Patrick Finucane

15.28. Sir Desmond considered two accounts given by journalists of information that they received from Tommy Lyttle. The first was Greg Harkin, who stated that he met Tommy Lyttle in January 1990, shortly before Nelson's arrest. The second was John Ware, who interviewed Lyttle in December 1993 and June 1994.

The account given by Greg Harkin

15.29. Greg Harkin states in a 2004 book that he co-authored that he met Tommy Lyttle, at Tommy Lyttle's request, in January 1990, though it is apparent from the text that he had spoken with Tommy Lyttle before.[1384] Greg Harkin quotes Tommy Lyttle as saying that: *"We all have our police and Army friends. I've got mine. But Brian's [Nelson] got the very best of friends."* [1385] He also predicted Brian Nelson's arrest and said that there would be *"something big going down"* in relation to Patrick Finucane's murder. [1386] Greg Harkin said that Tommy Lyttle's reason for calling him was that he expected to be arrested and *"wanted to issue a warning that if he were charged in relation to the murder of Finucane, he would 'blow this whole thing wide open."* [1387]

15.30. Tommy Lyttle was arrested a few days after this meeting, but Greg Harkin met him again when he was on bail. According to Greg Harkin, on this occasion Tommy Lyttle told him that Brian Nelson was *"one of Britain's top agents."* [1388] He also recounted the story of a

[1384] Ingram and Harkin at [203]; de Silva Review at [368/20.5-20.7].
[1385] Ingram and Harkin at [203].
[1386] Ingram and Harkin at [203].
[1387] Ingram and Harkin at [203].
[1388] Ingram and Harkin at [203]–[204].

party at his house following the murder of Patrick Finucane, which is discussed elsewhere in this document.[1389]

15.31. Earlier in the same book, Greg Harkin recorded the following account, which he attributed to Tommy Lyttle. It is not clear when Greg Harkin says this information was provided to him, though it is certainly possible that it was part of the January 1990 meetings described above.

> *"UDA west Belfast commander Tommy 'Tucker' Lyttle told me that within hours of [Douglas] Hogg's speech in the Commons on 17 January, he, Lyttle, met with his Special Branch handler. Despite his reign of terror in the city, Lyttle continued to work for the security forces – an incredible situation in any democracy. Lyttle later claimed that his handler discussed Hogg's comments with him and said, 'Why don't you whack Finucane?' Brian Nelson was then summoned to Lyttle's home in Sydney Street West and told to prepare an intelligence file on the lawyer. What Lyttle didn't know was that Brian Nelson was already actively targeting Pat Finucane."*[1390]

<u>The account given to John Ware</u>

15.32. According to contemporaneous notes submitted to the de Silva Review, John Ware interviewed Lyttle on 24 December 1993 and 20-22 June 1994. He summarised what he was told in an article in the *New Statesman* in 1998, the relevant section of which is reproduced in the de Silva Review.[1391]

> *"Lyttle … confirmed that the original idea to murder Patrick Finucane came from two RUC detectives. While a prominent UDA*

[1389] Ingram and Harkin at [203] – [204].
[1390] Ingram and Harkin at [196]; de Silva Review at [369/20.6].
[1391] de Silva Review at [369/-20.9-20.10].

gunman was being held in Castlereagh, an officer entered the interrogation room and said to his colleague: 'Have you put it to him yet?' They then suggested that the UDA shoot Finucane. Lyttle said that he was so astonished at this suggestion that he informed a regular contact in the RUC Special Branch. 'I told him: 'What the hell is going on in Castlereagh? Why is Finucane being pushed?' The officer said that it would be a 'bad blow for the Provos [the IRA] to have Finucane removed.' Did that amount to approval that he should be shot? 'Put it this way,' said Lyttle, 'He didn't discourage that he should be shot."[1392]

15.33. Sir Desmond also reproduced an extract from John Ware's notes concerning Tommy Lyttle's alleged conversation with his SB contact:

"With regard to the planned assassination of the lawyer Patrick Finucane, TL told [the RUC officer] that certain RUC officers were putting pressure on the UDA to have Finucane shot. This followed the interrogation of [L/03] and two other UDA men. The RUC officers had suggested to this UDA trio that they should remove Finucane and also Paddy McGrory and Oliver Kelly.

[…]

'They [Provisional IRA] would take months to recover from this', TL reports [the officer] as having replied … TL said this conversation with [the officer took place early in 1989 after [L/03] had been arrested, which was in December 1988. Finucane was considered a target by the RUC, according to TL, because of his brother his [sic] connection with the IRA … TL said that [L/28] began to look at Finucane in January. TL said that there is no question that [L/28] selected Finucane for targeting after it was made clear to [L/03] and the two others by the RUC officers in Castlereagh that

[1392] de Silva Review at [337/18.31].

Finucane should be shot … TL added 'put it this way [the officer] didn't discourage the idea that Finucane … should be shot. And if a man in his position doesn't discourage it then that amounts to approval." [1393]

15.34. Taken together, these accounts suggest that the initial suggestion to target Patrick Finucane was made to L/03 while he was being interrogated at Castlereagh. As is discussed elsewhere in this report, Sir Desmond considered it likely that this happened, based on the totality of the intelligence reports and evidence before him (which included John Ware's notes and submission to the Review). Tommy Lyttle claims to have learned of this afterwards, and to have discussed it with a regular contact in RUC SB in early 1989. During that conversation, on Tommy Lyttle's account, the SB officer did not discourage the murder of Patrick Finucane, which Lyttle took as approval.

15.35. John Ware's notes also record Lyttle as saying: "There is no doubt at all that between the RUC and [an RUC SB contact] the idea to kill Finucane was born." [1394]

15.36. The de Silva Review also quotes part of a submission made to the Review by John Ware, explaining why he considered Tommy Lyttle's account to be credible:

"When I went to Belfast in September 1989 … to make the first of several Panorama programmes on collection I was told that a few weeks <u>before</u> [Patrick Finucane's] murder, Lyttle had asked to meet two individuals whom he trusted and both of whom I know. Lyttle had said to them words to this effect: 'You'll never guess what the cops are now suggesting we do. Kill Finucane.'

[1393] de Silva Review at [338/18.34] and [370/20.11]
[1394] de Silva Review at [338/18.33].

This was recounted to me by one of the individuals whom I have known since 1975, who is a friend and whom I trust implicitly. This individual was conscience stricken because he felt he should have acted upon what Lyttle had told him, perhaps by telling Finucane himself." [1395]

Analysis in Sir Desmond's report

15.37. Sir Desmond expressed some scepticism about Greg Harkin's account, noting that Tommy Lyttle at that time had an agenda in seeking to exploit the issue of leaks from the security forces. He also thought it unlikely that he would have referred to the SB officer as his "handler" given that he denied being an agent. [1396]

15.38. Sir Desmond said that he was *"inclined to prefer"* Lyttle's account to John Ware.[1397] It was given after Tommy Lyttle had left the UDA. Sir Desmond examined the full record provided by John Ware and was struck by the *"general accuracy of the information provided by Lyttle to Mr Ware."*[1398] When comparing this information to the wider evidence available to him, Sir Desmond thought that *"Lyttle was, broadly speaking, being candid with Mr Ware."*[1399] However, this did not mean that his account of the targeting conversations around Patrick Finucane should be accepted in the absence of corroborative evidence.

15.39. Sir Desmond went on to consider the wider evidence set out in this chapter, looking for such corroboration. As is discussed above, he concluded that Tommy Lyttle had contact with RUC officers, who provided him with improper assistance, a matter of *"serious*

[1395] de Silva Review at [338/18.35]. Emphasis in the original.
[1396] de Silva Review at [369/20.8].
[1397] de Silva Review at [369/20.9].
[1398] de Silva Review at [370/20.12].
[1399] de Silva Review at [370/20.12].

concern." [1400] However, he found no evidence to corroborate Lyttle's claim that he discussed the targeting of Patrick Finucane with an RUC contact. [1401] He also held that he could not put any weight on John Ware's anonymous source, who had said that Tommy Lyttle had told him before Patrick Finucane's murder that the "cops" wanted the UDA to kill him. [1402]

15.40. Sir Desmond concluded:

> *"The evidence of Lyttle's links to RUC officers does not enable an inference to be drawn that he discussed the targeting of Patrick Finucane with an SB 'contact'. As Lyttle is now deceased, it is not possible to adequately test the veracity of this specific allegation, though I do note that other aspects of the information he imparted to John Ware in 1994 were accurate. I certainly cannot exclude the possibility that Lyttle did, as he told John Ware, discuss the targeting of Mr Finucane with an SB contact."* [1403]

15.41. Sir Desmond did not have Ed Moloney's article, or the tape recording of Tommy Lyttle's accounts before him. This additional evidence cuts both ways. If accurate, it appears to reinforce the conclusion that Tommy Lyttle had an established RUC SB contact at or around the time of the planning of Patrick Fincuane's murder. However, there is nothing in Mr Moloney's article to suggest that Tommy Lyttle referred to any discussion with that contact about Patrick Finucane, still less any tacit or explicit encouragement to kill him. This may not be surprising: an admission of this nature may have led to Tommy Lyttle being re-arrested had it reached the relevant authorities. As is

[1400] de Silva Review at [379/20.64].
[1401] de Silva Review at [372/20.21].
[1402] de Silva Review at [338/18.36] and [32/1.40].
[1403] de Silva Review at [379/20.63].

noted above, Ed Moloney thought that Tommy Lyttle had downplayed aspects of his relationship with "Bertie Scott".

Lyttle's role in the murder of Patrick Finucane

15.42. The de Silva Review described Tommy Lyttle's role in the plot to murder Patrick Finucane as *"complex and in parts contradictory"*.[1404] This assessment reflects the power struggle within the UDA at the time, with the tendency of the more militant element to minimise Tommy Lyttle's role and capabilities.

15.43. The evidence cited in the de Silva Review suggesting that Tommy Lyttle was not involved in the plot came form that element. L/28 was recorded in a FRU CF as telling Brian Nelson on 13 February 1989 that:

> *"…he would be annoyed if the UFF were not allowed to claim the attack. He added that 'Tucker' Lyttle had known nothing about the operation. L/28 explained that he had been in [redacted] Club at the time of the attack and Lyttle arrived as soon as he heard about the shooting. Lyttle was very nervous and chomped his way through a glass of ice cubes that L/28 had for himself."* [1405]

15.44. Sir Desmond found that Kenneth Barrett gave a broadly similar account to Panorama in 2001 saying that: *"[L/28] knew what was happening, do you understand me? Tucker didn't."* [1406]

15.45. Other evidence examined by Sir Desmond suggested that Tommy Lyttle did have some awareness of the plot:

a. The evidence considered above about Tommy Lyttle's account to journalists, particularly John Ware. Sir Desmond said that John Ware's submission to the Review suggested that Tommy

[1404] de Silva Review at [370/20.14].
[1405] de Silva Review, Volume II, [525/18]; de Silva Review at [370/20.14].
[1406] de Silva Review at [371/20.15].

Lyttle was aware of the targeting of Patrick Finucane, but that he genuinely disapproved of the actual shooting. [1407]

b. A FRU CF dated 20 December 1988 that confirmed that Lyttle was present at a meeting at which, according to reliable Security Service intelligence, a UDA commander planned to discuss the targeting of three solicitors, including Patrick Fincuane. [1408]

c. RUC intelligence received on 16 February 1989 saying that Tommy Lyttle had *"sanctioned"* the murder, though Sir Desmond expressed caution about placing much weight on this source given his *"somewhat limited access to the central UDA figures."* [1409]

d. Security Service intelligence dated 15 February 1989, which recorded that Lyttle *"had mentioned Home Office Minister Douglas Hogg's comment about PIRA-sympathisers among the legal profession"* in the week prior to the murder of Patrick Finucane.[1410] A Security Service officer thought Tommy Lyttle *"had therefore presumably had some foreknowledge of the Finucane shooting."*[1411] As a matter of strict logic, and based only on the published material, it is not clear how that conclusion flows from the intelligence cited, though it is certainly a possibility.

15.46. Sir Desmond found that none of these individual reports were conclusive. Taken together, and given Tommy Lyttle's accounts to journalists, Sir Desmond concluded:

[1407] de Silva Review at [371/20.18].
[1408] de Silva Review at [371/20.17] and [316/16.60] to [318/16.67].
[1409] de Silva Review at [371/20.17] and Volume II at [607].
[1410] de Silva Review at [371/20.17].
[1411] de Silva Review at [371/20.17].

"I am satisfied that Lyttle must have had foreknowledge of the UDA plan to murder Patrick Finucane. It is, however, none the less possible that, although Lyttle was aware of the targeting of Patrick Finucane, he was not privy to the operational details as to how and when the UDA hit team intended to murder him." [1412]

15.47. Sir Desmond did not express a view on whether Tommy Lyttle approved or, or sanctioned, the murder.

Overview

15.48. The publicly available evidence about Tommy Lyttle's involvement in the murder of Patrick Finucane, and his knowledge of possible RUC encouragement of that murder, is complex and frustratingly elusive. Two of the key sources, Tommy Lyttle and Ed Moloney, are dead. A third, John Ware's source from September 1989, has – at least to date – remained anonymous. Little point is served in seeking to draw conclusion before unpublished material is considered by the Inquiry. For now, the answers given by the de Silva Review to the questions posed at the start of this chapter are as follows:

a. There was no sound basis for saying that Tommy Lyttle was an RUC SB agent. However, Sir Desmond noted that there was *"a broad spectrum of possible relationships between paramilitary figures and members of the security forces."* [1413]

b. Tommy Lyttle did, however, have contacts within the RUC and RUC SB who provided him with improper assistance. This was a matter of serious concern.

c. Two accounts from journalists record Tommy Lyttle describing RUC officers giving encouragement to the UDA to murder

[1412] de Silva Review at [372/20.19] and [379/20.62].
[1413] de Silva Review at [372/20.24].

Patrick Finucane shortly before his death. Sir Desmond found one of these, given to John Ware, more persuasive. While he did not find any evidence directly corroborating this account, he did identify circumstantial evidence that supported it. He said that he *"cannot exclude the possibility that Lyttle did, as he told John Ware, discuss the targeting of Mr Finucane with a SB contact."* [1414]

d. Sir Desmond found that Tommy Lyttle did have foreknowledge of the plot to murder Patrick Finucane in 1989, though he may have been unaware of the operational details.

15.49. In his 2015 article, Ed Moloney broadly agreed with the first two of these conclusions but went further in labelling the relationship between Tommy Lyttle and "Bertie Scott" as a *"collusive alliance."* [1415] Ed Moloney does not appear to have been told by Tommy Lyttle of any discussions that he (Lyttle) had in late 1988 and early 1989 with "Bertie Scott" or any other RUC source about the plot to murder Patrick Finucane.

[1414] de Silva Review at [379/20.63].
[1415] Moloney, "*Who was Bertie Scott?*".

16. THE ROLE OF BRIAN NELSON IN THE MURDER OF PATRICK FINUCANE

16.1. Sir Desmond undertook a detailed review of the evidence available to him about Brian Nelson's direct involvement in the plot to murder Patrick Finucane. This was, overwhelmingly, based on intelligence evidence and material from the Stevens Investigation, some of which (but by no means all) was published in volume II of Sir Demond's report. No purpose is served by repeating the detail of all that evidence, and what follows is intended as a summary and not a substitute for Sir Desmond's findings. Further context is provided from some of the secondary sources.

The Sources of Evidence

Nelson's own accounts

16.2. The relevant extracts of Brian Nelson's accounts of his role in Patrick Finucane's murder are published in Volume II of Sir Desmond's report, and summarised and analysed in Volume I. [1416]

Contact Forms

16.3. Sir Desmond's report states that there was no record of the targeting of Patrick Finucane in any of the CFs relating to meetings between Nelson and his FRU handlers before the murder. [1417]

16.4. Nelson's first contact with a FRU handler after the murder took place the following morning, Monday 13 February, at 10:20. Nelson told his handler, by phone, *"It was ours this morning"*. This was taken to refer

[1416] de Silva Review Volume II, at [519]-[526], [553]-[562] and [567]-[586]; de Silva Review, Volume I at [380/21.3-21.35]
[1417] de Silva Review, Volume I, at [380/21.5].

to the killing of Patrick Finucane.[1418] Nelson said nothing about his own involvement.

16.5. A CF dated the following day, Tuesday 14 February 1989, recorded Nelson giving the following information (Nelson being referred to by his agent number, 6137). The events referred to apparently took place a week earlier, on 7 February 1989:

> "*6137 was leaving his house at 1430 hrs when he met L/28 and Ken Barrett (22) approaching, L/28 asked 6137 for the photograph of PAT McGEOWN (23) leaving court after the charges against him were dropped. L/28 added that McGEOWN was with PAT FINUCANE (24) in the photograph. 6137 said he would go to the Int Cell and collect it. L/28 told 6137 that he would be at the [redacted] Community Centre (25). 6137 collected the photograph which had appeared in the parody of APRN and took it to L/28.*
>
> *Source comment: At this stage I had been led to believe that L/28 was interested in PAT McGEOWN.*" [1419]

16.6. The same CF contained Nelson's account of how he learned of Patrick Finucane's murder.[1420] He claimed that he had been listening in on the RUC radio network on the night of Sunday 12 February when he heard about a fatal shooting at an address,[1421] which he checked on the Belfast Street Directory and found was that of Patrick Finucane. He did not receive confirmation that the UDA/UFF was responsible until he visited L/28 at his house at 10:30 on Monday 13 February 1989, after he had made his call to his FRU handler. He said that when he made the call he had assumed, rather than known, that the UDA/UFF had carried out the murder, something for which

[1418] de Silva Review, Volume II, at [519] to [520].
[1419] de Silva Review, Volume II, at [523/9].
[1420] de Silva Review, Volume II, at [524/13] to [525/17].
[1421] The details of the address are redacted on the published CF.

he was chastised by his handler.[1422] According to Nelson's account (as recorded in the CF), L/28 told him that he was not told about the operation as he did not need to know. He also claimed that L/28 admitted obtaining the photograph of Patrick Finucane from Nelson *"by devious means."* [1423]

16.7. According to the CF, L/28 told Nelson that L/20 had suggested the murder of Patrick Finucane after Tommy "Tucker" Lyttle had said that they could not target T/21. He also said that they had *"spent weeks planning the operation."*[1424]

16.8. As context, Pat McGeown was a client of Patrick Finucane who had been arrested on suspicion of his involvement with the murders of Corporals David Howes and Derek Wood in West Belfast in March 1988.[1425] McGeown had already been targeted by the UDA;[1426] Nelson had prepared two "P" Cards, in which he was listed as *"PIRA Command Ops Officer"* and, as of 20 July 1986, *"OC West Belfast"*. Significantly, the P Cards contained a photograph of McGeown's head and shoulders. [1427] McGeown is described in the respected book *"Lost Lives"* as having been a former hunger striker and sometime OC of PIRA in the Maze. [1428] These details are relevant to an understanding of why Nelson may have seen – or wished to have been perceived as seeing – McGeown as a "legitimate" target.

16.9. Patrick Finucane had successfully represented McGeown when the charges against him in respect of Corporals Howes and Woods were

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[1422] de Silva Review, Volume II, at [521/5].
[1423] de Silva Review, Volume II, at [524/16] to [525/16].
[1424] de Silva Review, Volume II, at [525/17].
[1425] David McKittrick et al, *"Lost Lives"* (Edinburgh: Mainstream, 2001), [1121-1124]. These murders were the third incident in an unprecedented spiral of killings after the "Death on the Rock" shootings in Gibraltar and the murder by a UFF member of three others at the subsequent funerals.
[1426] de Silva Review, Volume I, at [62/2.37] to [63/2.38], [145/7.99] to [146/7.103] and [395/21.91].
[1427] de Silva Review, Volume II, at [551-552].
[1428] David McKittrick et al, Lost Lives (Edinburgh: Mainstream, 2001), at [1399].

dropped in November 1988. This event had a significant media profile. *The Independent* reported, retrospectively, that *"security forces were … dismayed, and republicans delighted, when at a preliminary inquiry, all charges were dismissed and he walked free from the court with his solicitor, Pat Finucane."*[1429] The photograph referred to appeared in the UDA's spoof publication *An Phobcrapt* (mimicking the republican paper, *An Phoblacht*). The journalist John Ware linked this publication to the Security Service's propaganda initiatives, which are discussed elsewhere in this document, though this is not a connection that Sir Desmond made. [1430] The photograph in question is reproduced below.



1990 statement to the Stevens Investigation

16.10. Nelson gave a statement to the Stevens Investigation, dated 15 January 1990. The salient features are:

a. About six to eight weeks before the murder (thus around the turn of the year), L/28 had said to him that *"I would really love to get that bastard Finucane."* He clarified that he meant the solicitor, Patrick Finucane. L/28 claimed to have been told that Patrick Finucane was the *"brains behind PIRA, forget about Adams."*

[1429] David McKittrick et al, *Lost Lives (Edinburgh: Mainstream, 2001) at* [1400].
[1430] Ware, Neither Confirm Nor Deny at [57] and at [215]-[216].

b. L/28 asked Nelson to find out the location of Patrick Finucane's office and *"anything else"* he could obtain.

c. Nelson did not do anything in response: *"I don't know what it was maybe instinct, but I felt there was something wrong possibly it was too hot."*

d. Around two weeks before the murder, Nelson checked with L/28 whether he still needed Patrick Finucane's office details. L/28 told him it was *"taken care of"*.

e. Nelson said he provided the photograph from *An Phobcrapt* a week before the murder, having been asked to provide a large photograph of Pat McGeown by L/28 (who was accompanied by Kenneth Barrett). L/28 had specified that he did not want one of the small montage photographs. Nelson got the *"only"* large photograph of McGeown he possessed, the one that also showed Patrick Finucane. He said that he provided the magazine (not just the photograph taken from it), and that Barrett was reported as saying that it would *"do fine"*.

f. Nelson claimed to have *"heard nothing more until the night of the murder."*

g. When he learned of the murder over the RUC radio, he assumed L/28 was responsible and said to himself: *"Christ I'm going to be in a bit of bother over this … I should have known what was going down and I did say to myself out loud, 'I'm going to get a bit of stick from [A/13]' who was my handler at the time."*

h. He said that he did not get confirmation that the UDA/UFF had carried out the murder until he visited L/28 the following day.

i. Towards the end of the statement, Nelson recorded: *"I would like to state that at no stage prior to the murder of Pat Finucane did I gather intelligence or become* [in] *anyway involved in the murder of this person, except on the occasion when I was asked by L/28 for a photograph of Pat McGeown."* [1431]

Nelson's account in his Journal

16.11. The account that Nelson gave in his journal was broadly consistent with that in his 1990 statement, though with some differences. In this account, Nelson claimed that he was asked by L/28 specifically for the photograph from *An Phobcrapt* while also enquiring about the whereabouts of Pat McGeown. This, he said, happened on the Thursday before the murder, which would have been 9 February 1989. [1432] He concluded the account by writing that he *"received a considerable amount of deserved flak over this murder."* [1433]

Nelson's 1993 interviews

16.12. Nelson gave a series of interviews in 1993 to investigators from the Stevens enquiry in which he denied that he had any role in the murder of Patrick Finucane. He also claimed that when the Stevens I officers had first mentioned Patrick Finucane's name to him in January 1990, he could not remember it. Nelson further denied writing a journal and, on the third occasion he was interviewed, responded to questions by saying: *"On the advice of my solicitor, I have nothing to say."* [1434]

16.13. Sir Desmond examined why Nelson may have changed his story. The detail of his analysis is not reproduced here and should be

[1431] de Silva Review, volume II, at [554] to [562]; de Silva Review, Volume I, at [381/21.8] to [381/21.10].
[1432] de Silva Review, Volume. II, at [553].
[1433] de Silva Review, Volume II, at [553], de Silva Review, Volume II at [381/21.11-21.13].
[1434] de Silva Review, Volume I, at [382/21.14-21.19].

considered in full in his Report. [1435] He found that by the time of the third interview, *"The Army had consciously and comprehensively brought his silence by linking it to their continuing care and support of his family."* This position had been reinforced by A/05's suggesting to him that his prosecution was a consequence of his failing to heed the Army's advice that he should not co-operate with the Stevens I investigation. [1436]

16.14. Sir Desmond therefore concluded that he "in these circumstances of clear financial inducement … no weight can be placed on the account of events Nelson provided in 1993." [1437]

Other evidence

16.15. Sir Desmond went on to consider the other evidence he had of Nelson's involvement in the planning of Patrick Finucane's murder. Again, the detail is not repeated and should be considered in full. Sir Desmond put weight on the following evidence.

Evidence given by Kenneth Barrett

16.16. Kenneth Barrett spoke to BBC *Panorama* journalists John Ware and Eamon Hardy in 2001, and to the Stevens III enquiry in 2002 and 2006. His accounts corroborated Nelson's evidence of handing over a newspaper cutting or *"clippings"* that features a photograph of Patrick Finucane, but it was his clear evidence that Nelson did this knowing that Patrick Finucane was the target. He was not tricked. Barrett gave further evidence of Nelson being involved in the targeting of Patrick Finucane with L/28, L20 and Barrett himself.

[1435] de Silva Review, Volume I, at [382/21.19] to [385/21.35].
[1436] de Silva, Review, Volume I, at [385/21.34].
[1437] de Silva Review, Volume I, at [385/21.35].

16.17. There was a conflict in Barrett's accounts about whether Nelson provided a P Card for Patrick Finucane. He told the *Panorama* journalists that he did not, but said in his 2006 Stevens statement that *"Nelson produced a card for Finucane and provided it to L/28 and I."*

16.18. Sir Desmond expressed caution about accepting Barrett's evidence unless it was corroborated. Given the contrary accounts about the P Card, he decided he could place no reliance on either account on that matter. However, he did place some, cautious, weight on other aspects of these accounts. [1438]

Security Service intelligence

16.19. Intelligence received in late February 1989 from a source assessed to be reliable indicated that Nelson had *"undoubtedly"* been involved in a *"recce"* of Patrick Finucane's home before the murder. Sir Desmond accepted the reliability of the source and noted the unusual certainty with which the information was given. He considered that he could weigh this evidence in the balance, despite the limited detail that it provided. [1439]

Evidence from neighbour

16.20. This evidence, initially given the day after the murder, was that on Friday 10 February two purported window cleaners came to her house, asked to see round the property, and quoted her a price of £5 (compared to the normal price of £2). The fact that she gave the statement, Sir Desmond felt, indicated that she was suspicious that the men were involved in the murder. Ten years later, in 1999, she provided a further statement to the Stevens III investigation in which

[1438] de Silva Review, Volume I, at [387/21.44] to [389/21.57].
[1439] de Silva Review, Volume I, at [389/21.58] to [390/21.61].

she stated that she felt from the outset that the men were not window cleaners.

16.21. In the later statement, the neighbour said that when she later saw a picture of Brian Nelson, at some point between 1992 and 1994, she thought it remined her of the window cleaners. Sir Desmond had no doubt that the neighbour was giving an honest account, but he did not place any weight on this identification. [1440]

Lyttle's comments to John Ware

16.22. The role of Tommy "Tucker" Lyttle, the West Belfast Brigadier and Chair of the Inner Council of the UDA, in the murder of Patrick Finucane is considered in a separate chapter of this document. He spoke to John Ware in December 1993 and June 1994, and John Ware provided his notes of those conversations to the de Silva Review. These included comments that Nelson had driven L/28 to Patrick Finucane's house a couple of weeks before the shooting. However, he is also recorded as supporting Nelson's account that he was tricked into providing the picture of Patrick Finucane as he had been asked for one of Pat McGeown. [1441]

16.23. According to John Ware's notes, Lyttle claimed that Nelson told him that Patrick Finucane met Gerry Adams and T/13 at a hotel in South Belfast on the Thursday before his murder (9 February). Lyttle said that the knowledge of this matter played a *"big part in the final decision to go ahead with the Finucane assassination."* Seven years later, Kenneth Barrett also told John Ware that Nelson saw Patrick Finucane in a hotel car park, though he did not mention Gerry Adams or the location of the hotel. [1442]

[1440] de Silva Review, Volume I, at [390/21.62] to [391/21.72].
[1441] de Silva Review, Volume I, at [392/21.73] to [392/21.76].
[1442] de Silva Review, Volume I, at [387/21.44].

16.24. Sir Desmond considered that he could place weight on this evidence. His wider conclusions about the reliability of the account that Lyttle gave to John Ware are discussed elsewhere in this document.

UDA concerns about Nelson's knowledge of the murder

16.25. Sir Desmond cited evidence from RUC Special Branch in January 1990 and the Security Service in 1992 to the effect that sources in the UDA were concerned about Nelson's knowledge of who was involved in the murder, given his arrest and his exposure as a British agent. Sir Desmond considered that this provided some limited support for Kenneth Barrett's claims that Nelson had a significant role in the murder. [1443]

William Stobie's statement to Neil Mulholland

16.26. William Stobie was reported to have told the journalist Neil Mulholland that Nelson was present at a meeting when Patrick Finucane's name was discussed as a target, and he indicated that he *"would know when would be the best time for a clean job."* Stobie's role in the murder is considered in a separate chapter. Sir Desmond found that he could not place any weight on this account, as Stobie's *"relatively lowly status"* within the UDA meant it was unlikely that he would have been included in the circle discussing the targeting of Patrick Finucane. [1444]

[1443] de Silva Review, Volume I, at [393/21.77] to [393/21.82].
[1444] de Silva Review, Volume I, at [394/21.83] to [394/21.86].

Sir Desmond's conclusions

The provision of the photograph of L/28

16.27. Sir Desmond was satisfied that Nelson consciously provided a photograph of Patrick Finucane to L/28 and that he was not tricked into doing so. [1445] His reasons for this were:

a. Nelson accepted in the CF on 14 February 1990, and in his 1990 statement and his journal, that he handed the photograph to L/28. In the statement and journal, he said that Kenneth Barrett was also present when it was handed over. Barrett's evidence was consistent in saying that Nelson provided the photograph (notwithstanding the different views expressed about his motives).

b. Nelson had at least eight other photographs of Pat McGeown in his intelligence dump, and two P Cards which included photographs of McGeown's face. Sir Desmond thought that if McGeown was the truly intended target, Nelson would have provided the P cards or one of the better photographs of him that he possessed. These included a further "face on" photograph of McGeown that appeared in the same addition of *An Phobcrapt*.

c. Significantly, the *An Phobcrapt* photograph that he did provide was the only photograph that he had of Patrick Finucane in his intelligence dump (as judged by the contents of that dump when seized).

d. Nelson knew by February 1989 that McGeown was being targeted by the UVF and had provided a contact in the UVF with

[1445] de Silva Review, Volume I, at [396/21.98].

a P Card. Sir Desmond thought it reasonable to expect that Nelson would have told L/28 about this had L/28 suggested that the UDA should also target McGeown. Yet Nelson never claimed to have passed this information to L/28.

e. By February 1989, Nelson thought that McGeown was in hiding, as can be seen from one of the P Cards. Sir Desmond thought it *"highly likely"* that Nelson would have informed L/28 of this had he been asked for a photograph of him. Again, these is no evidence that Nelson did tell L/28 that McGeown was in hiding.

f. Sir Desmond also noted the inconsistencies in Nelson's three accounts of how the photograph came to be handed over, and about what he was asked for by L/28. [1446]

Whether Nelson produced a P Card for Patrick Finucane

16.28. As is noted above, Kenneth Barrett gave conflicting accounts of whether Nelson produced a P Card for Patrick Finucane. While Sir Desmond placed no weight on his evidence on this matter, he did review two FRU CFs from early March 1989, which were principally concerned with Nelson's involvement in drafting a statement to be issued by the UFF about the killing. This involved a discussion between L/28, Lyttle and Nelson about whether the statement should include information about Patrick Finucane meeting Gerry Adams at the AB Hotel in the week before the murder. In both CFs, reference is made to this information being on *"Finucane's personality card."* [1447]

16.29. From these sources, and Lyttle's account to John Ware that Nelson had provided the information, Sir Desmond stated that he was

[1446] de Silva Review, Volume I, at [394/21.88-21.98].
[1447] de Silva Review, Volume I, at [397/21.99-21.100].

satisfied that there was a P Card on Patrick Fincuane and that Nelson was aware of its existence and content.[1448] Although no P Card for Patrick Finucane was found in the intelligence dump that was seized by the Stevens I Investigation, Sir Desmond found that it was common practice for such cards to be destroyed once a target had been murdered. [1449]

16.30. Sir Desmond went on to consider whether the P Card for Patrick Finucane was produced by Nelson, or whether it had originated from the previous intelligence officer. Here, Sir Desmond found there were considerable uncertainties. However, he concluded that it was *"likely that Nelson was involved at some stage in producing, storing, and perhaps disseminating, a 'P card' on Patrick Finucane."* [1450]

Nelson's activities before and after the murder took place

16.31. Sir Desmond considered, and rejected, several aspects of Nelson's own accounts of his actions before and after the murder of Patrick Finucane.

a. He stated that he was *"sceptical"* of Nelson's account that it was *"merely a coincidence"* that he happened to be listening to the RUC radio on the night that Patrick Finucane was murdered. [1451]

b. He noted that Nelson admitted to discussing the murder with L/28 on Monday 13 February and to his involvement in drafting the UFF statement on the murder. In the CF on 14 February, it was reported that L/28 had asked Nelson if he had previously told him that Patrick Finucane was the *"brains"* behind the IRA. Sir Demond noted that that would be an *"odd comment for L/28*

[1448] de Silva Review, Volume I, at [397/21.102-21.103].
[1449] de Silva Review, Volume I, at [398/21.106].
[1450] de Silva Review, Volume I, at [398/21.108-21.112].
[1451] de Silva Review, Volume I, at [399/21.115].

to have made if, as Nelson claimed, L/28 had deliberately kept him out of the loop on planning the murder". [1452]

c. Sir Desmond noted that Nelson had been able to provide intelligence to his handlers on 14 February 1989 that L/28, L/20, L/05, L/33, Kenneth Barrett, L/25 and L/22 had all been involved in the murder. Sir Desmond noted that other intelligence suggests that this list of names was *"essentially accurate"*. He suggested that *"it might be thought surprising that Nelson could provide seemingly accurate intelligence about those involved in the attack on the basis solely, as he alleged, of his observation of those individuals walking into a back room at the UDA HQ."* [1453]

d. Sir Desmond considered two intelligence accounts of a UDA meeting held on Wednesday 15 February 1989, which Brian Nelson attended. Nelson's own account of that meeting to his FRU handlers, as recorded in a CF dated 22 February, indicated that Nelson did not inform them about any discussion of Patrick Finucane's murder at the meeting. [1454] The second account, based on intelligence provided to the RUC and graded as being reliable, recorded that the murder was the *"main topic of discussion"*. [1455] Sir Desmond preferred this second account, noting that it would have been surprising if such a high-profile murder by the UDA/UFF just three days earlier had not been discussed at the meeting. [1456] He concluded that Nelson was present at the meeting, the murder was discussed, and Nelson deliberately chose to give a *"different, and misleading, account*

[1452] de Silva Review, Volume I, at [399/21.116].
[1453] de Silva Review, Volume I, at [400/21.118-21.121].
[1454] de Silva Review, Volume I, at [401/21.122].
[1455] de Silva Review, Volume I, at [401/21.123-21.124].
[1456] de Silva Review, Volume I, at [401/124].

to his handlers of what was discussed". [1457] This suggested a *"conscious desire to downplay his knowledge of the murder."* [1458]

Sir Desmond's conclusions

16.32. Sir Desmond's overall conclusions are worth quoting in full.

> "*On his own admission, Nelson was told by L/28 to target Patrick Finucane approximately two months before the murder was committed. Despite Nelson's denial that he had undertaken such targeting pursuant to that request, I am nevertheless satisfied that he did. I also believe that Nelson undertook a 'recce' of some description on the Finucane home.*
>
> *There is a wealth of circumstantial evidence to support my finding that Nelson played a direct role in the targeting of Mr Finucane. When considered cumulatively, the pattern of Nelson's activity I have outlined in this chapter; the UDA's apparent belief that Nelson played an important role in the murder; Nelson's evident desire to conceal the true nature of his involvement in events after the murder; and my view that it is likely that Nelson produced a 'P card' on Mr Finucane all suggest that his involvement in the targeting was greater than that to which he was prepared to admit.*
>
> *Moreover, having regard to all the evidence I have reviewed, I am satisfied that L/28 asked Nelson to provide a photograph of Patrick Finucane and that he provided that photograph, taken from the An Phobcrapt publication, to L/28 and Kenneth Barrett*

[1457] de Silva Review, Volume I, at [401/21.125].
[1458] de Silva Review, Volume I, at [401/21.126].

on 7 February 1989. The provision of that photograph was for the purpose of assisting the hit team to murder Patrick Finucane.

In conclusion, I am satisfied that the FRU agent Brian Nelson played a direct and important role in the conspiracy that led to Patrick Finucane's murder on 12 February 1989." [1459]

The significance of the cessation of targeting of T/21

16.33. A further element in Brian Nelson's possible motivations is worthy of note. On 14 February 1989, Nelson was recorded as telling his FRU handlers that the targeting of Patrick Finucane was, at least in part, a response to Lyttle's decision to stop the targeting of a Catholic priest, T/21. That decision was made towards the end of November 1988, seemingly because L/28 had been told that the RUC knew of the UDA's efforts. [1460] One possible source of this knowledge was Brian Nelson himself, as FRU had passed on to RUC SB his reporting about the threat to T/21. [1461]

16.34. Brian Nelson had opposed the targeting of T/21 and had expressed disquiet about it to his FRU handlers. [1462] According to a CF dated 17 November 1988, one handler had asked him in mid-November, *"why he did not suggest someone from PSF* [Provisional Sinn Féin*] or PIRA hierarchy."* [1463] There is no publicly available evidence that this led Nelson to suggest Patrick Finucane (or anyone else) as a target, but it may have made him more amenable to working on an alternative target that was, in his eyes, more "legitimate".

[1459] de Silva Review, Volume I, at [401/21.127] to [402/27.130].
[1460] de Silva Review, Volume II, at [525/17]; and de Silva Review, Volume I, at [354/19.57] to [354/19.58].
[1461] de Silva Review, Volume I, at [354/19.57] to [354/19.58].
[1462] de Silva Review, Volume I, at [172/7.236], [179.7.277], [211/8.90] and [386/21.41].
[1463] de Silva Review, Volume I, at [211/8.90].

16.35. Nelson was also worried about his personal safety, particularly given that he had been subject to a brutal interrogation with a cattle prod a few months earlier following concerns Lyttle had about his possible links to PIRA. [1464] Knowledge of T/21's targeting had been confined to a small group within the UDA, which included Nelson. The compromise of the operation inevitably raised the possibility of an informer. A CF dated 26 November 1988 recorded that Nelson *"had visions of another interrogation … as he believed that suspicion would fall on him for telling the RUC of the targeting of [T/21]."* [1465]

16.36. Sir Desmond wrote that: *"[t]his context suggests to me that Nelson is likely to have been concerned about his own position and safety when he became involved in the conspiracy to murder Patrick Finucane*." [1466] The effect that this may have had on Brian Nelson's willingness to share the information about the targeting of Patrick Finucane with his FRU handlers is explored later in this document.

What intelligence did Brian Nelson provide to FRU before the murder?

Introduction

16.37. If Sir Desmond's conclusions about Brian Nelson's involvement in Patrick Finucane's murder are correct, it follows that a long-standing agent of the British Army was intimately involved in planning the murder of a solicitor. His involvement took place over a period of several weeks, and he was aware of the risk to Patrick Finucane for up to two months before his murder. Nelson maintained contact with his handlers throughout this period. It is unquestionably the case that Nelson had, in the past, provided FRU with detailed intelligence about targeting and conspiracies to murder among his

[1464] de Silva Review, Volume I, at [161/7.177] to [162/7.179].
[1465] de Silva Review, Volume I, at [404/21.144].
[1466] de Silva Review, Volume I, at [405/21.146].

associates in the West Belfast UDA. He was thought to be close to L/28, [1467] who Sir Desmond found to be a leading figure in the plan to target and murder Patrick Finucane, and also regularly reported on others implicated in the plot. These matters give rise to an obvious question: what did Brian Nelson tell FRU of the plot to kill Patrick Finucane?

16.38. A further question also falls to be explored by this Inquiry. As discussed earlier in this document, Sir Desmond found that FRU had, in some instances, provided information to Brian Nelson that materially assisted his efforts to target individuals. The secondary literature provides further examples, while some authors have postulated the hypothesis that UDA and UFF units were encouraged by the state to act as "counter-gangs" against individuals targeted by the state. The Inquiry must, therefore, consider whether there is evidence that FRU actively assisted or encouraged Nelson to target Patrick Finucane.

16.39. Informed answers to both these questions require detailed consideration of unpublished material. For that reason, what follows is limited to an exposition of the conclusions reached by Sir Desmond. These are neither binding on this Inquiry, nor a substitute for its own work. They are, however, matters that the Inquiry's Terms of Reference requires it to consider.

<u>The conflicting positions</u>

16.40. The evidence of FRU witnesses to the Stevens investigation was that Brian Nelson gave FRU no prior notice of the plot to murder Patrick Finucane.

[1467] de Silva Review, Volume II, at [536/7] to [536/8].

a. A/05, the Commanding Officer of the FRU at the time of Patrick Finucane's murder told Sir Desmond in 2012 : *"FRU had no prior knowledge of any threat to the life of Patrick Finucane … We did not know of the threat because Brian Nelson did not tell us."* [1468]

b. Nelson's main handler at the time, A/13, told the Stevens I Investigation: *"I know that targeting did take place without the knowledge of Nelson and therefore unbeknown to us, and a murder did take place. By this I am referring to the murder of Patrick Finucane."* [1469]

16.41. These accounts are supported by the absence of any reference to the UDA's targeting of Patrick Finucane in FRU Contact Forms and Telephone Contact Forms (TCFs). [1470]

16.42. There are three principal sources to the contrary. The first is the evidence of Brian Nelson himself.

a. In his witness statement to Stevens I, dated 15 January 1990, Nelson said: *"I would like to state here that all information concerning the Finucane affair I passed on to Military intelligence through my handlers."*[1471] The context of that sentence is: (i) its place towards the end of a statement in which he denied any conscious involvement in targeting Patrick Finucane, and suggested that his knowledge of the plot prior to the murder was limited to an understanding that L/28 wanted to *"get"* Patrick Finucane and had *"taken care of"* finding information about the location of Patrick Finucane's office; [1472] (ii) a discussion in the statement about Nelson's post-murder

[1468] de Silva Review, Volume I, at [408/21.164].
[1469] de Silva Review, Volume I, at [408/21.163].
[1470] de Silva Review, Volume I, at [408/21.165].
[1471] de Silva Review, Volume II, at [561].
[1472] de Silva Review, Volume II, at [554] to [555].

involvement in drafting a UDA/UFF press release about the murder, which immediately preceded Nelson's claim to have told his handlers everything about the *"Finucane affair"*. [1473]

b. In his journal, Nelson wrote of his conversation with L/28 *"two months"* before the murder and said that *"[a]t this time I informed my Handlers that [L/28] was showing interest in this solicitor."*[1474] Sir Desmond thought it implied but not stated in the journal account that he also passed on to his handlers his conversation *"[a] few weeks later"* in which L/28 said that he had *"found out what he needed to know"* about Patrick Finucane. [1475]

16.43. The second source is a possible interpretation of Nelson's comment to his FRU handlers over the telephone on the morning of 13 February 1989, that *"It was ours, this morning."*[1476] The TCF records that this was referring to the murder of Patrick Finucane.[1477] Judge Cory commented that:

> "*From this cryptic comment, the handler was able to divine, with apparent certainty, that Nelson was referring to the murder of Patrick Finucane the night before. This might suggest that the handler did have some background information, and that the telephone call of 13th was not the first time the Patrick Finucane case was discussed.*" [1478]

16.44. It might be possible to draw some support for this proposition from Nelson's statement of 15 January 1990. There, he said that he spoke to A/13 twice on the morning of 13 February 1989 and that it was in

[1473] de Silva Review, Volume II, at [561].
[1474] de Silva Review, Volume II, at [553].
[1475] de Silva Review, Volume II, at [553] and de Silva Review, Volume I, at [407/21.157].
[1476] de Silva Review, Volume II, at [519].
[1477] de Silva review, Volume II, at [520].
[1478] de Silva Review, Volume I, at [409/21.168].

the second of these conversations that he *"confirmed that it was ours."* He said that this was *"my way of telling [A/13] it was [L/28] because [A/13] would know about [L/28]."* [1479] Without prior knowledge of L/28's involvement in a plot to kill Patrick Finucane, it would have been difficult for A/13 to make this link.

16.45. The third source to state or imply that the FRU knew of the plot to kill Patrick Finucane prior to the murder is an account given by Ian Hurst, a former FRU soldier who has written under the pseudonym "Martin Ingram". Ian Hurst was an agent-handler working in FRU's West Detachment at the time of Patrick Finucane's murder. He gave evidence to the Stevens III Investigation in June and July 2000 of being told about FRU's involvement in the murder of Patrick Finucane on three occasions: (i) a conversation with A/13 at a bar in Ashford, Kent (possibly in June 1989, though the de Silva Review is not clear on this); (ii) a discussion with A/13, A/09 and A/17 at Sergeants' Mess, also in June 1989; and, (iii) a conversation with A/04 in a house that they shared in County Fermanagh in 1990. [1480] According to Ian Hurst, he was told the following:

a. That there was *"intelligence pre the actual attack … I was told by A/04 that that information had been passed to the RUC."* Ian Hurst considered that this was provided by Nelson, who was *"the only conduit."*

b. That his conversations with A/04 gave him the *"clear understanding"* that there were two occasions on which FRU had pre-emptive intelligence about Patrick Fincuance, and that "*there is little doubt that Nelson had told FRU that Finucane*

[1479] de Silva Review, Volume I, at [406/21.154].
[1480] de Silva Review, Volume I, at [413/21.191].

was being targeted." He believed that the RUC were told on the first occasion, *"but the second was allowed to proceed."*

c. He was *"80/90% sure that [A/04] said there was a photograph of Finucane passed to Nelson by FRU of Finucane."*

d. That A/13 was *"happy and content … because Finucane was up to his neck in it."*

e. That A/13 said that A/05 *"held the view that he was content with the case and it was 'bomb proof' and being overseen by political masters."*

f. That CFs had been doctored by A/04. [1481]

Sir Desmond's analysis

The CFs from after the murder

16.46. Sir Desmond placed considerable emphasise on the CFs produced after the murder, which in his view showed that FRU recorded and accepted Brian Nelson's denial of involvement in the murder.

16.47. The CF of **14 February 1989** recorded Nelson's account of being tricked by L/28 into handing over a photograph of Patrick Finucane, when he thought that the intended target was Patrick McGeown. It also recorded L/28 telling Nelson that *"he was not told about the operation as he did not need to know."* [1482]

16.48. The CF does not express any scepticism about this account. Indeed, it included the internal comment that:

[1481] de Silva Review, Volume I, at [413/21.191-21.197].
[1482] de Silva Review, Volume II, at [524/16].

"*[Nelson] seems to be left out of major operations only finding out about them after the event. 6137 was unaware of the targeting of Pat Finnucane [sic] and L/28 wanted it kept this way.*" [1483]

16.49. As was typical of such forms, the CF contained a "Case Development" section. This recommended a "boss meet" with Nelson to encourage him to become more active within L/28's team. A "boss meet" was a tactic used by intelligence agencies when an agent's performance needed to be significantly improved, or where the agent needed to be reprimanded. Later CFs show Nelson was tasked to work on his relationship with L/28. [1484]

16.50. The CF of 14 February also showed Nelson was admonished for saying, the previous day, that the attack was committed by the UDA/UFF before he knew for sure that this was the case:

"*Handler realised from the meeting with 6137 that he was not told who had committed the murder until after telephoning handler* [on Monday 13 February]. *Up until that point he only assumed, although rightly, that it was the UFF. 6137 has been told that he should only report facts and not what he thinks are facts.*" [1485]

16.51. As is discussed above, the CF of **22 February 1989** recounted a meeting of UDA commanders Nelson attended on 15 February. Nelson said those present discussed Operation Snowball, a plan to murder members of PIRA/IPLO who were believed to be targeting loyalists. An RUC intelligence record gave a starkly different account, recording that Patrick Fincuane's murder was the "main topic of discussion."[1486] Sir Desmond considered that the "absence in the

[1483] de Silva Review, Volume I, at [409/21.172] and de Silva Review, Volume II, at [521/3].
[1484] de Silva Review, Volume I, at [410/21.173-21.174] and de Silva Review, Volume II, at [521/3-4].
[1485] de Silva Review, Volume II, at [521/5].
[1486] de Silva Review, Volume I, at [410/21.177-21.178].

[Nelson] CF of any record of a discussion of Mr Finucane's murder … suggests to me that Nelson may again have been concealing important intelligence from his handlers." [1487]

16.52. A CF dated **7 April 1989** positively asserted that Nelson did not know about the targeting of Patrick Fincuane.

> "*6137 had always maintained that he is a close friend of [L/28] and that [L/28] trusts 6137. Handler believes this to an extent but there are still operational matters which [L/28] does not discuss with 6137. One example which springs to mind was the* shooting of Pat Finucane which 6137 knew nothing about, even though he supplied a photograph." [1488]

16.53. Sir Desmond's conclusion on the FRU documentary record was that the CFs were *"exceptionally detailed contemporaneous documents recording a wealth of intelligence passed by Nelson to his handlers."* He found no evidence that they had been doctored (though they had been withheld from the Stevens investigators). Indeed, to the contrary the CFs contained material that was so *"highly damaging"* to FRU that *"it seems inconceivable that there was a conspiracy to amend the content of the CFs, since this damaging material would surely have been altered or deleted."* [1489]

<u>Other matters considered by Sir Desmond</u>

16.54. Sir Desmond's analysis also considered the following matters. These are presented only in summary form and are not intended as a substitute for Sir Desmond's detailed analysis.

[1487] de Silva Review, Volume I, at [411/21.178].
[1488] de Silva Review, Volume II, at [536/8].
[1489] de Silva Review, Volume I, at [413/21.190].

16.55. **Nelson's relationship with his handlers**: Sir Desmond found evidence that Nelson was under some pressure from FRU to improve his performance in January 1989, but that he was also under pressure from the UDA to provide better intelligence and targeting. Nelson was also concerned about his own safety at this time as he feared being interrogated again by the UDA (see above). These pressures pulled Nelson in different directions: the FRU would wish to have intelligence of the plot against Patrick Finucane, but if he provided that intelligence the operation might be compromised (as the operation against Gerry Adams, another high-profile target had been). If that happened, it would jeopardise Nelson's position with the UDA and could lead to him falling under suspicion, with consequences of potential torture and death.[1490]

16.56. Sir Desmond also found that Nelson did not always tell his handlers about all his activities, particularly where he was engaged in what he saw as *"justifiable"* targeting. [1491]

16.57. **The credibility of Nelson's own statements:** Sir Desmond found that he could place limited weight on these because of his earlier finding that they did not contain an honest account of Nelson's role in targeting Patrick Finucane. There was an obvious risk that the statements would be self-serving and would seek to maintain the fiction that he had not been consciously involved in the murder. [1492]

16.58. **Other aspects of the FRU record**: Sir Desmond noted two further aspects of the FRU records.

a. <u>References from March 1989 to there being a P Card for Patrick Finucane</u>: Sir Desmond considered that this should have

[1490] de Silva Review, Volume I, at [404/21.140-21.150].
[1491] de Silva Review, Volume I, at [403/21.135-21.138].
[1492] de Silva Review, Volume I, at [406/21.151-21.162] and at [417/21.208].

prompted FRU to consider whether Nelson had in fact been involved in the targeting of Patrick Finucane. However, it did not persuade him that such knowledge was (or should have been) available to FRU prior to the murder. [1493]

b. References to Patrick Finucane being a member of the IRA: Although there were some references in the FRU record to the word "PIRA" being associated with Patrick Finucane, Sir Desmond did not find this compelling evidence that FRU had come to this conclusion, still less that FRU had prior knowledge of the murder. There was evidence that this was an administrative "trace" carried over from regular Army computer records. [1494] He also cited A/05's evidence that FRU *"knew who was on the Provisional IRA Army Council, Northern Command, and Belfast Brigade. Patrick Finucane did not figure … we did not consider Patrick Finucane to be an important PIRA figure."* [1495]

16.59. **The credibility of Ian Hurst's evidence:** Sir Desmond noted that Ian Hurst did not work in the East Det, that Nelson had limited contact with two of his supposed sources (A/09 and A/04), and that he had seen no evidence to support Ian Hurst's account of CF forms being doctored. [1496] He referred to Ian Hurst's claim to the Lawyers Committee for Human Rights that there had been three attempts to kill Patrick Finucane within a space of six months; Sir Desmond found that there was "simply no substance to these claims." [1497] He also cited the finding of Lord Saville and his colleagues on the Bloody Sunday Inquiry that Ian Hurst had, in evidence to them, "to a

[1493] de Silva Review, Volume I, at [411/21.179-21.182].
[1494] de Silva Review, Volume I, at [412/21.185-21.189].
[1495] de Silva Review, Volume I, at [413/21.188].
[1496] de Silva Review, Volume I, at [415/21.199-21.200].
[1497] de Silva Review, Volume I, at [415/21.201].

substantial degree exaggerated the importance of his role … and his level of knowledge and access to intelligence." [1498] Sir Desmond said that he was "left in significant doubt as to whether Ian Hurst was in a position to have the degree of detailed knowledge of the handling of Brian Nelson that he claimed to possess." [1499] He did not attach any weight to his allegation about FRU and the murder of Patrick Fincuane. [1500]

16.60. **Allegations that FRU provided information to Nelson about Patrick Finucane:** Sir Desmond referred briefly to "*allegations that the FRU provided information*" to Nelson about Patrick Finucane, including maps and photographs, and that FRU handlers took part in reconnaissance. The sole source cited was an article by Greg Harkin (Mr Ingram's co-author) from June 2002. Sir Desmond said that "[*h]aving reviewed all the available evidence, I have found no material to support this allegation*." [1501] He also referred to evidence that suggested that the FRU and the RUC did not have the correct home address for Patrick Finucane at the time of his murder. [1502]

16.61. **The interpretation of the CF on 13 February**: Sir Desmond did not share Justice Cory's suspicions that Nelson saying, *"it was ours, this morning*," and FRU associating this with Patrick Finucane's murder, was indicative of a shared prior knowledge of the plan to kill him. He thought this typical of the type of *"somewhat cryptic"* conversations that take place between agents and handlers. The murder of Patrick Finucane was the leading news story that morning, and the involvement of a loyalist gang was a reasonable inference. [1503]

[1498] de Silva Review, Volume I, at [416/21.202].
[1499] de Silva Review, Volume I, at [416/21.204].
[1500] de Silva Review, Volume I, at [416/21.204].
[1501] de Silva Review, Volume I, at [416/21.205].
[1502] de Silva Review, Volume I, at [416/21.205-21.206].
[1503] de Silva Review, Volume I, at [409/21.170].

Sir Desmond's conclusion on what FRU knew prior to the murder

16.62. Sir Desmond concluded:

> "*I am firmly of the view that in this instance Nelson withheld critical information from his handlers.*
>
> *In my view, the decisive evidence on this question is to be found in the contemporaneous FRU CFs. The CFs appear to show that Nelson did not pass on any information prior to the murder to suggest that the UDA were targeting Patrick Fiucane. Furthermore, after the murder Nelson told his handlers the same fictitious story about the McGeown/Finucane photograph that he was to maintain subsequently in his 1990 statement and in his 'journal' account.*
>
> *Critically, in my view, the CFs show that only two days after the murder the FRU handlers were concerned that Nelson had been apparently kept out of the loop on the targeting of Patrick Fincuane and even went so far as to propose a 'boss meet' during which Nelson would be encouraged to become more involved in L/28's team …*
>
> *In my view, the proposition that Nelson told his handlers about the targeting of Patrick Finucane cannot be persuasively sustained in the light of the evidence provided by the contemporaneous intelligence records*." [1504]

16.63. Sir Desmond, however, stressed that this did not absolve FRU of all criticism for Patrick Fincuane's murder.

> "*That is not the case.*

[1504] de Silva Review, Volume I, at [417/21.209-21.212].

To consider the significance of this finding one must position it within my overall conclusions as to the role and handling of Nelson as a FRU agent. By February 1989, Nelson had been tasked to target republican figures and his actions were leading to people being attacked; the FRU had known since at least June 1988 that he was willing to conceal information from his handlers relating to 'justifiable' conspiracies; and the RUC SB were not generally exploiting his intelligence to prevent attacks.

The very nature of Nelson's re-recruitment from Germany and his subsequent handling leads me to the conclusions that by 1989 Nelson was, to all intents and purposes, a direct State employee. The FRU must, therefore, bear a degree of responsibility for whatever targeting activity Nelson carried out in his dual role as a UDA Intelligence Officer and a FRU agent during this period, whether or not in a specific case he shared with his handlers the full state of his knowledge. As A/05 himself put it at Nelson's trial:

> *"...whatever [Nelson] may or may not have done throughout his time with the UDA since 1987, he would not have done it had we in FRU not reinstated him in the UDA in the first place."* [1505]

[1505] de Silva Review, Volume I, at [415/21.213-21.215].

17. THE ROLE OF WILLIAM STOBIE AS A ROYAL ULSTER CONTABULARY AGENT AND IN THE MURDER OF PATRICK FINUCANE

Introduction

17.1 William Stobie was, on Sir Desmond de Silva QC's analysis, the man who supplied one of the weapons used to kill Patrick Finucane a few hours before the attack. He was also an RUC Special Branch (SB) informer.

17.2 William Stobie was arrested in 1990 and 1999. On the latter occasion he was charged with conspiracy to murder Brian Adam Lambert and the murder of Patrick Finucane. The cases appeared to rest largely on the evidence of the journalist Neil Mulholland, to whom William Stobie had given an account in June 1990. Neil Mulholland was unable to give evidence at the trial due to ill health. The trial collapsed and a not guilty verdict was entered. [1506]

17.3 Two weeks later, on 12 December 2001, William Stobie was murdered by loyalist paramilitaries.[1507]

17.4 The evidence concerning William Stobie's involvement in the murder of Patrick Finucane, and the intelligence that he provided about it before and after the event, comes from a variety of sources, several of which are inconsistent or contradictory. To assist the reader in establishing a narrative of events, this section sets out the findings that Sir Desmond made, based on the evidence on which he felt he could place reliance. It also considers some of the alternative accounts and counter-narratives that are evident from

[1506] de Silva Review Volume I at [48/1.92-1.93] and [419/22.2].
[1507] Report of the Police Ombudsman of Northern Ireland, *Police did all they could to protect William Stobie*, https://www.policeombudsman.org/investigation-reports/current-investigations/police-did-all-they-could-to-protect-william-stobie. Responsibility was claimed by the Red Hand Defenders, though others have attributed it to elements within the UDA: see Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), at [265].

the sources considered by Sir Desmond and other secondary literature.

17.5 The main accounts given by, or relating to, William Stobie are:

a. Intelligence documents created by RUC SB that were intended to record, contemporaneously or near contemporaneously, what William Stobie told his handlers.

b. Stobie's account to Neil Mullholland, given on 6 June 1990. This is recounted in a statement that Neil Mullholland gave to the Stevens III Investigation, dated 3 June 1999. Neil Mullholland's statement was based on a notebook that was exhibited to his statement. The de Silva Review has published Neil Mullholland's statement, but not his notebook. [1508]

c. A police interview conducted with William Stobie at RUC Castlereagh on 13 September 1990. [1509] William Stobie was arrested after Neil Mulholland contacted police regarding the account William Stobie had given to him. Neil Mulholland at that stage refused to sign a witness statement (he later said in 1999 that he did so only after *"some serious deliberation"*, [1510] and it was a decision that caused controversy among other journalists0. [1511]

d. William Stobie subsequently gave at least three interviews to the journalist Ed Moloney, at some stage after they met in September 1990. Ed Moloney published an article based on these accounts in June 1999 in the *Sunday Tribune*. Ed Moloney refused to provide his interview notes to the police and

[1508] de Silva Review Volume II at [628]-[643].
[1509] de Silva Review Volume I at [424/22.36-22.40].
[1510] de Silva Review Volume II at [643].
[1511] Harkin, Greg and Ingram, Martin, *Stakeknife* (O'Brien Press, 2004) at [200]-[201].

successfully defended a legal action seeking their disclosure. The de Silva Review consideration of William Stobie's account to Ed Moloney is based on the published article, which Sir Desmond felt was sufficient for the purposes of his review. [1512] After the publication of the de Silva Review, Ed Moloney wrote an online article reflecting on the findings of the Review and his relationship with William Stobie. [1513] In this, Ed Moloney said that he had agreed with William Stobie that he would not publish a story based on their conversations unless William Stobie said otherwise. This happened in 1999, within hours of his arrest.[1514]

e. Statements made to the police following his arrest in June 1999.[1515]

f. Various media interviews that William Stobie gave following the collapse of his trial in 2001. [1516] In those interviews, William Stobie supported calls for a public inquiry into the murder of Patrick Finucane, which some writers have suggested led to his murder. [1517]

Stobie's role in the UDA and his recruitment by RUC SB

17.6 William Stobie, who had previously served in the British Army, acted as a Quartermaster in the Belfast UDA. [1518] Sir Desmond found that *"in practice he was one of a number of people in the Belfast area*

[1512] de Silva Review Volume I at [425/22.42-22.49].
[1513] Ed Moloney, *The de Silva Report on Pat Finucane – Some Considered Thoughts, Part 2*, *The Broken Elbow*, 3 February 2013.
[1514] Ed Moloney, *The de Silva Report on Pat Finucane – Some Considered Thoughts, Part 2*, *The Broken Elbow*, 3 February 2013.
[1515] de Silva Review Volume I at [427/22.50-22.53].
[1516] de Silva Review Volume I at [427/22.54].
[1517] Wood, Ian, *Crimes of Loyalty: A History of the UDA* (Edinburgh University Press, 2006) at [266]; Ingram and Harkin at [201]–[202]; McDonald and Cusack at [311]. Ed Moloney considers that had William Stobie not been put on trial for the murder of Patrick Finucane, *"the odds are he would still be alive today"*: see "…Some Considered Thoughts, Part 2."
[1518]de Silva Review Volume I at [251/10.1-10.2].

who stored or moved weapons for the UDA." [1519] Sir Desmond's view was that William Stobie was a relatively low-level, *"comparatively minor"* figure within the UDA, at least when compared to Brian Nelson. [1520] The journalists and authors Henry McDonald and Jim Cusack wrote that William Stobie, like Brian Nelson, *"was quiet and did his job satisfactorily and efficiently, unlike many of the others who were incompetent drunks."* [1521]

17.7 In November 1987, William Stobie was implicated in the murder of Brian Adam Lambert, a 19-year-old man who was murdered by the UDA on 9 November 1987. According to the respected book *Lost Lives*, the killing was carried out as retaliation to the Enniskillen Day bombing, which had taken place the previous day. Adam Lambert, as he was known by his family, was shot on a building site in the Highfield estate off the Springfield Road. He was on work experience during his university holiday. Seemingly unknown to those who killed him, he was a Protestant. [1522]

17.8 William Stobie was arrested in relation to the murder and held at the Castlereagh detention centre on 15 and 16 February 1988. He was interviewed by three RUC SB Detective Constables: R/05, R/08 and R/06. It is implied, but not expressly stated, in the de Silva Review that this was the time that William Stobie was recruited as a SB agent. William Stobie's own account to Neil Mulholland is consistent with this timing: *"I was up to my neck in [the Lambert murder] and Special Branch had me by the balls."* [1523]

17.9 William Stobie also said to Neil Mulholland that he had provided the guns for Adam Lambert's murder and had driven one of the getaway

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[1519] de Silva Review Volume I at [252/10.10].
[1520] de Silva Review Volume I at [252/10.10] and [394/21.86].
[1521] McDonald and Cusack at [143].
[1522] David McKittrick et al, *"Lost Lives"* (Edinburgh: Mainstream Publishing, 2001), at [1098].
[1523] de Silva Review Volume II at [632].

cars. [1524] William Stobie was not pursued for the murder after he was recruited as an SB agent, [1525] though three others were jailed. [1526] Sir Desmond wrote: *"It appears that the RUC effectively decided to drop the pursuit of a suspect in a murder investigation in order to recruit the individual as an agent."* [1527]

Stobie's record as an agent

17.10 William Stobie's position as a Quartermaster was potentially useful for RUC SB. An RUC Chief Superintendent's summary of William Stobie's work as an agent, dated 6 November 1990, recorded that "the intelligence supplied was of a good standard, and of medium grade." [1528]

17.11 Sir Desmond's analysis of William Stobie's effectiveness as an agent prior to the murder of Patrick Finucane was that his work "did not generally have the effect of frustrating terrorist activity … his handling and the lack of exploitation of his intelligence raises some of the same issues as the Nelson case." [1529]

17.12 Sir Desmond raised two particular issues of concern, the first concerning William Stobie's conduct and the second the conduct of his handlers. They were:

a. William Stobie's tendency to hand over weapons to UDA terrorist without first informing his handlers. He cited three examples from July and November 1988. [1530]

[1524] de Silva Review Volume II at [632]
[1525] de Silva Review Volume I at [252/10.9]
[1526] *Lost Lives*, at [1099].
[1527] de Silva Review Volume I at [252/10.9].
[1528] de Silva Review Volume I at [252/10.11].
[1529] de Silva Review Volume I at [252/10.13].
[1530] de Silva Review Volume I at [252/10.14-10.20].

b. The RUC's failure to exploit intelligence provided by William Stobie on 22 August 1988. [1531] This concerned efforts made by members of the Woodvale UDA – L/20, L/33, L/57 and L/25 – to target two named individuals. William Stobie told his handlers about these efforts and the fact that photographs had been provided. Sir Desmond found that there was *"no evidence that any action was taken as a result of this intelligence."* Although an SB50 was produced, it was so sanitised that those reading it would not have known the identities of those who were being targeted. Sir Desmond's concerns were heighted by his finding that three of those mentioned in this intelligence – L/20, L/33 and L/25 – *"all subsequently played important parts in the conspiracy to murder Patrick Finucane."* [1532]

17.13 Overall, Sir Desmond concluded: [1533]

> *"There is no evidence that, prior to Patrick Finucane's murder, any exploitative action was taken as a result of Stobie's intelligence regarding weapons, targeting or the UDA members involved in the West Belfast hit team*."

17.14 Sir Desmond found only one instance in which Stobie's intelligence was *exploited*, which related to the dismissal of a UDR soldier after William Stobie said he was leaking information to the UDA. On another occasion – relating to the murder of Terence McDaid, which is discussed elsewhere in this document – William Stobie's intelligence was *disseminated* by RUC SB to RUC CID, but there was no evidence to suggest it was subsequently *exploited* by them. [1534]

[1531] de Silva Review Volume I at [254/10.21-10.24].
[1532] de Silva Review Volume I at [254/10.24].
[1533] de Silva Review Volume I at [254/10.26].
[1534] de Silva Review Volume I at [254/10.25-10.26].

Stobie's role in the murder of Patrick Finucane

17.15 An RUC SB debrief form from 30 January 1989 recorded William Stobie was in possession of two 9mm Browning pistols, a sub-machine gun and a Heckler & Koch (H&K) pistol. One of the Browning 9mm pistols had been given to him by L/15 on the evening of 23 January 1989. [1535]

17.16 Subsequent RUC debrief forms concerning William Stobie suggest the following sequence of events.

a. On Monday 6 February, 1989 six days before Patrick Finucane's murder, William Stobie attended the weekly UDA meeting. At around 6.30pm, L/03 asked him for a 9mm pistol. William Stobie left the meeting and returned with a 9mm H&K pistol and gave it to L/03. [1536]

b. At 11.30pm on the same night, L/20 told William Stobie that "*they had a hit planned on a top IRA man.*" L/20 said he did not like the small H&K pistol and asked him to get a 9mm Browning, which he would need for the Thursday or Friday of that week (the 9 or 10 February 1989). [1537]

c. William Stobie understood (and told his RUC SB handlers) that it was "*most likely*" that L/33 and L/20 would then move the weapon to the Woodvale area prior to going on the operation. [1538]

d. On Tuesday 7 February 1989, William Stobie relayed the information set out above to his RUC SB handlers. They appear

[1535] de Silva Review Volume II at [592]-[593].
[1536] de Silva Review Volume II at [594]-[595] and Volume I at [420/22.8].
[1537] de Silva Review Volume II at [595] and Volume I at [420/22.9].
[1538] de Silva Review Volume II at [595]-[596] and Volume I at [420/22.9].

to have tasked him to delay handling over the 9mm Browning pistol *"until he contacts handler accordingly."* [1539]

e. On Thursday 9 February 1989, William Stobie called his RUC SB handlers. A debrief form records him saying: *"Tell them the parcel was not delivered to-night, ask the boys to ring me at midnight."* [1540]

f. There is no further reference to contact from William Stobie in the SB files (as recovered by the de Silva Review) until Wednesday 15 February 1989, three days after Patrick Finucane's murder. For the reasons described below, Sir Desmond concluded that no action was taken based on his information to frustrate the planned attack.

g. The RUC SB debrief record of the contact on 15 February 1989 states: *"In respect of the 9mm Browning requested by [L/20] (see debrief of 7/2/89). No further contact was made with source regarding the same."* [1541]

h. The same debrief form suggests that William Stobie attended a UDA-affiliated club at 1pm on the afternoon of Patrick Finucane's murder, 12 February 1989. There he saw L/20, L/25, L/33, L/28 and L/11 in conversation. Having listed the names, the note records, *"Nothing further."* [1542]

i. At 8.30pm on the same evening, according to the same debrief form, William Stobie was in a club and saw L/20, L/25, Kenneth Barrett, and L/33 arrive. A few minutes later, L/22 and L/28 arrived and asked William Stobie if he had seen L/20. They subsequently

[1539] de Silva Review Volume II at [594]-[596] and Volume I at [420/22.8-22.9].
[1540] de Silva Review Volume II at [598] and Volume II at [420/22.10].
[1541] de Silva Review Volume II at [600]-[602] and Volume I at [420/22.13-22.14].
[1542] de Silva Review Volume II at [600].

joined L/20 (and seemingly the others named above), upstairs in the club. L/22, L/20 and L/28 subsequently left together. [1543]

j. The debrief records that William Stobie was not aware of Patrick Finucane's murder until the late news that night. [1544]

k. On the morning of 15 February 1989, William Stobie drove L/03 to L/20's house in the Highfield estate. L/20 spoke to L/03, who in turn told William Stobie to *"call with L/20 tonight at 9pm + collect a Browning pistol + hide same."* [1545] William Stobie reported this to his RUC SB handlers that afternoon. The debrief form recorded that he was to keep them appraised of the Browning pistol. [1546]

17.17 The SB record contains a critical gap in information between 9 February and 12 February 1989 on the question of whether William Stobie provided a 9mm Browning pistol – the type used in the murder of Patrick Finucane – to L/20 or others. The RUC SB records do, however, provide near contemporaneous evidence that William Stobie had been asked to provide such a weapon to L/20 shortly before Patrick Finucane's murder, and that he was later told to retrieve such a weapon from L/20 and hide it after the murder.

17.18 William Stobie's accounts to Neil Mulholland and Ed Moloney contain no such ambiguity. He told both that he provided a 9mm Browning and a H&K pistol, which he thought were used in the attack. According to Neil Mullholland's statement to the Stevens III investigation, William Stobie told him he provided the guns on the same day as he was asked to provide them at a UDA meeting. [1547]

[1543] de Silva Review Volume II at [600]-[601].
[1544] de Silva Review Volume II at [602].
[1545] de Silva Review Volume II at [602].
[1546] de Silva Review Volume II at [600] and [603].
[1547] de Silva Review Volume II at [634]-[635] and Volume I at [423/22.27-22.30].

According to Ed Moloney's article, *"Stobie delivered the guns to the UDA killers on the Sunday afternoon / evening of 12 February, the day of Patrick Finucane's death."* [1548] As is noted above, William Stobie spoke to both journalists over a year after the events in question, in 1990, though the resulting statement and article were not provided or published until 1999. The de Silva Review found that the H&K pistol was not used in the murder.

17.19 The journalist and author Greg Harkin has provided an account of the provision of the weapons, seemingly based on an interview in 2001. He said he spoke to William Stobie *"just weeks before he was murdered."* William Stobie told him that on 12 February 1989, he:

> "*got a phone call and was told to bring some 'gear' to a club on the Highfield estate in West Belfast. Ken Barrett, 'M' and 'X' were waiting for him there. When Stobie arrived, he recalled, Barrett complained because he had brought a Heckler and Koch machine pistol while Barrett wanted a 9mm Browning: the Heckler and Koch held only nine bullets while the Browning held thirteen rounds.*" [1549]

17.20 Sir Desmond did not include this account (published in 2004) in his report. It is noted that some of the detail in this, and the accounts given to Neil Mulholland and Ed Moloney, is inconsistent with the contemporaneous RUC SB intelligence reports, which suggest that the H&K pistol was provided earlier in the week and was rejected by L/20.

17.21 In his police interview in 1990, William Stobie denied any involvement in the murder of Patrick Finucane, and that of Adam Lambert. He accepted that he had taken the H&K pistol to L/03, and

[1548] de Silva Review Volume I at [426/22.45].
[1549] Ingram and Harkin at [198] to [199].

that he had been asked to delay handing over the Browning, as recorded in the RUC SB notes. He claimed he had never actually handed over the Browning. [1550] William Stobie does not appear to have addressed this matter in response to being charged with Patrick Finucane's murder in 1999, though he claimed to be not guilty of that charge. [1551]

17.22 Sir Desmond concluded that he was:

> "*satisfied that Stobie did indeed provide the 9mm Browning to the UDA hit team on Sunday 12 February.*"

17.23 In support of this conclusion, he pointed to the admissions William Stobie made against his own interest to two journalists (Neil Mulholland and Ed Moloney), the undisputed fact that William Stobie was storing Browning 9mm pistols for the UDA, and that: *"It would seem logical for Stobie to be asked to collect and store a gun that he himself had previously provided."* [1552]

Did Stobie know Patrick Finucane was the intended target?

17.24 There is nothing in the RUC SB forms cited in the de Silva Review to suggest that William Stobie knew that Patrick Finucane was the target of the planned attack. William Stobie told Ed Moloney that he did not know prior to the murder that Patrick Finucane was the intended victim.[1553] Greg Harkin said that in 2001 William Stobie denied to him knowing that Patrick Finucane (or even an unnamed solicitor) was the target, though Greg Harkin suggested that he did not believe him. [1554]

[1550] de Silva Review Volume I at [424/22.36-22.40].
[1551] de Silva Review Volume I at [427/22.50-22.54].
[1552] de Silva Review Volume I at [428/22.58-22.62].
[1553] de Silva Review Volume I at [426/22.44].
[1554] Ingram and Harkin at [198].

17.25 However, William Stobie gave a different account to Neil Mulholland. According to Neil Mulholland's 1999 statement (based on a 1990 interview):

> *"He then told me that the biggest sweat of all came over the Finucane job. He said that at this time he was well in with a person called Tucker Lyttle and the local commander in Forthriver. During a later second meeting with Stobie he told me that this local commander in Forthriver was L/03. He said that he would get a call and that he would be told to bring a certain piece to a certain place at a certain time. He said that he would never know who it was for or when or who the target was. However, he said that there had been some discussion at a meeting in a club about targets and that Finucane's name had come up again and again. When the subject came up a third time it was much more detailed. He said that 'Rece' reports were discussed about his (Finucane) house and intelligence (Nelson) indicated that he would know when would be the best time for a clean job … He stated that it was decided that the best guns for the job would be a 9mm Heckler and Koch and Browning pistol. At this meeting he stated that no other details were finalised and it was just a talk through."* [1555]

17.26 William Stobie later disavowed this part of his account to Neil Mulholland, telling police in 1990 that he did not know Patrick Finucane was the target. When asked why he had said something different to Neil Mulholland, he replied: "I don't know I was under pressure. I wanted to make myself out to be the big man in the organisation." [1556]

[1555] de Silva Review Volume II at [634] and [635].
[1556] de Silva Review Volume I at [425/22.38].

17.27 In a statement made to police following his arrest in 1999, and which is discussed in more detail below, William Stobie claimed to have warned RUC SB on the night of 12 February 1989 that a man was going to be shot. He said that he *"did not know at the time of the person who was to be shot"*. [1557]

17.28 Following the collapse of his trial, William Stobie gave a television interview on 4 December 2001 in which he claimed to have told the SB prior to the murder that *"a top Provie"* was being targeted.[1558] This is consistent with the RUC SB debrief form. Notably William Stobie did not claim to have identified Patrick Finucane as the target.

17.29 Sir Desmond concluded that he did not believe that William Stobie knew that Patrick Finucane was the intended target of the attack. [1559] In addition to the inconsistency of the accounts considered above, he identified following factors that weighed against William Stobie having this knowledge.

a. William Stobie's role in the UDA did not (with the one exception from August 1988) involve him knowing of targets or being involved in targeting meetings. [1560]

b. The FRU Contact Forms do not record any instances of William Stobie being present at targeting meetings with Brian Nelson in 1988 to 1989. [1561]

c. The knowledge of the targeting of Patrick Finucane *"appears to have been kept to a reasonably tight circle within the UDA and*

[1557] de Silva Review Volume I at [427/22.50].
[1558] de Silva Review Volume I at [427/22.54].
[1559] de Silva Review Volume I at [428/22.62].
[1560] de Silva Review Volume I at [424/22.31].
[1561] de Silva Review Volume I at [424/22.32].

it would seem unlikely that a comparatively minor figure such as Stobie would have been brought within that group." [1562]

d. Kenneth Barrett was generally dismissive about William Stobie's involvement in the murder plot, saying he *"had nothing to do with Finucane, he took no part."* [1563]

e. Other aspects of the account that William Stobie gave to Neil Mulholland are demonstrably untrue, such as his claim that he cut ties with RUC SB in disgust at its failure to stop the murder. [1564]

What did Stobie tell RUC SB prior to the murder?

17.30 It is evident from the RUC SB debrief forms that by the evening of 9 February 1989, William Stobie had told his handlers of the following information:

a. An imminent hit was planned on a "top IRA man".

b. L/20 was a key figure in the operation.

c. William Stobie was storing two 9mm Browning pistols along with other weapons for the UDA.

d. William Stobie had supplied an H&K pistol for the hit but had been asked to hand over a 9mm Browning pistol.

e. The 9mm Browning pistol had not been handed over on 9 February 1989.

[1562] de Silva Review Volume I at [424/22.32].
[1563] de Silva Review Volume I at [424/22.33].
[1564] de Silva Review Volume I at [424/22.35].

f. William Stobie wished to speak to his handler at midnight that night. [1565]

17.31 Some corroborative intelligence was also available. The RUC Daily Intelligence Book on 7 February 1989 recorded: [1566]

> *"UDA active with targeting but only have 6-12 good members. Highfield UDA might be working on a big job."*

17.32 Sir Desmond considered that the RUC SB would have known that two prominent figures named by William Stobie in his reporting – L/03 and L/20 – were members of the Highfield UDA.

17.33 William Stobie told Ed Moloney that he made further contact with his handlers on the evening of the murder, 12 February 1989. According to the summary provided in the de Silva Review, William Stobie said the following: [1567]

a. He saw six individuals in the club to where he took the weapons on the afternoon / evening of 12 February 1989, three of whom he appears to have identified.

b. Although these men were heavy drinkers, that evening they were only drinking Coke – *"this was a sure sign that something was on because they only drink Coke when they're on a job."*

c. William Stobie then went to visit his mother before returning home.

d. He called his handlers between 7pm and 7.30pm to inform them about the delivery of the guns.

[1565] de Silva Review Volume I at [421/22.19].
[1566] de Silva Review Volume I at [422/22.20] and Volume II at [597].
[1567] de Silva Review Volume I at [426/22.45-22.47].

e. William Stobie later complained to his handlers about the RUC's failure to act on his intelligence. He was told: *"they [the RUC] hadn't time to get things organised and 'anyway he [Mr Finucane] was just an IRA man'*."

17.34 When arrested in 1999 on suspicion of the murder of Adam Lambert and Patrick Finucane, William Stobie denied his guilt and stated: [1568]

"At the time I was a police informer for Special Branch. On the night of the death of Patrick Finucane I informed Special Branch on two occasions by telephone of a person who was to be shot. I did not know at the time of the person who was to be shot."

17.35 In a later short statement handed to Stevens III officers on 23 June 1999, William Stobie claimed: [1569]

"On Sunday 12 February 1989 I informed my Special Branch handlers twice by telephone that a man was to be shot … My handlers realised the full significance of this information."

17.36 Sir Desmond's conclusions on the information available to RUC SB before Patrick Finucane's murder were as follows:

a. He was sure that William Stobie had provided *"significant intelligence"* that an *"imminent attack would take place on a 'top PIRA man' using a 9mm Browning pistol"*. [1570]

b. He was also sure that William Stobie had identified L/20 as *"one of the key UDA terrorists behind the murder plot."* [1571]

[1568] de Silva Review Volume I at [427/22.50].
[1569] de Silva Review Volume I at [427/22.51].
[1570] de Silva Review Volume I at [428/22.59].
[1571] de Silva Review Volume I at [428/22.59]

c. RUC SB had corroborative intelligence that Highfield UDA – which included L/20 and L/03 (who had also been named by William Stobie) – were "*working on a big job*". [1572]

d. It was "*entirely foreseeable*" that after the 9 February 1989 telephone call, William Stobie would hand over the 9mm Browning to other UDA members. [1573]

e. "*It is possible that … [Stobie] informed his handlers on the Sunday evening that he had handed over the gun. The evidence on this is, however, inconclusive. Even if this was the case, Stobie's account to Ed Moloney would tend to suggest that he only informed his handlers of his actions around the time the attack took place*". [1574]

17.37 It is inherent in Sir Desmond's wider findings that William Stobie did not inform the RUC that Patrick Finucane was the intended target of the attack as he did not know this before the murder.

17.38 Greg Harkin's account of what William Stobie told him in 2001 was not considered in the de Silva Review. He recorded William Stobie telling him that after he had delivered the weapons on 12 February 1989:

> "*I left the club, got to a phone and told my handler. I said who was in the club and what they wanted. I later saw them [the hit team] get into a van and knew that they were off. I called my handler again and they said they would look into it. I told them what guns*

[1572] de Silva Review Volume I at [422/22.20].
[1573] de Silva Review Volume I at [422/ 22.23] and [429/22.64].
[1574] de Silva Review Volume I at [429/22.63].

they had. These guns had been taken aware before by my handlers before, so they knew which ones I was talking about."[1575]

What did the RUC do in response to Stobie's intelligence?

17.39 Sir Desmond found that the intelligence provided by William Stobie on 7 February 1989 was disseminated by his handlers to the RUC Source Unit and the Tasking and Co-Ordination Group (TCG).[1576] It was also recorded in the Daily Intelligence Book.[1577] Officers of the rank of Chief Inspector and Detective Superintendent in the TCG were aware of the intelligence. [1578]

17.40 On the evening of 9 February 1989 – when William Stobie called RUC SB to say that the *"parcel"* had not been delivered and requested that *"the boys"* call him at midnight – a comment in the margin noted that one of his handlers, DC R/08, was informed. [1579]

17.41 R/08 told Stevens III investigators that he was unable to recall if he received this message. No reference was made to it in his journal. He had been on duty from 3pm to 11pm on 9 February 1989.[1580] The record of the message was timed at 8.55pm.[1581] Sir Desmond found it *"extremely surprising that R/08 cannot recall whether or not he had a conversation with Stobie at midnight"*. [1582]

17.42 The absence of any records, and R/08's stated lack of recollection, suggested to Sir Desmond that William Stobie's call on 9 February 1989 "may not have [been] returned." He thought that if this was the result of a conscious decision, SB "must have known that there was

[1575] Ingram and Harkin at [199]. Greg Harkin asked William Stobie if the weapons had been *"jarked"* (i.e. fitted with tracking devices or bugs). William Stobie said he did not know: Ingram and Harkin at [199].
[1576] de Silva Review Volume I at [421/22.17].
[1577] de Silva Review Volume I at [421/22.17] and Volume II at [597].
[1578] de Silva Review Volume I at [421/22.17].
[1579] de Silva Review Volume I at [420/22.10].
[1580] de Silva Review Volume I at [420/22.11-22.12].
[1581] de Silva Review Volume II at [598].
[1582] de Silva Review Volume I at [420/22.12].

a reasonable prospect that Stobie would have decided to hand over the weapon, having unsuccessfully sought further guidance from his handlers." [1583]

17.43 Sir Desmond considered the accounts given by other officers involved with William Stobie: DC R/05 (who was listed as a handler with R/08), and R/06 (who provided security cover for the meeting on 7 February). As is noted above, these appear to have been the three officers who spoke to William Stobie at the time of his recruitment, when he was implicated in the murder of Adam Lambert. None of these officers could recall any action being taken on William Stobie's intelligence, other than its dissemination to other parts of the RUC. [1584]

17.44 Sir Desmond found no indication in any of the RUC documentation he considered to suggest that the RUC took any action as a result of William Stobie's intelligence about an imminent attack, beyond the initial request to delay handing over the Browning pistol. [1585]

17.45 Sir Desmond concluded that no such action was taken. [1586] He found this:

> "*Extremely surprising given the high-value nature of the intelligence that had been provided by Stobie to his handlers …*
>
> *The intelligence picture as a whole was certainly sufficient for the RUC to have considered a range of options to attempt to prevent the UDA's planned attack. Analysis of the Daily Intelligence Book and the Threat Book shows the RUC regularly and successfully taking action to prevent attacks on the basis of vaguer intelligence than the information provided by Stobie in the week*

[1583] de Silva Review Volume I at [422/22.23].
[1584] de Silva Review Volume I at [421/22.15-22.16].
[1585] de Silva Review Volume I at [421/22.18].
[1586] de Silva Review Volume I at [421/22.18-22.60].

preceding Parick Finucane's murder. The RUC could have considered a range of options to seek to thwart the attack, including, for example, placing the UDA suspects under surveillance, taking action in relation to the weapons in Stobie's possession or pre-emptively arresting some of those plotting the attack, such as L20." [1587]

17.46 It is relevant to note that the debrief forms were not made available to the Stevens investigation until December 2000, nearly 12 years after the events in question. They had been *"discovered by Detective Chief Inspector R/11 in his desk drawer."* [1588]

17.47 By the time of the de Silva Review, William Stobie had been murdered and R/05 had died.[1589] Sir Desmond did not receive oral evidence or written submissions from R/08 or R/06, or R/24, the Detective Superintendent in the TCG who was informed of William Stobie's intelligence on 7 February 1989. [1590]

17.48 As is discussed elsewhere in this document, after the murder, *"SB unjustifiably withheld … critical intelligence [from Stobie] from the RUC CID."* [1591]

Stobie's trial

17.49 The journalist Ed Moloney wrote the following in 2013 about the collapse of William Stobie's trial:

"*At his subsequent trial [Stobie] told prosecutors he would go public about his involvement in the Pat Finucane killing if the charges weren't dropped and by extraordinary coincidence a few minutes later a police witness made the most elementary*

[1587] de Silva Review Volume I at [421/22.19-22.22].
[1588] de Silva Review Volume I at [419/22.4].
[1589] de Silva Review Volume I at [431/22.77] and [41/1.50].
[1590] de Silva Review Volume I at [40/1.48].
[1591] de Silva Review Volume I at [431/22.78] and [429/22.65-22.78].

blunders by revealing one of Stobie's previous convictions, one of the first things student policemen are warned never to do when in the witness box, and a mistrial was declared. The charges were later dropped. For reasons that go unexplained, de Silva does not explore or even mention this episode even though it implicates the Director of Public Prosecution's office in the Finucane cover-up." [1592]

17.50 It is not clear to which of Stobie's two trials Ed Moloney was referring. Stobie was tried in 1991 on firearms offences, and again in 1999 following the production of Neil Mulholland's statement.

17.51 On the 1999 trial, the de Silva Review stated that:

"I am conscious that William Stobie was never convicted of any offence in relation to the murder of Patrick Finucane. Although the Director of Public Prosecutions (Northern Ireland) ("DPP (NI)") ... believed that the evidence against Stobie passed the Test for Prosecution, his trial collapsed in 2001 after journalist Neil Mulholland refused to testify on medical grounds and a verdict of not guilty was entered." [1593]

17.52 It is relevant to note that Sir Desmond praised the DPP (NI) for his tenacity in pursuing the prosecution of Brian Nelson in the face of opposition within HM Government, and stated that he was satisfied that the decision to withdraw the charge relating to Patrick Finucane's murder was made on evidential grounds. [1594]

[1592] Moloney, "...Some Considered Thoughts, Part 2".
[1593] de Silva Review Volume I at [419/22.2].
[1594] de Silva Review Volume I at [27/106] and [488/24.177].

Overview

17.53 On Sir Desmond's analysis, William Stobie told his RUC SB handlers on 7 February 1989, five days before Patrick Finucane's murder, that he had been asked to provide a weapon for an imminent attack by a UDA team. He named two key figures involved, and RUC SB had some corroborative intelligence that their unit was working on a *"big job"*. Other than asking William Stobie to delay handing over the weapon, Sir Desmond found no evidence that RUC SB took any further action to prevent the attack. Indeed, he found that William Stobie's call of 9 February 1989, seemingly requesting further instructions that night, may not have elicited a response.

17.54 Sir Desmond's overall conclusion was stark:

> *"I concur with Sir John Stevens' view that proper exploitation of William Stobie's intelligence prior to the attack could have prevented the murder of Patrick Finucane on 12 February"*. [1595]

17.55 After the murder, according to Sir Desmond, RUC SB *"unjustifiably withheld"* aspects of William Stobie's evidence from their colleagues in CID.

17.56 For Ed Moloney, these conclusions only went so far:

> *"So, a powerful indictment of … what? RUC incompetence or malevolence, or evidence of some hidden subterranean manipulation. We don't know because as with so much of Sir Desmond de Silva's report, there are more questions than answers, more what's, where's and when's than why's."* [1596] *[ellipses in the original]*

[1595] de Silva Review Volume I at [25/91].
[1596] Moloney, "…Some Considered Thoughts, Part 2".

18. THREATS TO SOLICITORS IN NORTHERN IRELAND BEFORE AND AFTER THE MURDER OF PATRICK FINUCANE

Introduction

18.1. At various times during the 1980s, the UDA targeted three defence solicitors working in Northern Ireland: Patrick Finucane, Oliver Kelly and Paddy McGrory.

18.2. This chapter provides an overview of the following threats to their lives:

a. In June 1981, the threat to Oliver Kelly.

b. In August 1981, the threat to Patrick Finucane.

c. In June 1985, the threat to Patrick Finucane.

d. In December 1988, the threats to Patrick Finucane, Oliver Kelly and Paddy McGrory.

e. In July 1989, the threat to Paddy McGrory.

f. In October 1989, the threat to Paddy McGrory.

18.3. Sir Desmond de Silva QC found that in only the first of these cases did the state take action to protect one of these solicitors.

The threat to Oliver Kelly in June 1981

18.4. In June 1981, the Irish Joint Section (IJS) received intelligence which suggested that the UDA had carried out targeting activity on Oliver Kelly and intended to murder him.[1597] As is set out earlier in this document, the IJS was established in the 1970s as a joint unit of the Security Service and the Secret Intelligence Service (SIS), but by 1981

[1597] de Silva Review, Volume I at [307/16.6].

it appears to have been led and predominantly staffed by the Security Service.

18.5. Security Service documentation made available to, but not published by, Sir Desmond recorded that during discussions between officers from the IJS and the Deputy Head of RUC Special Branch, the latter "*ruled out warning Kelly since RUC relations with Kelly are strained following the break-out*".[1598] The 'break-out' was a reference to the escape of seven prisoners from Crumlin Road Prison on 10 June 1981, which the RUC considered Kelly to have "*master-minded*".[1599] The Deputy Head of Special Branch offered a second reason against warning Oliver Kelly about the intelligence: "*that Kelly must know already that he is under threat from loyalist paramilitaries*". [1600]

18.6. Sir Desmond described that there was "*a dramatic change of approach*" later in the month, when the Director and Co-ordinator of Intelligence (DCI) made it known that Mr Kelly was "*directly and constructively involved*" as an intermediary in discussions between the UK Government and the hunger strikers at HMP Maze.[1601] The DCI indicated that it was "*clearly of extreme importance that Kelly remain in good health providing this could be achieved without endangering [an agent]*". [1602]

18.7. Following the DCI's intervention, the decision was taken to arrest selected UDA figures in order to deter the group from mounting an attack on Mr Kelly. This action was taken and appears to have preventing the UDA from carrying out its attack. It is the only

[1598] de Silva Review, Volume I at [307/16.8].
[1599] de Silva Review, Volume II at [724].
[1600] de Silva Review, Volume I at [307/16.8].
[1601] de Silva Review, Volume I at [308/16.13].
[1602] de Silva Review, Volume I at [308/16.15].

example of action being taken by the state to protect one of the three solicitors targeted by the UDA during the 1980s. [1603]

18.8. In the de Silva Review, Sir Desmond expressed grave concern that action to protect Mr Kelly was only contemplated after the DCI had indicated that he was playing a constructive role in the discussions with the hunger strikers. Sir Desmond found this was indicative of an "*unjustifiable approach to threat intelligence*", primarily by the RUC Special Branch, which distinguished between those who were deemed 'constructive' and worthy of protection, and those who were not. He also found it *"clear that the Security Service / SIS acquiesced in that approach."* [1604]

The threat to Patrick Finucane in August 1981

18.9. In August 1981, an IJS agent within the UDA reported intelligence about the UDA's targeting efforts. A report produced by the Security Service on 24 August 1981 recorded the threat to Patrick Finucane as follows:

> "*One target stood out above the others. This was Pat Finucane, a solicitor with strong republican connections who was closely involved with Bobby Sands at the time of the latter's election campaign. The UDA has details of Finucane's office and the security restrictions imposed on those entering the building (an almost exact replica of [redacted]). However, [redacted] was far more worried that they now had Finucane's home address. [redacted] explained that this address was in what [redacted] called "murder mile". It is on the edge of the loyalist Westland Estate. The house backs on to the UDA club, "Crangles", and there is a back alley connecting the two. The area is the stamping-*

[1603] de Silva Review, Volume I at [309/16.17-16.18].
[1604] de Silva Review, Volume I at [309/16.21].

ground of [redacted], the UFF's most successful gun-man, who made his name shooting people in their beds, and [redacted] saw Finucane as the easiest possible target for [redacted] and his team. [redacted] predicted that the team would use the back-alley, force an entry and shoot Finucane in the early hours. Once the order to go ahead had been given there would be nothing to stop [redacted] doing this at once. He had operated in the area long enough for a cursory reconnaissance to be sufficient, and might not feel the need for any reconnaissance at all." [1605]

18.10. Another intelligence report received on the same date recorded further details about the extent of the UDA's knowledge of Mr Finucane's work address:

"*He works from an office at [redacted] Victoria Square. He shares an office with another solicitor called Madden. The office is situated on the third floor. There is first-class security. There is one elderly doorman, plus a man in his early twenties who operates the lift. All visitors must sign a book in the entrance hall before permitted to enter*." [1606]

18.11. Sir Desmond described the nature of this intelligence as indicating "*the gravity of the UDA threat against Mr Finucane*".[1607] The UDA was aware of the exposure of the Finucane family home; the security arrangements at Mr Finucane's office; and the identity of the loyalist gunman who was likely to carry out the attack.

18.12. The note made on 24 August 1981 records that the IJS quickly held a meeting with the Head of RUC Special Branch to discuss possible courses of action. Those included:

[1605] de Silva Review, Volume II at [692]-693].
[1606] de Silva Review, Volume II at [701].
[1607] de Silva Review, Volume I at [310/16.27].

"*Warn Finucane either officially or by an anonymous 'tip off' or threat*"

"*Arrest..... the UFF team*"

"*Arrest Finucane*"

"*Establish an overt SF [Security Force] presence in the area*"

"*Carry out a mock attack on Finucane's house, thus causing him to flee*"

"*Put [in place] E4A surveillance*" [1608]

18.13. In respect of the first option, the note recorded:

"*It was agreed that it was very unlikely that Finucane could be trusted to keep his own counsel if warned that he was a target. If he were to seek to exploit this information by making it public then the risks to [redacted] would be enormous. Clearly, this course of action was therefore unacceptable*." [1609]

18.14. Sir Desmond considered that neither the IJS nor the RUC were in a strong position to assess the degree of trust they could place in Patrick Finucane. He found that there was a real risk that the making of such judgements would lead to individuals deemed untrustworthy not receiving any protection from the state. [1610]

18.15. The Head of RUC Special Branch "*thought that the attack on Finucane could be carried out very soon, possibly that night*" and "*therefore assessed the threat as very real and imminent*".[1611] However, the Head of RUC Special Branch ultimately reached the

[1608] de Silva Review, Volume II at [694].
[1609] de Silva Review, Volume II at [695].
[1610] de Silva Review, Volume I at [314/16.46].
[1611] de Silva Review, Volume II at [698].

view "*that the RUC would take no action on the information*".[1612] This was on the basis "*that for all concerned the balance of advantage lay with preserving [redacted] as a source for as long as possible*".[1613] The note recorded that all present agreed with this decision.[1614] A later note made by an IJS officer set out that the Head of RUC Special Branch had left "*no-one in any doubt that an overriding concern for the safety of [the source] would lie behind any decision he made*". [1615]

18.16. During the course of the de Silva Review, individuals from the RUC and the Security Service assumed conflicting positions as to where responsibility for the decision to exploit this intelligence lay. R/15, a retired RUC officer, said it was for the Security Service to handle the intelligence as it was received from their source; on the other hand, G/07, a Security Service officer, said the decision as to how to exploit the intelligence in question could only have rested with RUC Special Branch. [1616]

18.17. Sir Desmond concluded that the decision not to act on the threat intelligence, to prioritise the life of the agent and to take no action to protect Patrick Finucane's life was not justifiable in the circumstances. [1617]

The threat to Patrick Finucane in June 1985

18.18. On 19 June 1985, intelligence received by the Security Service recorded the following:

> "*[redacted] UDA Brigadier [redacted] is trying to obtain information about a lawyer called Finnucane* [sic]. *[redacted] is*

[1612] de Silva Review, Volume II at [699].
[1613] de Silva Review, Volume II at [699].
[1614] de Silva Review, Volume II at [699].
[1615] de Silva Review, Volume I at [311/16.34] and Volume II at [702].
[1616] de Silva Review, Volume I at [312/16.36-16.40].
[1617] de Silva Review, Volume I at [313/16.43].

interested in this man because he is sympathetic to PIRA. He considers him a priority target."[1618]

18.19. The Security Service shared this intelligence with the RUC Special Branch via a Northern Ireland Intelligence Report (NIIR) which reproduced verbatim the information set out above.[1619] The NIIR was distributed to four RUC Special Branch officers, including the Head and the Deputy Head. [1620]

18.20. However, Sir Desmond found there was no record in the documentation he received to suggest that the RUC Special Branch took any action as a result of this intelligence or that the Security Service queried whether any action had been taken.[1621]

The threats to Patrick Finucane, Oliver Kelly and Paddy McGrory in December 1988

18.21. On 19 December 1988, the Security Service reported intelligence of a UDA threat against three solicitors:

"*[redacted] was to have held a meeting of the military commanders on [redacted] December to discuss plans to kill the three solicitors who have represented republicans at recent hearings. These were Paddy McGrory, Oliver Kelly and the 'shoot to kill' solicitor in Armagh*." [1622]

18.22. Sir Desmond was satisfied that the Security Service should have known at the time that the 'shoot to kill' solicitor was a reference to Patrick Finucane, as his involvement in the inquest into the deaths of the three men shot by the RUC in County Armagh on 11 November

[1618] de Silva Review, Volume II at [705].
[1619] de Silva Review, Volume II at [706].
[1620] de Silva Review, Volume I at [315/16.54].
[1621] de Silva Review, Volume I at [315/16.55].
[1622] de Silva Review, Volume II at [707].

1982 had been widely reported and the inquest had been referred to the 'shoot to kill inquest'. [1623]

18.23. Sir Desmond considered that this intelligence should have been assessed as constituting a potentially serious threat to the lives of the three solicitors; indeed, two of the solicitors, Patrick Finucane and Oliver Kelly, had been longstanding targets of the UDA, having been targeted in 1981. [1624]

18.24. Sir Desmond examined material outlining the background to the Security Service's agent-reporting in December 1988. That material was not published within Volume II of the De Silva Review. Nonetheless, Sir Desmond was satisfied that there was a good reason why the Security Service was unable to receive any further intelligence on the outcome of the meeting of the UDA's military commanders. [1625]

18.25. Notwithstanding this, Sir Desmond considered that:

a. The Security Service could have considered whether to have the FRU agent Brian Nelson tasked to report on further targeting.[1626]

b. If further intelligence was unlikely to be forthcoming, this meant there was a more pressing obligation to consider the steps that might be taken to protect life. [1627]

18.26. However, Sir Desmond found that there was no documentary record to suggest that the Security Service took any action to disseminate the intelligence, nor was there any reference in the RUC records to suggest that they received the intelligence. [1628] Sir Desmond

[1623] de Silva Review, Volume I at [317/16.62-16.65].
[1624] de Silva Review, Volume I at [318/16.70].
[1625] de Silva Review, Volume I at [319/16.75].
[1626] de Silva Review, Volume I at [319/16.76].
[1627] de Silva Review, Volume I at [319/16.77].
[1628] de Silva Review, Volume I at [320/16.84].

concluded that the Security Service was responsible for the failure to act on the December 1988 threat intelligence in relation to the three solicitors.[1629] In view of the dissemination of propaganda described in Chapter 19, Sir Desmond emphasised that the obligation on the Security Service to act on this threat intelligence was "*particularly acute*". [1630]

Threats and protection re Oliver Kelly and Paddy McGrory after the murder of Patrick Finucane

18.27. On 16 February 1989, four days after the murder of Patrick Finucane, the RUC Special Branch received reports from two sources that Oliver Kelly and Paddy McGrory were also being targeted by the UDA. [1631] Some steps were subsequently taken by the state to protect them:

a. Oliver Kelly, in his witness statement to the Rosemary Nelson Inquiry, recalled that the RUC advised him that he had been targeted and sought to provide him with advice about his safety. [1632]

b. Paddy McGrory's son, Barra, who would later become the DPP(NI) told John Ware that a senior Irish Government official made representations to the RUC that his father should be protected.[1633] Paddy McGrory's application for a personal protection weapon was approved on or around 31 March 1989. [1634]

[1629] de Silva Review, Volume I at [321/16.86].
[1630] de Silva Review, Volume I at [319/16.73].
[1631] de Silva Review, Volume II at [96]-[97].
[1632] de Silva Review, Volume I at [434/23.14].
[1633] de Silva Review, Volume I at [434/23.12]; John Ware, "Plot to kill Belfast lawyers revealed", *Guardian*, (2 August 2002).
[1634] de Silva Review, Volume 1 at [434/23.13].

18.28. On 17 February 1989, two documents were generated which addressed the ongoing threat to Oliver Kelly and Paddy McGrory:

a. An NIIR recorded: "*Whatever the intention at the time it may be that the reaction following Finucane's murder on 12 February was such that the UDA would be deterred from mounting further attacks against such targets for fear of provoking retaliation. However, if firm plans do exist in relation to the other two, the possibility of attacks against them remains*".[1635]

b. A note made by the Assessments Group observed that Paddy McGrory represented the families of three members of the IRA shot in Gibraltar on 6 March 1988 and was criticised for so doing in the UDA's "Ulster" magazine, which "*implied he deserved the same fate*" as the three men who were shot. [1636]

The threat to Paddy McGrory in July 1989

18.29. On 10 July 1989, a CF produced by the FRU recorded that a UDA member had passed on targeting information to Brian Nelson.[1637] The targeting material recorded that:

a. P. J. McGrory "*spends a lot of time in "The Chester", Antrim Rd, late afternoon…*".

b. "*Every Sunday P. J. McGrory visited the "Kitchen Bar"… parks the car (Merc) out of the road… he is always with his son*". [1638]

18.30. Sir Desmond found that this intelligence was not passed by the FRU to the RUC Special Branch. On 30 September 1991, the then Commanding Officer of the FRU, A/14, wrote to the Deputy Head of RUC Special Branch to explain why, saying that Nelson did not

[1635] de Silva Review, Volume II at [198].
[1636] de Silva Review, Volume II at [710].
[1637] de Silva Review, Volume II at [538].
[1638] de Silva Review, Volume II at [539].

consider Paddy McGrory to be a UDA target and that there was therefore no need to warn Paddy McGrory. [1639]

18.31. Sir Desmond did not accept the FRU's rationale for failing to pass the threat intelligence against Paddy McGrory to the RUC Special Branch. It was not, in his view, for the FRU to decide the level of risk faced by an individual without reference to the RUC Special Branch. [1640] In any event, Sir Desmond judged that the level of risk to Paddy McGrory at that time was high. [1641]

The threat to Paddy McGrory in October 1989

18.32. In October 1989, the RUC Special Branch became aware of an UVF plan to murder Paddy McGrory in response to his role representing the families of three members of the IRA shot in Gibraltar on 6 March 1988.[1642] The UDA were reported to be aware of both his home and work addresses. [1643]

18.33. A note in the RUC Special Branch's Threat Book recorded that the Deputy Head of RUC Special Branch had asked for the threat to be included in the Chief Constable's morning briefing on 11 October 1989. A subsequent note in the Threat Book recorded that no further action would be taken in respect of the intelligence, on the instructions of the Deputy Head of RUC Special Branch.[1644]

[1639] de Silva Review, Volume I at [435/23.17].
[1640] de Silva Review, Volume I at [435/23.19].
[1641] de Silva Review, Volume I at [435/23.18].
[1642] de Silva Review, Volume I at [435/23.20-23.21].
[1643] de Silva Review, Volume I at [436/23.21].
[1644] de Silva Review, Volume I at [436/23.21].

Sir Desmond's conclusions

18.34. The conclusions drawn by Sir Desmond on the threats made against Mr McGrory and Mr Kelly after Patrick Fincuane's murder, and the action taken in response, are reproduced here in full.

> *"There is no doubt that there was a serious threat to the lives of both Paddy McGrory and Oliver Kelly in the aftermath of Patrick Finucane's murder. The RUC did take action to seek to protect Paddy McGrory after the murder, albeit it may be the case that this action was prompted by representations made by Irish Government officials. Oliver Kelly was warned by the RUC that his life was in danger but appears to have declined to seek or receive RUC protection.*
>
> *The handling of threat intelligence relating to Paddy McGrory in July and October 1989 demonstrates a serious failure by the authorities to take proportionate steps to protect a solicitor whose life was in danger. In July 1989, the FRU failed to pass important threat intelligence to the RUC SB. In October 1989, the RUC took no action to warn Mr McGrory that the UVF were seeking to murder him. Although the responsibility for these omissions lies with the FRU and the RUC respectively, this failure must also be positioned in the context that representations had previously been made to very senior figures in the UK Government requesting that the necessary steps be taken to protect Mr McGrory."* [1645]

[1645] de Silva Review, Volume I at [436/23.23-23.24].

Allegations that RUC officers encouraged the UDA to target Paddy McGrory and Oliver Kelly

18.35. As is discussed earlier in this document, Sir Desmond found it *"likely that an RUC officer or officers did propose Patrick Fincuane, along with at least one other individual (T/05), as a target when speaking to L/03 in RUC Castlereagh* [detention centre] *on 8 or 9 December 1988."* [1646] There is no suggestion that T/05 was a solicitor; indeed, the context suggests he ran a snack van. [1647]

18.36. A report prepared by the Lawyers Committee for Human Rights entitled, *"Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane"*, which was prepared in 2002, contains a further allegation that RUC officers also suggested Oliver Kelly and Paddy McGrory as targets in similar circumstances. The information is said to have come in 1992 from *"a source found reliable by the Lawyers Committee … [the source] maintained loyalist contacts."* The report records the source giving the following account to the Committee:

> *"[A]bout three weeks before the murder, two or three mid-level RUC officers intruded upon the questioning of three separate UDA men detained at Castlereagh Detention Centre. The UDA detainees were members of a squad of approximately a dozen assassins known as the 'military men'. These detainees operated in the same area as FRU agent Brian Nelson.*
>
> *The officers allegedly asked the detective interrogating each detainee, 'did you tell them about the treble?' By 'treble' they meant Finucane and fellow defence solicitors P.J. McGrory and Oliver Kelly. At this point, the officers and the detectives told the UDA men to forget about indiscriminate sectarian killings and*

[1646] de Silva Review, Volume I at [344/18.69].
[1647] de Silva Review, Volume I at [343/18.62].

concentrate on the three solicitors as the 'brains behind the IRA.' A journalist emphasized to the Lawyers Committee that this account was based on extremely reliable authority." [1648]

18.37. Some support for this allegation may be found in two sections of the de Silva Review.

18.38. First, Sir Desmond considered a conversation between the Irish Ambassador and the UK Cabinet Secretary on 13 February 1989, the day after the murder of Patrick Finucane. According to the Cabinet Office note of the meeting, seen by Sir Desmond, the Ambassador raised concerns that: *"the police in Castlereagh were encouraging Protestant paramilitaries to attack Republican lawyers. In this context, the names of Messrs Finucane, McGrory and Kelly had been mentioned."* [1649]

18.39. Sir Desmond made the following observation on the 13 February 1989 meeting:

> *"The Ambassador did not reveal the source of the information … RUC intelligence received shortly after the murder of Patrick Finucane raises the possibility that such reports may have originated from loyalist sources briefing a well-known journalist, who subsequently passed the information on more widely. However, as these reports were only hearsay, I have sought to examine the full range of evidence relating to this issue."* [1650]

18.40. Second, Sir Desmond also quoted the notes made by John Ware of his interview with Tommy "Tucker" Lyttle in 1994. [1651] According to

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[1648] The Lawyers Committee for Human Rights, *"Beyond Collusion: The UK Security Forces and the Murder of Patrick Finucane"*, 2002, at [44].
[1649] de Silva Review, Volume I at [337/18.28].
[1650] de Silva Review, Volume I at [337/18.29].
[1651] It is noted that the Lawyers Committee said it received the information from its source in 1992. It makes no comment on when that information received support from the unnamed journalist.

those notes, Lyttle said that: "*The RUC officers had suggested to this UDA trio that they should remove Finucane and also Paddy McGrory and Oliver Kelly*". [1652] The "UDA trio" were L/03 and two other UDA men.

18.41. Sir Desmond made no finding as to whether Mr Kelly and Mr McGrory (who are named in his report) were suggested as targets by RUC officers in the circumstances described above. It is not possible to ascertain from the available published material how many sources there are for these allegations, or (if there is more than one) how they relate to one another.

[1652] de Silva Review, Volume I at [338/18.34].

19. THE COMMENTS OF DOUGLAS HOGG MP

The Debate

19.1. On 17 January 1989, during a debate of the House of Commons Standing Committee B about the Prevention of Terrorism (Temporary Provisions) Bill, Douglas Hogg MP, 1653 the Parliamentary Under Secretary of State at the Home Office, made the following statement:

> "*I have to state as a fact, but with great regret, that there are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA. I repeat that there are in the Province a number of solicitors who are unduly sympathetic to the cause of the IRA. One has to bear that in mind.*" [1654]

19.2. Mr Hogg's statement was immediately challenged by other MPs on the Committee, most notably by Seamus Mallon (the Deputy Leader of the Social Democratic and Labour Party, who would go on to become the Deputy First Minister of Northern Ireland) who responded first:

> "*That is a remarkable statement for a Minister to make about members of a profession who have borne much of the heat in a traumatic and abnormal situation. Such words should not be said without the courage to support them.*" [1655]

19.3. Mr Mallon then asked Mr Hogg to provide specific support for his statement. In response, Mr Hogg described himself as having three choices in relation to the statement he had just made:

[1653] Currently Viscount Halisham and Baron Hailsham of Kettlethorpe.
[1654] Hansard, Standing Committee B, 17 January 1989, col. 508.
[1655] Hansard, Standing Committee B, 17 January 1989, col. 509.

"*First, I could choose not to make that fact plain to the Committee. Secondly, I could put it in the terms that I have used, and make the general statement that there are a number of solicitors in Northern Ireland known to be sympathetic to one or other terrorist organisation. The third possibility is for me to say that Mr. So-and-So is known to be a solicitor sympathetic to the cause of the IRA*". [1656]

19.4. Mr Hogg continued:

"*Would it be right for me to withhold from the Committee my belief, based on advice, that there are a number of solicitors in Northern Ireland known to be sympathetic to one or other terrorist organisation? That is true and it is relevant to what we are discussing. It seems to me plain that if I believe that to be true I should state it. I do believe it to be true, and I state it*". [1657]

19.5. As for whether he would name the solicitors in question, Mr Hogg said: "I shall not identify specific instances, specific individuals or specific cases". [1658]

19.6. He went on to say:

"*I thought very carefully about the matter and the conclusion that I came to was that it was right that I should make the statement in the form that I have*". [1659]

19.7. The Committee's discussion about the statement made by Mr Hogg lasted an hour. During that time, Mr Hogg repeated the statement on more than half a dozen occasions.

[1656] Hansard, Standing Committee B, 17 January 1989, col. 509.
[1657] Hansard, Standing Committee B, 17 January 1989, col. 509.
[1658] Hansard, Standing Committee B, 17 January 1989, col 510.
[1659] Hansard, Standing Committee B, 17 January 1989, col 510.

19.8. Mo Mowlam MP, who would become the Secretary of State for Northern Ireland in 1997, observed that Mr Hogg had referred interchangeably to his "*knowledge*" and his "*belief*" about the truth of the statement. In response to her observation, Mr Hogg said:

> "*It is true that the majority of solicitors in Northern Ireland are honourable people acting with courage in difficult circumstances. It is also true that there are a number – a small number – of solicitors who are unduly sympathetic to the cause of the IRA; a small number, but a number. I am asked how I state that. I do so on advice. Does that mean that I know or I believe? That is a nice question. I am advised as a Minister that those are the facts. I believe them to be true and I state them as facts on advice that I have received.*" [1660]

19.9. Mr Hogg later clarified:

> "*The mere fact that someone represents terrorists or chooses to do so frequently does not automatically or necessarily bring that person within the description that I have used*". [1661]

19.10. Speaking at the conclusion of this discussion, Mr Mallon said:

> "*If I were a solicitor in the North of Ireland and read these Committee proceedings, my reaction would be "With friends like that, who needs enemies?"...*
>
> *"I have no doubt that there are lawyers walking the streets or driving on the roads of the North of Ireland who have become targets for assassins' bullets as a result of the statement that has been made tonight. That shows the seriousness of the matter...*

[1660] Hansard, Standing Committee B, 17 January 1989, col 514.
[1661] Hansard, Standing Committee B, 17 January 1989, col 520.

"The Minister should not be allowed to make such an accusation without substantiating it. Following his statement, people's lives are in grave danger. People who have brought cases to the European Court against this legislation will be suspected. People accused of IRA membership and other activities will be suspected. We have thrown a blanket over many lawyers in the North of Ireland, and it will be on the head of this Minister and Government if the assassin's bullet decides to do, by lead, what this Minister has done by word." [1662]

19.11. Less than four weeks later, Patrick Finucane was murdered. The following day, Mr Hogg issued a statement:

"*This is a tragic and wicked killing. I very much hope that those responsible will be brought before the courts as soon as possible. As to the identity of those responsible or the circumstances in which the murder has taken place, that is a matter for the RUC*." [1663]

19.12. On the same day, the Irish Taoiseach, Charles Haughey TD, issued a statement which Sir Desmond de Silva QC considered implicitly linked Mr Hogg's comments to the murder of Patrick Finucane:

"*The need for the greatest care to be given to any statement which might have tragic consequences in Northern Ireland has once again been underlined and I expect that this aspect will be urgently and fully considered*." [1664]

[1662] Hansard, Standing Committee B, 17 January 1989, col 518-519.
[1663] de Silva Review, Volume I, at [293/14.51].
[1664] de Silva Review, Volume I, at [292/14.48] to [293/14.48].

Briefings received by Mr Hogg prior to the debate

19.13. Prior to the debate on 17 January 1989, Mr Hogg received briefings from the RUC, the Metropolitan Police and the Home Office.

Briefing from the RUC

19.14. On 24 November 1988, Mr Hogg travelled to Belfast. His itinerary that day included a meeting with (**i**) Sir John Hermon, Chief Constable of the RUC; (**ii**) Blair Wallace, Senior Assistant Chief Constable; (**iii**) Assistant Chief Constable Wilf Monahan; and (**iv**) the Assistant Chief Constable responsible for the RUC Special Branch (albeit that, as it transpired, the Deputy Head of Special Branch, Assistant Chief Constable Brian Fitzsimons, attended in his place). [1665]

19.15. The meeting was "*to discuss Prevention of Terrorist legislation including financial aspects*".[1666] A note of the meeting, and the points to be followed up, was prepared by Mr Hogg's Private Secretary. It included the following paragraph:

> "*The RUC referred to the difficulties caused by the half dozen or so solicitors who are effectively in the pockets of terrorists, and who made good use of their right to insist on access to documents. This was put rather nicely, I thought, by the argument that such solicitors are defending the organisation, rather than the individual. Again, illustrative examples were promised, which I should be grateful if you would pursue with Mr Templeton.*" [1667]

19.16. Elsewhere, the note recorded that Mr Hogg sought such "illustrative examples" for "his use in defending the Government's position in the House". [1668]

[1665] de Silva Review, Volume I at [286/14.8]; de Silva, Volume II, at [713].
[1666] de Silva Review, Volume II, at [713].
[1667] de Silva Review, Volume II, at [715/(iv)].
[1668] de Silva Review, Volume II, at [714/(i)].

Information provided by the RUC

19.17. In a note written on the same day as the meeting with Mr Hogg, Sir John Hermon wrote:

> "*S/ACC Wallace was present at the meeting + he + ACC Monahan (also present) can now take the matters forward as agreed in our discussions.*"[1669]

19.18. S/ACC Wallace told Sir Desmond de Silva that he, ACC Monahan and ACC Fitzsimons were not admitted to the meeting with Mr Hogg until half an hour after it started.[1670] This means that, for the first half an hour, the RUC was only represented by Sir John Hermon. S/ACC Wallace told Sir Desmond that he left the meeting before its conclusion. He said that, when he was present at the meeting, he did not hear anyone make any reference to solicitors. [1671]

19.19. On 28 November 1988 S/ACC Wallace instructed the Head of the RUC Special Branch "to prepare family connections to PIRA of Solicitors (1) Oliver Kelly (2) Patrick Finucane" with a direction that no sensitive material was to be included.[1672]

19.20. These documents were prepared during the course of December 1988,[1673] and provided to S/ACC Wallace on 6 January 1989.[1674] On 11 January 1989, these documents were sent by the RUC to the Northern Ireland Office,[1675] and by 13 January 1989 they were in the possession of the Home Office. [1676]

[1669] de Silva Review, Volume II, at [719].
[1670] de Silva Review, Volume I, at [286/14.11].
[1671] de Silva Review, Volume II, at [286/14.11] to [287/14.11].
[1672] de Silva Review, Volume I, at [287/14.13]; de Silva Review, Volume II, at [718].
[1673] de Silva Review, Volume II, at [717].
[1674] de Silva Review, Volume II, at [716].
[1675] de Silva Review, Volume II, at [721].
[1676] de Silva Review, Volume II, at [720].

19.21. The RUC's note on Patrick Finucane comprised two pages. The first page, which was classified as 'confidential', listed his "Relatives with PIRA Connections", setting out that four of his brothers had PIRA connections, that his parents' house had been used in the early 1980s for PIRA meetings, and that his mother had attended 'H Block' demonstrations in London. [1677]

19.22. The second page, which was classified as 'secret', comprised a "*Personal history*" of Patrick Finucane. This recorded that Patrick Finucane was a partner in the firm of Madden & Finucane, a member of the Association of Socialist Lawyers and had been elected to the Executive Committee of the Northern Ireland Civil Rights Association in September 1980.[1678] The document went on to say:

> "*FINNUCANE [sic] also became joint treasurer for the 'Smash H Block Committee' during 1980 and regularly visited the hunger-strikers ie Bobby SANDS etc, giving legal advice and whilst doing so associating closely with Gerry ADAMS, PSF…*
>
> *During May/June 1985 he was a speaker at the International Conference of Jurists for Ireland in Paris and since then FINUCANE has continued to support the Republican cause using his expertise in an advisory capacity and associating closely with PIRA/PSF personnel.*"[1679]

Sir Desmond's assessment of this information

19.23. Sir Desmond reached two conclusions about the contents of the note provided by the RUC on Patrick Finucane:

a. First, that the note represents further evidence of the extent to which the RUC had formed the opinion that Patrick Finucane

[1677] de Silva Review, Volume II, at [722].
[1678] de Silva Review, Volume II, at [723].
[1679] de Silva Review, Volume II, at [723].

was a subversive threat rather than a lawyer carrying out his professional duties.[1680]

b. Second, that there was nothing in the note that could substantiate the serious allegation that there were a "*half dozen or so solicitors who are effectively in the pockets of terrorists*".[1681] In this respect, Sir Desmond agreed with Justice Cory's conclusion that there was "*...nothing in the document that indicates that Patrick Finucane was a terrorist or that he belonged to a terrorist organisation*".[1682]

Did the RUC intend for Mr Hogg to make this briefing public?

19.24. Sir Desmond considered whether the RUC intended for Mr Hogg to make public the comments about solicitors made during the meeting on 24 November 1988. In their comments to the Stevens III Investigation team, Mr Hogg and Sir John Hermon adopted opposing positions:

a. Mr Hogg described the idea that he would be provided with information by the RUC - in connection with a Bill for which he was responsible - and not use it in the House of Commons as "*bizarre*".[1683]

b. Sir John, on the other hand, maintained that he personally asked Mr Hogg not to tell MPs or Parliament about the problem of solicitors who may have involved themselves in terrorism.[1684]

19.25. Sir Desmond was satisfied, on the basis of the documents he reviewed, that it was understood by all concerned that Mr Hogg wished to refer to the issue of solicitors in Northern Ireland during

[1680] de Silva Review, Volume I, at [290/14.35[.
[1681] de Silva Review, Volume I at [290/14.36]; de Silva Review, Volume II, at [715/(iv)].
[1682] Cory Report at [92/1.259].
[1683] de Silva Review, Volume I, at [288/14.18].
[1684] de Silva Review, Volume I, at [287/14.16].

the course of the debates in the House of Commons.[1685] He reached this view for three reasons:

a. The Home Office note of the meeting on 24 November 1988 referred to Mr Hogg seeking "*illustrative examples to be supplied for his use in defending the Government's position in the House*" and that a request was made "*to ensure that suitable illustrations are included in Mr Hogg's briefing for Committee Stage*".[1686]

b. The Home Office note also recorded, in relation to one topic (albeit not the topic of solicitors), that Sir John was "*happy to be quoted*".[1687]

c. The instruction by S/ACC Wallace to the Head of the RUC Special Branch on 28 November 1988 to prepare a document setting out the "*family connections to PIRA*" of Patrick Finucane directed that no sensitive material was to be included. On the basis that Mr Hogg was cleared to receive sensitive material, Sir Desmond was satisfied that this direction demonstrated that the RUC was aware of Mr Hogg's intention to publicly disclose the information he was provided with.[1688]

Briefing from the Metropolitan Police Service

19.26. On 8 December 1988, Mr Hogg met with the Special Branch of the Metropolitan Police Service. His Private Secretary's notes of that meeting recorded that "*care was needed to ensure that solicitors sympathetic to a terrorist cause were not able to frustrate [an] investigation*".[1689]

[1685] de Silva Review, Volume I, at [288/14.23].
[1686] de Silva Review, Volume I, at [288/14.19]; de Silva, Volume II, at [714/(i)].
[1687] de Silva Review, Volume I, at [288/14.20].
[1688] de Silva Review, Volume I, at [288/14.22].
[1689] de Silva Review, Volume I at [288/14.24] to [289/14.25].

Briefing from the Home Office

19.27. Mr Hogg told Sir Desmond de Silva that, in preparation for the committee session, he would have "*received extensive advice and information from Home Office officials*" and that he would hold meetings before a committee session at which "*what I was to say in the debate would be the subject of discussion and advice*".[1690]

19.28. Sir Desmond reviewed Mr Hogg's Private Secretary's note of the briefing he received from Home Office officials on 16 January 1989. He found that it made no reference to the briefing he had received from the RUC or to the role of solicitors in Northern Ireland.[1691]

19.29. Sir Desmond also reviewed and published the speaking note prepared for Mr Hogg by Home Office officials resisting amendments to clauses 17 and 18 of the Bill, proposed by Peter Archer MP and William Cash MP. Those amendments sought to provide solicitors with a defence in the event that they: (**i**) made a disclosure to a client that was likely to prejudice a terrorist investigation in order to take instructions or provide legal advice; or (**ii**) refused to disclose information about acts of terrorism on the grounds of legal professional privilege.[1692] This speaking note made no reference to the briefing Mr Hogg had received from the RUC on 24 November 1988 or to the information the RUC subsequently provided about Patrick Finucane or Oliver Kelly.

19.30. For these reasons, Sir Desmond concluded that Mr Hogg had not based his comments about solicitors in Northern Ireland on advice he had received from Home Office officials.[1693]

[1690] de Silva Review, Volume I, at [291/14.39].
[1691] de Silva Review, Volume I, at [291/14.41].
[1692] de Silva Review, Volume II, at [725] to [729].
[1693] de Silva Review, Volume I, at [292/14.44].

Did Mr Hogg's comments play a role in the murder of Patrick Finucane?

19.31. Sir Desmond recognised that it has been alleged by some that Mr Hogg's comments prompted the UDA to murder Patrick Finucane. Sir Desmond considered this allegation and reached the following conclusions:

a. There are grounds for believing that Mr Hogg's comments, albeit unwittingly, further increased the vulnerability of prominent solicitors in Northern Ireland who represented republican suspects.[1694]

b. There is evidence to suggest that the UDA did consider and discuss Mr Hogg's comments about solicitors. Sir Desmond read, but did not publish, Security Service intelligence which recorded that Thomas 'Tucker' Lyttle had raised Mr Hogg's comments with another UDA member the week before Patrick Finucane's murder. [1695]

c. However, Sir Desmond found that it was clear that the UDA were already conspiring to murder Patrick Finucane before Mr Hogg's comments were made on 17 January 1989. He therefore accepted the position that had been conveyed to British Irish Rights Watch by UDA sources: that Mr Hogg's comments did not precipitate the murder of Patrick Finucane.[1696]

d. Further, Sir Desmond found there was no evidence whatsoever to suggest that Mr Hogg was aware of any threat to kill Patrick Finucane or indeed any other solicitor in Northern Ireland.[1697] He concluded there was no basis for any suggestion that Mr Hogg

[1694] de Silva Review, Volume I at [294/14.59] and [295/14.62].
[1695] de Silva Review, Volume I, at [294/14.58].
[1696] de Silva Review, Volume I, at [294/14.56].
[1697] de Silva Review, Volume I, at [294/14.55].

intended his comments to provide a form of political legitimacy to what was being planned by the UDA.[1698]

Was Mr Hogg compromised?

19.32. In respect of the basis of the remarks made by Mr Hogg, Sir Desmond de Silva was satisfied of two things:

a. First, that they were made as a direct result of the briefing notes sent to him by the RUC, following the meeting on 24 November 1988, setting out the "*family connections to PIRA*" of Patrick Finucane and Oliver Kelly.

b. Second, that the contents of that document did not substantiate the claim made by the RUC during the meeting with Mr Hogg on 24 November 1988 that there existed a "*half dozen or so solicitors who are effectively in the pockets of terrorists*". [1699]

19.33. In the overview report produced by the Stevens III Investigation, Lord Stevens addressed the comments made by Mr Hogg as follows:

"*To the extent that they were based on information passed by the RUC, they were not justifiable and the Enquiry concludes that the Minister was compromised*". [1700]

19.34. Sir Desmond agreed with the conclusion that Mr Hogg had been compromised by the RUC. He found that the RUC's briefing of him reflected its desire to discredit a small number of solicitors representing republican paramilitaries, and that the RUC intended

[1698] de Silva Review, Volume I, at [295/14.60].
[1699] de Silva Review, Volume I, at [295/14.61].
[1700] Stevens 3 Overview and Recommendations at [13/2.17].

that Mr Hogg put into the public domain their view that such solicitors were too close to those they represented. [1701]

[1701] de Silva Review, Volume I, at [295/14.63] to [295/14.64].

20. THE ROLE OF THE SECURITY SERVICE

20.1. A history of MI5's and evolving role in Northern Ireland is set out in Chapters 5 and 7 of this Opening. The purpose of this Chapter is to set out what is known publicly on four topics of key relevance to this Inquiry

20.2. A 1986 FRU directive described the hierarchy between MI5 (in the form of the DCI) and the FRU as follows,

> "*The overall direction for source coverage within the Province is the responsibility of the Director and Coordinator of Intelligence (DCI), who exercises this responsibility through the various Intelligence Committees. Within HQNI the Assistant Secretary Political (ASP), who is DCI's representative, is to be kept informed of the status of current sources on a regular basis. In addition, he is the Security Service's representative, responsible for the maintenance and safekeeping of all FRU source files.*" [1702]

20.3. In relation to those files, Sir Desmond de Silva QC also noted that,

> *"The FRU files were also generally described in evidence to my Review as technically the property of the Security Service."* [1703]

20.4. The de Silva Review was provided with evidence that a Security Service secretary stationed within the FRU looked after the files. Sir Desmond concluded that the secretary role was merely administrative. He quoted an October 1990 statement to the Stevens I Investigation from the DCI that,

[1702] de Silva Review, Volume I, at [226/8.173].
[1703] de Silva Review, Volume I, at [227/8.175].

"The Security Service secretary in FRU has no executive function. This officer's duties relate purely to the maintenance of the files."[1704]

20.5. The role of the MI5 'secretary' in FRU headquarters has also been considered by the Operation Kenova investigation into the notorious PIRA member and FRU agent codenamed Stakeknife. Kenova reported that – at least until 1986 – one of the tasks of the MI5 officer stationed within the FRU was to transcribe the audio cassette recordings of each meeting between FRU agents and their handlers.[1705] The Inquiry will want to review this issue, and consider what additional awareness the MI5 secretary will have given the Service of FRU's activities in performing this function.

20.6. More substantively, the de Silva Review identified that, whilst there was agreement between the witnesses interviewed that MI5 had formal supervisory responsibility towards FRU, there was a stark difference of opinion as to the extent to which MI5 had in fact developed awareness of the detail of FRU's operational activity.

20.7. FRU's Commanding Officer (anonymised as A/05 by Sir Desmond) stated unequivocally that that there was *"close monitoring and support of our work by the Security Service."*[1706] Features relied upon to support that contention included: the monthly briefing given by A/05 to the DCI (also attended by the ASP) which included all *"major case development points*"; the attendance of the ASP at A/05's regular briefings to the CLF; and the evidence of the FRU Operations Officer (effectively the second-in-command) that the ASP and DASP

[1704] de Silva Review, Volume I, at [227/8.175].
[1705] Operation Kenova Final Report, at [159/13].
[1706] de Silva Review, Volume I, at [227/8.177].

had *"continuous and full access to all intelligence reports including CFs and MISRs."*[1707]

20.8. In contrast, and as set out in earlier chapters, the position of both MI5 witnesses and the Service to the de Silva Review was to challenge A/05's position and assert that MI5 had only limited knowledge of the detail of FRU's operations. [1708]

20.9. There was a similar dispute about the proximity of MI5's influence over and knowledge of the actions of the FRU agent 'Stakeknife' encountered by the Operation Kenova investigators. Late in the life of that investigation (and after the interim report had already been completed) it emerged that MI5 were in possession of an important tranche of relevant material that had not been provided to the Kenova investigation team.[1709]

20.10. An evaluation of the circumstances of the provision of that material and its contents was undertaken by the Kenova investigators, with their conclusions in relation to it recorded in the Kenova Final Report. In short summary, the effect of the late-disclosed material was to cause the Kenova investigation to reverse its conclusions about the extent of MI5 knowledge of Stakeknife.

20.11. The following conclusion had appeared in the Interim Report,

> *"During the Troubles, MI5 advised and assisted the FRU generally, was copied into its intelligence and even conducted a supportive review of its handling of Stakeknife in particular. However, MI5 was not responsible for how Stakeknife was targeted or run and could not sensibly be criticised for the conduct or operation of the FRU or any of its agents. Indeed, MI5 came onto Kenova's radar in*

[1707] de Silva Review, Volume I, at [227/8.177] to [228/8.182].
[1708] de Silva Review, Volume I, at [228/8.183] to [229/8.190].
[1709] Operation Kenova Final Report, at [20/4.3] to [21/4.6].

a largely tangential way because it retained a vast amount of FRU and RUC Special Branch intelligence product when others did not."[1710]

20.12. Whereas when the Final Report was published, Kenova's conclusions on the issue were expressed in the following way:

"While it is correct to say that FRU, rather than MI5 or RUC SB, was ultimately responsible for the recruitment and operation of Stakeknife, and there is no evidence of him being co-handled by multiple security forces, MI5's knowledge was not "limited". On the contrary, the further MI5 material demonstrates that it had a much greater awareness and involvement in the running of Stakeknife throughout the entirety of his operation as an agent than previously thought…

In this regard, the main representative of MI5 in Northern Ireland and principal security adviser to SoSNI - the Director and Coordinator of Intelligence (DCI), was personally briefed by the FRU Commanding Officer every four to six weeks on all of the FRU's most significant cases, one of which was Stakeknife.

The DCI was also supported by the Assistant Secretary Political (ASP) and Deputy ASP (DASP). They ensured routine, day to day liaison between MI5 and the Army and provided security advice to FRU in respect of its agent handling. MI5 administrative staff also provided support to the ASP and maintained the filing system within the FRU. The role of the DASP was to ask questions and give feedback on FRU reporting and, where possible, advise on future taskings, especially at the strategic level. Having access to

[1710] Operation Kenova Interim Report at [120/41.2] to [121/41.2].

the FRU intelligence output also enabled the DASP to direct material to the appropriate branches within MI5.

It is also significant that former FRU personnel, including those who were handlers of Stakeknife, took up roles within MI5 after leaving the military, including that of ASP and DASP.

Accordingly, there were roles and forums in place between FRU and MI5 which could and should have captured any significant concerns about the conduct or activities of agents, including their involvement in serious criminality, and ensured that these were addressed.

Against this background, the further MI5 material not only undermines any claims that the Service had a peripheral role in connection with Stakeknife, but it also supports the evidence of former FRU personnel that MI5 was closely involved with his handling. One former FRU Commanding Officer has stated on numerous occasions that: everything done in respect of Stakeknife was done with MI5's knowledge and consent; and MI5 had an influential role, particularly through the involvement of its ASP. The newly revealed files support this account, especially considering that the Commanding Officer met and briefed the MI5 DCI every four to six weeks as set out above. MI5 had automatic sight of all Stakeknife intelligence and therefore was aware of his involvement in serious criminality. [1711]

20.13. Whilst Kenova's conclusions were made in the context of Stakeknife, and the particular FRU arrangements for the handling of that agent, it can be seen from the passages quoted above that the circumstances and intelligence structures relied upon by Kenova to found its final conclusions closely resemble the factors that were

[1711] Operation Kenova Final Report, at [87/12.19] and [89/12.22-12.26].

considered by the de Silva Review to evaluate MI5's knowledge of the actions and motivations of another FRU agent, Brian Nelson, in relation to the murder of Patrick Finucane.

20.14. In respect of Stakeknife, it is striking that the late-disclosed MI5 material caused the Kenova investigation to reverse entirely its earlier view that MI5's role in respect of him had been 'limited' to arrive at a final conclusion that the Service "had a much greater awareness and involvement in the running of Stakeknife throughout the entirety of his operation as an agent than previously thought".

20.15. In that light, one of the Inquiry's tasks will be to scrutinise the extent and sufficiency of the CLOSED disclosure with which it is provided, and to form its own conclusions about the extent of MI5's 'awareness and involvement' in the running of Brian Nelson, and of the other intelligence relevant to the murder of Patrick Finucane. To fulfil that task properly, the Inquiry will want to develop an understanding of what went wrong with disclosure to the Kenova investigation, why the late-disclosed material was considered so significant, and whether there may similarly have been missed or overlooked material from the disclosure that was provided to the de Silva Review.

20.16. In due course, the Inquiry will require clear assurance that the MI5 disclosure it is provided with is comprehensive, and that no similar failure of disclosure as beset Kenova may have occurred.

Brian Nelson

20.17. The specific details of Brian Nelson's antecedents, recruitment and activities are covered elsewhere within this opening since the publicly available evidence suggests that, at the relevant time, he was an agent handled and run by FRU. However (and as covered in other chapters) given the extent to which Brian Nelson has featured

in other investigations into Patrick Finucane's murder, it is also important for the Inquiry to set out what is currently publicly known about the specific involvement of MI5 in his case. That is the focus and limitation of this section of the opening.

20.18. There is currently no publicly available material to establish whether MI5 had a role in Nelson's initial recruitment as an agent by FRU in 1984. As with other FRU agents, the fruits of his intelligence would thereafter have been made available to MI5, at least through distribution of the MISRs that contained the anonymised, source-protected substance of the information he provided; if not through the raw Contact Sheets themselves.

20.19. As to MI5's involvement in particular events in Nelson's first period as a FRU agent, in their report, 'Deadly Intelligence', British Irish Rights Watch (BIRW) noted that the FRU: *"… allowed Brian Nelson to be centrally involved in loyalists' acquisition of illegal weapons from South Africa, an operation of which MI5 [Security Service] also had knowledge."*[1712]

20.20. In investigating that issue, de Silva concluded that there was '*no doubt*' that Brian Nelson visited South Africa in 1985 to discuss the shipment of arms to the UDA; and that Security Service documents showed that MI5 had been fully aware of Nelson's trip to South Africa, and his discussions there with the arms dealer.[1713] Having considered the material, Sir Desmond rejected the contention that MI5 had facilitated the proposed arms importation or wanted it to occur. Together with other factors, he concluded that the Security Service documents he had seen indicated a clear intention to frustrate the proposed importation and *"demonstrate a … desire to intercept the weapons*". Perhaps importantly for current purposes, the Review

[1712] de Silva Review, Volume I, at [109/6.36].
[1713] de Silva Review, Volume I, at [110/6.38].

records that MI5 were able themselves to task Nelson via the FRU to answer a series of detailed questions regarding the proposed arrangements for the shipment. [1714]

20.21. By the time FRU sought to re-recruit Nelson in 1987, MI5 are said to have been rivals in the exercise, impressed with the level of his access and quality of his intelligence, and keen to recruit him themselves as one of their own agents.

20.22. A Security Service internal note seen by the de Silva Review dated 15 January 1986 recorded that Nelson could provide the Service with *"top level access"* to the UDA and that his intelligence was particularly important given the *"increasing political links between unionists and paramilitaries"*[1715]. The note was followed a week later by another from the Head of the MI5's F Branch suggesting that "*ASP [Assistant Secretary Political] take soundings of the FRU to establish their willingness to handover … [Nelson]*". [1716]

20.23. As is set out elsewhere, despite their efforts MI5 were ultimately unable to persuade FRU to give up Nelson, and he was re-recruited as an agent by the Army. Having been so keen to recruit him themselves, on the face of it, it would seem unlikely that MI5 would do anything other than take the keenest interest in the detail of Nelson's information as it was disseminated to them. That was the effect of A/05's statement to the Stevens III investigation. In his account, he was unequivocal as to the nature and extent of the access to Nelson's intelligence that was provided to MI5's senior officers,

> *"The ASP or DASP always accompanied me when I went once a month to Stormont to brief the Intelligence Co-ordinator on FRU*

[1714] de Silva Review, Volume I, at [110/6.42].
[1715] de Silva Review, Volume I, at [114/6.61].
[1716] de Silva Review, Volume I, at [114/6.61].

casework. I also recall that the ASP sat in on my regular briefings to CLF. Sadly both the ASP and the Intelligence Co-ordinator are now dead but I must stress that they knew about Nelson's activities, including the intelligence records [the 'intelligence dump'] because I personally briefed them. They also knew of my approach to the application of the Directive and Instructions and they never suggested it was wrong" [1717]

20.24. Those briefings were said to include,

" … regular updates on Brian Nelson's reporting, including his current access, and activities as well as major case development points … There was never an occasion when concern was expressed about Nelson's activities". [1718]

20.25. As is discussed earlier in this report, the Security Service have challenged A/05's evidence. While the DCI accepted that he did receive briefings from A/05, he said 15-20 cases would be covered in an h*our, with the focus being on the product of the intelligence, not the "handling details"*.[1719] In its submissions to the de Silva Review, the Security Service stated that it did not agree with the account given by A/05: *"To state that the Security Service has a 'supervisory' role suggests that ASP was able to exercise a degree of command and control over CO FRU. This is simply not the case"*. [1720]

20.26. Sir Desmond tested these accounts against the evidence it obtained on specific operations and the records to which it was provided access. Among its findings were the following,

[1717] de Silva Review, Volume I, at [227/8.178].
[1718] de Silva Review, Volume I, at [227/8.179].
[1719] de Silva Review, Volume I, at [228/8.185].
[1720] de Silva Review, Volume I, at [229/8.190].

a. CFs were not routinely copied to the Security Service in the Nelson case.[1721] However, the DCI accepted that the ASP and DASP could ask to see the files if they wished to do so, and the DASP stated that she *"might have seen the contact forms"*, although she could not remember. [1722]

b. The Security Service were provided with CFs relating to efforts to acquire arms from overseas, a matter on which the Security Service had an operational interest. [1723]

c. The Security Service, through the ASP, were aware of Nelson's intelligence about, and potential involvement in, a plot to murder Gerry Adams in 1987. Security Service documents show considerable concerns being expressed about the Nelson case and some discussion on whether the Security Service should take over the handling of Nelson. The records indicate an intention to provide guidance to FRU, though one memo expressed doubt over whether *"a whole series of briefings would have the slightest effect"*. [1724]

d. The Security Service received its own intelligence about Nelson's role as Intelligence Officer for the UDA shortly after his return to Belfast. One source's assessment was that Nelson would be principally involved in the targeting of leading Republicans in Belfast. Another noted that he was intelligent and effective and *"should make a significant contribution to the UDA's military capabilities"*. [1725]

[1721] de Silva Review, Volume I, at [230/8.195].
[1722] de Silva Review, Volume I, at [228/8.186] to [229/8.186] and [229/8.189].
[1723] de Silva Review, Volume I, at [230/8.194].
[1724] de Silva Review, Volume I, at [231/8.197] to [231/8.202].
[1725] de Silva Review, Volume I, at [232/8.203].

e. Later in 1987, the Security Service tasked him, through FRU, to answer a series of questions, predominantly concerning high-level strategic intelligence. [1726]

20.27. Significantly, de Silva also received evidence that on 27 June 1988 a Security Service officer met directly with Brian Nelson to debrief him, along with the OC of East Det FRU and two 'handlers'.[1727] This meeting is said to be MI5's last '*direct engagement'* with Nelson, but the Inquiry will have to consider whether it significant that it took place little more than 6 months before Patrick Finucane was to be murdered.

20.28. The MI5 notes of the meeting were seen by Sir Desmond in the preparation of his review. They are said to show that the MI5 officer had debriefed Nelson at length. The contents of the note demonstrated that the officer had concentrated his debrief on strategic issues relating to the UDA and its future direction, rather than the tactical detail of particular UDA targeting.[1728] However, when the officer reported his conclusions from the meeting to what was by then MI5's G8 department, he provided the following assessment, [1729]

> *"Since May 1987 FRU have clearly managed to establish control over the case and there no longer appears to be any pressing need for us to volunteer to take over running the case … In addition FRU admitted that 6137 was not completely frank and honest since he takes his UDA intelligence role seriously, does not necessarily pass FRU all details of 'justifiable' actions, and to an extent he may attempt to use his agent role to gain intelligence from FRU. This confirms DHSB's comments that 6137 has*

[1726] de Silva Review, Volume I, at [232/8.206].
[1727] de Silva Review, Volume I, at [233/8.209].
[1728] de Silva Review, Volume I, at [233/8.210].
[1729] de Silva Review, Volume I, at [233/8.211].

sometimes been caught out by RUC information … which contradicts his own". [1730]

20.29. Sir Desmond noted the *"contradiction"* within the note and found it *"surprising"* that the MI5 officer concluded that FRU had established control over Nelson in the light of the other recorded evaluations. He considered that points made about Nelson's commitment to his UDA role *"should have been a cause for serious concern"* within MI5, particularly given the Security Service's previous anxiety about Nelson's role in the Gerry Adams case. [1731]

20.30. Sir Desmond's overarching conclusions about MI5's awareness of Nelson's activities were as follows:

a. The Security Service were *"undoubtedly aware that Nelson was targeting Republicans,"* but there is no evidence to suggest that Security Service officers had necessarily read the CFs that would have demonstrated Nelson's enthusiasm for attacking such individuals. [1732]

b. On the two occasions on which the Security Service became actively involved in the exploitation of Nelson's intelligence, its officers sought to frustrate the UDA's plans to commit criminal offences. [1733]

c. He accepted that the Security Service *"did not have an executive role in the handling of Nelson."* [1734]

[1730] de Silva Review, Volume I, at [233/8.211].
[1731] de Silva Review, Volume I, at [233/8.209-8.213].
[1732] de Silva Review, Volume I, at [234/8.221].
[1733] de Silva Review, Volume I, at [234/8.221].
[1734] de Silva Review, Volume I, at [235/8.222].

d. He agreed with the conclusion of Justice Cory that there was an absence of evidence to reveal any collusive acts on the part of the Security Service. [1735]

e. However, he concluded that the Security Service *"failed to carry out its advisory and co-ordinating duties adequately in the Nelson case"*. [1736]

20.31. These were serious conclusions to draw but even they perhaps did not go far enough in the light of the evidence that was available and has been summarised above. Obviously, the Inquiry is yet to receive and consider that evidence for itself and is in no position at this stage to come to final conclusions, but the following features seem to flow from the evidence summarised by Sir Desmond,

a. MI5 was aware by no later than the June 1988 debrief that Brian Nelson was engaged in the collation and provision of targeting information in support of conspiracies to murder republicans.

b. The MI5 internal assessment of Nelson was that where he considered such targeting was 'justifiable', he displayed a lack of candour and honesty towards his handlers in an effort to ensure attacks took place. He did so by (i) deliberately not providing FRU with details of proposed actions that he considered justified; and (ii) seeking to obtain his own, actionable intelligence from the FRU for deployment by the UDA.

c. In that light, it is hard to see why de Silva considered proof that individual Nelson CFs had been read by MI5 officers was

[1735] de Silva Review, Volume I, at [235/8.223].
[1736] de Silva Review, Volume I, at [235/8.223].

necessary to establish awareness of his *'enthusiasm'* for attacking individuals.

d. Whilst MI5 had actively involved themselves on two occasions to frustrate UDA offending linked to Nelson, they did not repeat that action despite their awareness that Nelson's other serious criminal activities were ongoing.

20.32. The existence and extent of the MI5's awareness of Nelson's enthusiasm for targeting what he considered to be *'legitimate'* republican targets will be particularly important when considered in the context of the next topic: MI5's propaganda initiatives.

The Security Service propaganda campaign

20.33. Neither the Stevens investigations I - III nor Justice Cory's report contained any reference to the issue of whether the Security Service had operated a propaganda campaign in Northern Ireland during the relevant period. The first public acknowledgment of the existence of that campaign and its relevance to the murder of Patrick Finucane came in the de Silva Review.

20.34. In that light, it is important to say at the outset of this section that Sir Desmond de Silva concluded unequivocally that the Security Services deployed propaganda initiatives in Northern Ireland in the 1980s *'to contest and counter republican propaganda'* and – most significantly – that those initiatives '*came to include Patrick Finucane within their scope prior to his murder*'. [1737]

20.35. Before going further, it is also important to reiterate at this point that in none of the various investigations into Patrick Finucane's murder has there been any evidence suggesting that Patrick Finucane had <u>in fact</u> been a member of the PIRA or any other republican

[1737] de Silva Review, Volume I, at [296/15.1].

paramilitary organisation. If there is persistence to such rumour and innuendo despite that lack of evidence, that must be considered against the fact that it is now known that he came to be included within a propaganda campaign that promoted that disinformation.

20.36. The de Silva Review contains almost no detail about the content or '*technical details'* of the propaganda that was released about Patrick Finucane and others like him by the Security Service. That was a deliberate choice: Sir Desmond concluded that reasons of sensitivity prevented his publication of detail.[1738] Once it is in possession of the material, the Inquiry will want to reconsider afresh the extent to which safe, public disclosure can now be made. More than a decade has passed since Sir Desmond's report and – by virtue of the statutory nature of this Inquiry – in these proceedings the Chair has an important duty to balance claims to sensitivity against the powerful, countervailing public interest in frank disclosure and state accountability.

<u>The Origins and context of MI5's campaign</u>

20.37. Propaganda and the war of information is a common aspect of any entrenched armed conflict. The IRA's training and induction manual (known as the *'Green Book'*) was understood to contain detailed propaganda techniques designed to achieve the aim,

> *"To sustain the war and gain support for its ends by National and International propaganda and publicity campaigns"*[1739]

20.38. Contemporaneous and subsequent accounts from PIRA members have confirmed the importance that it ascribed to the *'propaganda war*'. [1740] The de Silva review saw evidence from the Security Service

[1738] de Silva Review, Volume I, at [296/15.3].
[1739] de Silva Review, Volume I, at [296/15.6-15.7].
[1740] de Silva Review, Volume I, at [297/15.7].

to the effect that they considered that PIRA ran a dedicated propaganda unit[1741] and it is clear that by the beginning of the 1980s there was widespread consensus – both within the Security Services and paramilitary organisations – that the PIRA was 'winning' the propaganda war.

20.39. Although the source or substance of the material has not been revealed, the de Silva Review considered that by the 1980s, *"there was a widespread feeling across the security forces and the UK Government that such propaganda needed to be countered"*. That conclusion is said to be founded upon *"a range of internal Government documents outlining the discussions of the need for what was described as 'Counter Action'."*[1742] A note from an intelligence officer seen by de Silva (not disclosed or dated, but said to be 'early' and held in the MI5 archives) suggested that a *"sustained and structured propaganda war"* should be fought against the terrorist groups in Northern Ireland (both Republican and Loyalist) on the following basis,

> *"... a deliberate and continued propaganda campaign (where the hand of HMG [Her Majesty's Government] is visible, obscured or invisible) might:*
>
> *(i) strike at recruitment into organisations*
>
> *(ii) disenchant those already inside by opening their eyes to the reality of things*
>
> *(iii) keep public attention, vigilance and interest*
>
> *(iv) who knows, provide new leads and recruits for us all".* [1743]

[1741] de Silva Review, Volume I, at [297/15.7].
[1742] de Silva Review, Volume I, at [297/15.9].
[1743] de Silva Review, Volume I, at [297/5.10] to [298/15.10].

20.40. However, the evidence produced to Sir Desmond suggested that such a structured campaign was not, in the event, taken forward. Instead, what the review described as *"comparatively limited"* initiatives were deployed. These were *"focused on propaganda directed against [the] PIRA"* and *"involved the dissemination of information within the broader loyalist community in a bid to counter republican propaganda."* [1744] It is also significant to record that these *'initiatives'* were said to have been undertaken by MI5 independently, and without reference to the NIO Information Strategy group or to government more widely.

20.41. The language used in the de Silva Review to describe the precise actions taken by the Security Service is (presumably deliberately) opaque; and does not lend itself to accurate summary. For that reason, the relevant paragraphs are quoted here in full,

> *"The Security Service used a variety of methods and conduits through which to disseminate the propaganda. The nature of the propaganda being disseminated varied. Some of the propaganda involved, for example, highlighting the damaging effect of PIRA murders and attacks. In other instances, the propaganda was targeted more directly at discrediting specific PIRA figures.*
>
> *Security Service officers later referred to the dissemination of information within the loyalist community, in such a way that it would be likely to become known by PIRA figures, as having the potential to make "an impact on the republican target". However, whilst the focus of the propaganda was aimed at PIRA, it is also clear that the initiatives were not particularly focused or controlled. The initiatives certainly came to include within their*

[1744] de Silva, Volume I, at [298/15.12].

scope individuals who were not members of terrorist organisations but prominent figures in the broader nationalist and republican communities". [1745]

20.42. The meaning of the final sentences of these paragraphs seems to be that – although perhaps not originally intended – the Security Service came to be engaged in the spreading of disinformation within the loyalist community about individuals who were not terrorists, but who were simply individuals of prominence. Those factors have obvious relevance in the case of Patrick Finucane.

MI5 Propaganda and Patrick Finucane

20.43. Again, the relevant paragraphs of de Silva warrant quoting in full:

"15.30 … I have established that in the late 1980s, prior to his murder, the [MI5 propaganda] initiatives encompassed the dissemination of information referring to Patrick Finucane within the loyalist community.

15.31 I should note that Patrick Finucane was not the focus of the propaganda initiatives in the late 1980s. The thrust of the propaganda rumours and innuendo was aimed at the republican movement and specific PIRA players, including individuals who would have been represented by Patrick Finucane. However, as a result of his work in defending these individuals, it is clear that Mr Finucane came to be included within the scope of the propaganda.

15.32 The information relating to Patrick Finucane that was being circulated effectively involved fanning the rumours and speculation linking him to the IRA. The effect of the propaganda

[1745] de Silva Review, Volume I, at [298/15.13] to [298/15.14].

would certainly have been, in my view, to associate Patrick Finucane with the activities of his clients.

15.33 I have found no evidence that the Security Service circulated Patrick Finucane's personal details, nor that they proposed that any individual or group attack him. In line with the broader objectives of the initiatives, the propaganda against Patrick Finucane appears to have been designed to discredit and 'unnerve' him rather than to incite loyalists or anyone else to target him. However, even if the propaganda was not intended to incite loyalists in that respect, I must consider the question as to whether it could have legitimised him as a target for loyalist paramilitaries." [1746]

20.44. The Inquiry will have to consider the import of these paragraphs, the material that founds the conclusions, and whether the inferences the de Silva Review drew are sufficient in the light of that material and the facts it establishes.

20.45. When the hesitancy and caveats of the foregoing passages are stripped away, these paragraphs of Sir Desmond's report amount to a finding of fact that, prior to Patrick Finucane's murder by loyalist paramilitaries, MI5 had disseminated '*rumours and innuendo*' that had fanned the existing, false speculation that he was a member of the IRA, and '*could*' have *'legitimised him as a target for loyalist paramilitaries'*.

20.46. It is fair to highlight that Sir Desmond concluded that the rumours linking Patrick Finucane to the IRA could not have been begun by MI5, not least because the available threat intelligence showed that the UDA had considered murdering him in 1981 and 1985 and before the propaganda initiative was commenced. Nevertheless, Sir

[1746] de Silva, Volume I, [301/15.30-15.33].

Desmond concluded that the impact of the MI5 propaganda campaign on the already circulating rumours was as follows,

> *"by the end of 1988, UDA members had certainly become aware of the* [MI5 propaganda] *rumours linking Patrick Finucane to the IRA. I am sure that members of the West Belfast UDA, and specifically one of the key ringleaders of the murder, L/28, became aware of rumours being circulated. Although it is clear that the UDA would already have believed Mr Finucane to be associated with PIRA, the rumours being disseminated could certainly have served to further reinforce the UDA's views in this regard.*
>
> *I am also sure that the Security Service were aware of the fact that the propaganda was reaching loyalist paramilitaries. Indeed, as I have already outlined ..., the subsequent records with respect to the propaganda initiative demonstrate that Security Service personnel later became concerned that the circulation of such information in this way was treading on "dangerous ground".*[1747]
>
> ...
>
> *I am entirely satisfied that, although he was not the focus of the initiatives, Patrick Finucane came to be included within their scope. In my view, his inclusion in this manner breached the obligations that should have been upheld by the State to ensure that lawyers could operate free from intimidation and not be identified with the causes of their clients.*
>
> *I am satisfied that the dissemination of this propaganda could have served to further legitimise Patrick Finucane as a target for loyalist paramilitaries. Whilst the aim of these initiatives was to 'unnerve' people such as Mr Finucane (rather than to incite*

[1747] de Silva Review, Volume I, at [302/15.37-15.38].

loyalists to attack them), the fact that the propaganda could have such an effect was, in my view, a consequence that should have been foreseeable to the Security Service at the time" [1748]

20.47. That findings that the MI5 disinformation was *'fanning the rumours and innuendo'* against Patrick Finucane and had reached the West Belfast UDA; and that MI5 were contemporaneously aware that their efforts were being received by loyalist paramilitaries in that way have to be considered together with MI5's assessment of June 1988 recorded in the previous section: that the UDA targeting chief and FRU agent Brian Nelson was actively seeking to mount operations against those individuals he considered to be '*legitimate'* targets.

20.48. From the Inquiry's interim standpoint of considering only the open conclusions of the de Silva Review, it does not appear to require the wisdom of hindsight to appreciate that the more MI5 propaganda painted Patrick Finucane as an IRA associate and 'legitimate' target, the more likely he was to be targeted by loyalist paramilitaries, including Nelson (who was assessed by MI5 of not being candid with his FRU handlers about his activities regarding 'justifiable' targets). In the course of its investigations the Inquiry will have to consider closely whether MI5 appreciated this linkage, and if they did, what inferences arise from it.

<u>Contemporaneous Concern within the Security Service</u>

20.49. As foreshadowed in the passage cited above, the de Silva Review reported that the underlying MI5 documents reviewed suggested "that there was considerable unease amongst some Security Service officers with regard to the nature of the propaganda and the proposals for expanding the initiatives." [1749]

[1748] de Silva Review, Volume I, at [305/15.53-15.54].
[1749] de Silva Review, Volume I, at [300/15.22].

20.50. Whilst the Review contains a number of quotations from individuals and documents in which those concerns were expressed, it is important to make clear that none of them have been given precise (or in many cases even general) dates. In that light, it is not currently possible to say whether the various expressions of concerns were being raised within MI5 before Patrick Finucane was murdered (and so were within the contemplation of the agency running the disinformation campaign before he was killed) or whether they were voiced only subsequently – and perhaps defensively - in reaction to the outrage.

20.51. As with all the other outstanding matters identified in this review of the currently available open material, the question of whether the internal MI5 concerns about the propaganda campaign were raised before Patrick Finucane's murder will be an important issue for the Inquiry to consider and, if at all possible, make public. If such concerns were being raised within MI5 before Mr Finucane's murder, the Inquiry will have to consider with care whether or not any effort was made thereafter to reign-in the propaganda, to mitigate its impact or otherwise to 'de-legitimise' Patrick Finucane in the eyes of Brian Nelson and other loyalist paramilitaries. If there was no such effort, the Inquiry will have to consider what if any inferences it is appropriate to draw from those facts.

1988 Threat Intelligence

20.52. The final issue to be considered under this heading concerns the handling by the Security Service of threat intelligence it had received in the December of 1988, 7 weeks before Patrick Finucane was to be murdered. The existence and nature of that material was made public by Justice Cory in his 2004 Collusion Inquiry report[1] and was further explored and evaluated in the de Silva Review.

20.53. In 2004, Justice Cory reported that,

> *"an agent reported* [to MI5] *that a meeting of UDA military commanders was to have taken place in December. According to the source, the purpose of the meeting was to "discuss plans to kill the three solicitors who have represented republicans at recent hearings". These solicitors were identified as "Target O, Target H, and the 'shoot to kill' solicitor in Armagh".* [1750]

20.54. Justice Cory did not publish the date or the content of that intelligence, but he did observe that he had seen no documents indicating that this intelligence had been passed on the RUC Special Branch, or that any active protective intervention had been contemplated or deployed to protect Patrick Finucane. He considered those conclusions of such significance that they may have been sufficient to warrant a public inquiry into the matter in and of themselves. [1751]

20.55. Sir Desmond was able to go further on this issue than Justice Cory could. It published a redacted version of a Security Service telegram from 19 December 1988 in which the intelligence of a UDA threat against the three solicitors had been included. The distribution list of that telegram was redacted, but the intelligence itself was recorded as follows:

> *"[L/32] was to have held a meeting of the military commanders on … December to discuss plans to kill the three solicitors who have represented republicans at recent hearings. These were Paddy McGrory, Oliver Kelly and the 'shoot to kill' solicitor in Armagh".* [1752]

[1750] Cory Report at [61/1.176].
[1751] Cory Report at [61/1.176].
[1752] de Silva Review, Volume I, at [316/16.60]; de Silva Review Volume II, at [707/3].

20.56. Although the redactions applied by the de Silva Review to the telegram obscure the wider context of the document, it reported that this was an internal MI5 telegram that had been distributed to the Security Service Assessments Group that reported to the DCI, the Security Service Assistant Director responsible for Irish related agent operations and the Assistant Director responsible for mainland and overseas Irish-related investigations. [1753]

20.57. The first two solicitors who are listed in the intelligence are identified by name, whereas the third is identified in relation to his work – "*the shoot to kill solicitor in Armagh*". An important question for this Inquiry to consider will be whether MI5 understood contemporaneously that this was a reference to Patrick Finucane. This question assumes particular importance since in 2004 - in their representations to Justice Cory - the Security Service had contended that it was *"by no means clear"* that the Service had identified the "'*shoot to kill' solicitor*" as having been Patrick Finucane prior to his murder. [1754]

20.58. However, the accuracy of that standpoint is in apparent conflict with the material subsequently received and considered by the de Silva Review. The Review also published two further MI5 documents, each dated shortly after Patrick Finucane's murder. In the first – an NIIR produced on 17 February 1989, Mr Finucane's name had simply been substituted by MI5 for the previous descriptor the *"'shoot to kill solicitor*" that had been contained in the original intelligence[3].[1755] That may be unsurprising in the light of the second document: a separate 'Note for the File' produced by an officer in the Assessments Group on the same date who described the earlier intelligence

[1753] de Silva Review, Volume I, at [317/16.61].
[1754] de Silva Review, Volume I, at [317/16.62].
[1755] de Silva Review, Volume II, at [708].

relating to the "*'shoot to kill' solicitor*" as a "*clear reference to Finucane*". [1756]

20.59. It is right to note – as the de Silva Review did – that these assessments were produced 5 days after the murder and would therefore have been drafted with the benefit of hindsight. By themselves, perhaps they cannot be a complete answer to the question of whether MI5 had identified Patrick Finucane as the subject of the December loyalist threat before he was killed. However, de Silva also reported extracts from an MI5 witness he interviewed, anonymised as G/07. Significantly, that witness had accepted that the December 1988 reference to the "*'shoot to kill'* solicitor" would have been sufficient to make it clear to those receiving the intelligence at the time that it was "*highly likely* " that the UDA's plans related to Patrick Finucane. [1757]

20.60. Sir Desmond contextualised that admission by investigating and setting out some of the contemporaneous local and national media reporting that had linked Patrick Finucane to the *'shoot to kill'* case. He reported that in November 1988, there had been widespread press reporting of the fact that Mr Finucane was representing Eleanor McKerr at the inquest into the deaths of Gervaise McKerr and two other men who were shot by the RUC in County Armagh in 1982. The inquest itself was also being held in Craigavon in County Armagh. [1758]

20.61. The inquest proceedings were high profile at the time and controversial, as they concerned allegations that the 1982 shootings had been the result of a State '*shoot to kill*' policy. On 16 November 1988, the Daily Telegraph had explicitly referred to the case as the

[1756] de Silva Review, Volume II, at [710/5].
[1757] de Silva Review, Volume I, at [318/16.67].
[1758] de Silva Review, Volume I, at [317/16.63].

"*shoot-to-kill inquest*" in its reporting. In a high-profile Judgment delivered on 20 December 1988 – which was the day after the Security Service telegram published by Sir Desmond - the Court of Appeal had ruled that police officers involved in the case were compellable witnesses. Patrick Finucane had been centrally involved in both the inquest itself and the ancillary litigation concerning the compellability of its police witnesses. The Belfast Telegraph of 15 November 1988 had also published his photograph in the newspaper, together with its reporting of the inquest proceedings. [1759]

20.62. The de Silva review concluded that these features meant that he was "satisfied that the Security Service should have known at the time that the "'shoot to kill' solicitor" reference related to Patrick Finucane". [1760] The Inquiry will have to go further and consider the question of whether or not MI5 did have that contemporaneous awareness as a matter of fact.

20.63. The second key issue that arises in relation to this material is what - if anything - MI5 did with the December 1988 threat intelligence before Mr Finucane was murdered. Justice Cory reported that he had seen, "*no documents indicating that this information, … was passed on to RUC SB, or that any active intervention was contemplated*". He recorded that that position was in in contrast to how MI5 had dealt with earlier threat intelligence against Mr Finucane from 1981, in respect of which records were available to him. [1761]

20.64. The de Silva Review considered this issue alongside that of the propaganda campaign that Justice Cory had not dealt with in his report. Sir Desmond concluded,

[1759] de Silva Review, Volume I, at [317/16.64] to [317/16.65].
[1760] de Silva Review, Volume I, [317/16.64].
[1761] Cory Report at [61/1,176].

"*the obligation on the Security Service to deal appropriately with this threat intelligence was… particularly acute because the threat post-dated the dissemination of propaganda relating to Patrick Finucane*" which "*identified Mr Finucane with the activities of his clients and could… have served to legitimise him as a target for loyalist paramilitaries.*"

20.65. Sir Desmond's view was that by distributing that propaganda a further, considerable obligation had been placed onto MI5 "to act on any threat intelligence they subsequently received relating to Patrick Finucane." [1762]

20.66. These were conclusions of the upmost seriousness to draw. However, what is currently absent from the analysis is any consideration of the information also known to MI5 ahead of Patrick Finucane's murder about the motivations and actions of the FRU agent Brian Nelson and his willingness to prosecute attacks against what he saw as legitimate targets. Once the evidence is available, the Inquiry will want to consider all three features together – MI5s access to Nelson, the Propaganda campaign and the threat intelligence – and draw such inferences and conclusions as seem appropriate about the totality of the information available to MI5.

20.67. Sir Desmond went on to consider (as Justice Cory had done before him) whether any evidence was available to the Review to allow evaluation of the question whether the Security Service had taken any steps to pursue the threat intelligence further, or to share it with the RUC Special Branch. [1763]

20.68. On the issue of MI5 taking steps to obtain further intelligence, the de Silva Review recorded that it had "been able to examine material

[1762] de Silva Review, Volume I, at [319/16.73].
[1763] de Silva Review, Volume I, at [319/16.74].

outlining the background to the Security Service's agent-reporting in December 1988. [and was] satisfied that there was a good reason why the Service were unable to receive any further intelligence on the outcome of the meeting of military commanders."[1764] The Inquiry will have to consider the material and test that conclusion in due course, together with the Review's suggestion that consideration should have been given to tasking Brian Nelson to report on any further UDA targeting of the solicitors.

20.69. In relation to the issue of whether MI5 had warned the RUC of the intelligence so that executive protective action could have been considered, like Justice Cory the de Silva review recorded that it had seen no documentary record to indicate that the 1988 threat intelligence had ever been shared. [1765]

20.70. Sir Desmond went on to evaluate the possibility that even in the absence of records, the December 1988 threat intelligence may have been shared verbally with the RUC SB by the relevant Security Service agent-handler. De Silva summarised an internal note produced for the then DCI in 1999, in which a Security Service Director recorded that:

> *"... [The Head of the Service's agent-running section in Northern Ireland],who was [the agent's] case officer, was in regular contact with HSB over the... case and believes that the intelligence would have been discussed with the RUC as a matter of routine".* [1766]

20.71. Further, in a statement to the Stevens III Investigation in 2004, the then Head of the Security Service's agent-running section in Northern Ireland had stated:

[1764] de Silva Review, Volume I, at [319/16.75].
[1765] de Silva Review, Volume I, at [319/16.78].
[1766] de Silva Review, Volume I, at [319/16.78].

"To the best of my belief, based on normal practice … I would have arranged to discuss the matters raised by the agent with officers in RUC Headquarters". [1767]

20.72. Finally, in his oral evidence to the Review, G/07 had said,

"I find it inconceivable that nothing was done, on the back of this intelligence; why there is no record of it, I find very surprising". [1768]

20.73. Sir Desmond evaluated these pieces of explanation against the fact that there was no written record within the disclosure provided to him – either within the MI5 material or within the RUC archives – that the threat intelligence had ever been passed. That was significant, because G/07's written statement to the Review acknowledged that the procedure at the time was for such intelligence to be provided to the RUC in written form:

"The Security Service has no executive powers, and in Northern Ireland it was therefore the RUC's responsibility to deal with threats to life, both as principal law enforcement agency, and because they held the lead responsibility for counter terrorist intelligence work, and were therefore best placed to set new intelligence in the wider context. If the threat was immediate, the information would be passed in a telephone call and then followed up in writing. Otherwise, it would have been sent as soon as reasonably feasible in report form. The Service's engagement with the RUC after threat intelligence was passed was limited to ensuring that the agent's identity, safety and access were safeguarded when the RUC took action on the reporting". [1769]

[1767] de Silva Review, Volume I, at [320/16.79].
[1768] de Silva Review, Volume I, at [320/16.80].
[1769] de Silva Review, Volume I, at [320/16.81].

20.74. Sir Desmond's final conclusion was that the December 1988 threat intelligence amounted to a potentially serious threat to the life of Patrick Finucane. In the intervening 2 months between the threat and Mr Finucane's murder *"No steps had been taken to warn him that his life was in danger or to otherwise protect him"*. [1770]

20.75. Sir Desmond's view of that was unequivocal

> *"I believe that the responsibility for the failure to act on the December 1988 threat intelligence lies with the Security Service. Had the Service properly pursued this intelligence with the RUC, I believe that there would be a documentary record demonstrating this."* [1771]

20.76. As with all other matters in this opening, the Inquiry will use its powers to obtain full disclosure of the material relevant to this question, and come to its own conclusion in the light of all the facts.

[1770] de Silva Review, Volume I, at [321/16.85].
[1771] de Silva Review, Volume I, at [321/16.86].

21. EVIDENCE OF PRIOR KNOWLEDGE ELSEWHERE IN GOVERNMENT

Introduction

21.1. Sir Desmond de Silva QC addressed suggestions in media reports that Government Ministers may have been involved in directing or sanctioning collusive activity during the Troubles in Northern Ireland. Sir Desmond observed that no evidence to support these allegations arose during the investigative work of Lord Stevens or Justice Cory. [1772]

21.2. Sir Desmond's consideration of this subject involved the examination of several thousand pages of documents, comprising:

a. Memos between civil servants at the Northern Ireland Office;

b. Briefings provided in preparation for regular meetings on security policy, led by the Secretary of State for Northern Ireland;

c. Security Service intelligence assessments provided to Ministers;

d. Reports from the Joint Intelligence Committee in London; and

e. Communications between the Prime Minister and Cabinet Ministers. [1773]

Did Government Ministers know about the targeting of Patrick Finucane?

<u>The nature of intelligence briefings to Ministers</u>

21.3. Sir Desmond set out the ways in which Ministers were briefed on intelligence matters, which was through:

[1772] de Silva Review, Volume I, [498/25.1].
[1773] de Silva Review, Volume I, [498/25.3].

a. Receipt of Northern Ireland Intelligence Reports from the Security Service Assessments Group;

b. Monthly Security Policy Meetings involving the Director and Coordinator of Intelligence, the Chief Constable of the RUC and the General Officer Commanding Northern Ireland;

c. Informal, ad hoc advice provided by senior security advisers; and

d. Briefings in connection with the approval of warrants under the statutory framework in place at the time.[1774]

21.4. Sir Desmond found that briefings provided to Ministers were at the 'strategic' level, rather than at the 'operational' level. This distinction was described to Sir Desmond as meaning that Ministers would not be briefed on operational decisions regarding, for example, the handling of agents, the exploitation of intelligence or whether to act on threat intelligence, but would instead receive briefings related to the intelligence 'product supplied by the security forces. [1775]As such, Ministerial approval for the handling of agents was not sought. [1776]

21.5. This description is consistent with that provided by 'Martin Ingram', the pseudonym of Ian Hurst, a former FRU soldier, to the historian Ian S. Wood, who said that intelligence material would be presented to Ministers in much-shortened form, with the salient points explained, but without explanation about how the information contained therein had been acquired. [1777]

21.6. Sir Desmond was unequivocal in concluding that, based on the material in his possession, there was no evidence whatsoever to suggest that Government Ministers either (**i**) sought to direct any of

[1774] de Silva Review, Volume I [500/25.17].
[1775] de Silva Review, Volume I, [500/25.18] to [501/25.19].
[1776] de Silva Review, Volume I, [501/25.20].
[1777] Ian S. Wood, *Crimes of Loyalty: A History of the UDA* (Edinburgh: Edinburgh University Press, 2006), [320].

the intelligence agencies to assist the UDA in any way or (**ii**) sought to collude in a policy of using loyalist paramilitaries to carry out extra-judicial killings of republicans. [1778]

Were Ministers briefed on the role of Brian Nelson?

21.7. Sir Desmond found no evidence to suggest that Ministers were briefed on Brian Nelson's activities as an FRU agent prior to his arrest. [1779]

21.8. Further, he concluded that a briefing provided to the Secretary of State for Defence, Tom King MP, on 26 September 1990, suggested that even he had no background knowledge of Nelson's activities. This was significant because Tom King MP had been the Secretary of State for Northern Ireland from September 1985 to July 1989, during most of Nelson's time as an FRU agent, and was briefed regularly on Northern Ireland intelligence matters. [1780]

21.9. The briefing notes from September 1990 included the following sentences:

a. A note of the pre-meeting, without the Secretary of State present, recorded: "*CGS agreed that we would repeat this background to Secretary of State for Defence so that he understood the references in the Attorney General's letter to the intelligence dump held by Nelson and the delay in handing it over to the Stevens inquiry*". [1781]

b. A note of the meeting with the Secretary of State recorded: "*He was briefed on the value of FRU and was particularly interested in two annexes produced by ACOS G2; one giving the*

[1778] de Silva Review, Volume I, [498/25.4].
[1779] de Silva Review, Volume I, [501/25.21].
[1780] de Silva Review, Volume I, [501/25.23].
[1781] de Silva Review, Volume II, [819/1].

achievement of Nelson as an agent and the second giving a flavour of the achievements of FRU over the past few years". [1782]

Did Ministers know about the targeting of Patrick Finucane?

21.10. Sir Desmond de Silva found that there was no evidence to suggest that Ministers had any foreknowledge of the plan to kill Patrick Finucane.[1783] Further, he found there was no evidence that Ministers were subsequently provided with any intelligence briefing suggesting that the intelligence agencies had foreknowledge of a threat to Patrick Finucane's life. [1784]

21.11. In his book, "*Neither Confirm Nor Deny: British Intelligence, Lawless Agent Running and the Suppression of Truth*", John Ware wrote that a review conducted in 2012 by Detective Chief Inspector Phil James, a senior investigating officer within the Stevens III Investigation team, of all the Cabinet minutes from 1988 to 1991 established that neither Patrick Finucane nor his murder were ever mentioned. [1785]

21.12. Against this is the statement made by Geraldine Finucane to the BBC Spotlight documentary, "*The Troubles: A Secret History*" broadcast in 2019, in which she recalled that Justice Cory told her he had seen papers marked 'For Cabinet Eyes Only' which "*involved the collusion and the killing of my husband*".[1786]

Wider Culpability

21.13. In addition to his consideration of the specific questions of Ministerial knowledge of Nelson's activity and the threat to Patrick Finucane, Sir

[1782] de Silva Review, Volume II, [821/5].
[1783] de Silva Review, Volume I, [503/25.30].
[1784] de Silva Review, Volume I, [503/25.33].
[1785] Ware, Neither Confirm Nor Deny at [58] (fn.94: Author interview, Phil James, 22 January 2025).
[1786] The Troubles a Secret History, Episode 5 (BBC Spotlight, 8 October 2019), Accessible at: https://www.youtube.com/watch?v=kJFqx2wDhuk&t=2s.

Desmond also examined the broader approach of the Government to loyalist paramilitaries and agent-handling.

Approach to loyalist paramilitaries

21.14. Sir Desmond found that Government security policy during the late 1980s was driven by the need to tackle the PIRA, and that loyalist paramilitary violence was viewed as a largely reactive phenomenon to republican atrocities. In reaching this finding, he cited the memoirs of Margaret Thatcher, in which she wrote:

> "*the IRA are the core of the terrorist problem; their counterparts on the Protestant side would probably disappear if the IRA could be beaten*". [1787]

21.15. Although Sir Desmond concluded that security meetings during the late 1980s were dominated by discussions about how to tackle the PIRA and republican violence, he also found that there nevertheless existed a desire to tackle and reduce the threat from loyalists in the same manner. [1788]

21.16. Sir Desmond considered whether the Government's decision not to proscribe the UDA as a terrorist organisation until August 1992 could be criticised. He found that the UDA in the late 1980s was, for all intents and purposes, a terrorist group.[1789] However, he concluded that it was difficult to criticise the Government for failing to proscribe the UDA until 1992.[1790] In reaching this conclusion, he was mindful of the fact that proscription could have served to strengthen the militaristic elements within both loyalism and republicanism, at a

[1787] de Silva Review, Volume I, [498/25.5] to [499.25.5].
[1788] de Silva Review, Volume 1, [499/25.6] to [499/25.9].
[1789] de Silva Review, Volume 1, [499/25.10].
[1790] de Silva Review, Volume 1, [500/25.15].

time when steps were being taken to engage with representatives of paramilitary groups.[1791]

Approach to agent-handling

21.17. Finally, as set out at in Chapter 4, "Agent Handling", Sir Desmond was highly critical of the Government's approach to agent-handling in Northern Ireland: he found that the Government was fully aware of the unacceptable fact that there was no adequate framework in place for agent-handling in Northern Ireland in the late 1980s.[1792]

[1791] de Silva Review, Volume I [500/25.15].
[1792] de Silva Review, Volume II, [503/25.31].

22. INITIAL ROYAL ULSTER CONSTABULARY INVESTIGATION INTO THE MURDER OF PATRICK FINUCANE

Introduction

22.1. This section deals with the initial RUC investigation into the murder of Patrick Finucane, including the recruitment of Kenneth Barrett as a Special Branch agent in 1991. Sir Desmond's examination of the investigation built on the finding of the European Court of Human Rights (ECtHR) in 2003 that the UK Government had breached its procedural obligations under Article 2 of the European Convention on Human Rights (ECHR) by failing to carry out an adequate official investigation into the murder. [1793]

22.2. At the outset, it may be useful to provide the ECtHR's summary of the steps taken as part of the initial RUC investigation. After Patrick Finucane's murder, steps were taken to secure evidence at the scene; [1794] Patrick Finucane's house was *"cordoned off by the RUC and a forensic examination of the scene conducted by experts. Photographs were taken and maps prepared. A scene of crimes officer examined the car believed to have been used by those responsible for the shooting and which had been found abandoned. On 13 February 1989 a consultant in pathology conducted a post-mortem examination. A "major incident room" was set up at the Antrim Road police station. Many suspected members of the UFF were detained and interviewed about the murder*" [1795]

22.3. On 4 July 1989, a gun was found during a police search in the Shankill Road area of Belfast. It proved to be one of the weapons used to murder Patrick Finucane. As is discussed earlier, it had been stolen by a Colour Sergeant of the UDR in 1987. In April 1990, three people

[1793] Finucane v United Kingdom (Application no. 29178), 1 July 2003.
[1794] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [74].
[1795] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [12] to [14].

were convicted of possession of the gun and of membership of the banned paramilitary organisation, the UFF, but they could not be linked to Patrick Finucane's murder. The Colour Sergeant who had stolen the weapon sold it to Kenneth Barrett. In 2004 Kenneth Barrett pleaded guilty to the murder of Patrick Finucane.[1796]

22.4. In or around September 1990, the police found firearms in the attic of William Stobie's flat and he was arrested. '*A decision was taken on 16 January 1991 not to prosecute William Stobie in connection with the Finucane case, apparently on the ground that there was insufficient evidence. On 23 January 1991, it was decided not to proceed with two arms charges against William Stobie. The prosecution adduced no evidence and he was acquitted*.'[1797]

22.5. Having conducted a wider examination of the original RUC investigation into the murder, Sir Desmond noted the following:

a. First, the investigation lacked the requisite independence;[1798]

b. Second, the investigation did not examine the question of collusion.[1799] There was, for example, no investigative follow-up action in response to two credible intelligence reports that RUC officers had been congratulating loyalists held in custody for the UDA having carried out the murder;[1800]

c. Third, "*highly relevant intelligence*" was withheld from the CID murder investigation team. This undoubtedly had a significant impact in preventing attempts to bring Patrick Finucane's murderers to justice. In particular, key UDA suspects, including

[1796] *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* [2019] UKSC 7, at [4].
[1797] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [16].
[1798] de Silva Review, Volume I at [448/23.89] to [449/23.90].
[1799] de Silva Review, Volume I at [448/23.89] to [448/23.90].
[1800] de Silva Review, Volume I at [25/92].

L/20, L/28 and Kenneth Barrett, were not investigated or arrested until more than ten years after the murder;[1801]

d. Fourth, the CID team did not exploit some of the intelligence it had;[1802] and

e. Fifth, the RUC's failure to ensure an adequate investigation was particularly significant when considered alongside the wider inadequacy of the action taken by the authorities against the West Belfast UDA prior to the murder (as discussed previously) and the decision by SB to recruit Kenneth Barrett after he 'admitted' his involvement in the murder.[1803]

22.6. This chapter will consider each of these issues in turn.

Independence and effectiveness of the investigation

22.7. In 1994, Geraldine Finucane applied to the ECtHR for a declaration that the United Kingdom government had failed to carry out a proper investigation into her husband's death and for an order requiring the government to conduct a full public inquiry into its circumstances. On 1 July 2003, the ECtHR made a unanimous finding that the UK Government had breached its procedural obligations under Article 2 of the ECHR in respect of the response of the State to the murder of Patrick Finucane.

22.8. In reaching this conclusion, the ECtHR discussed a number of general principles and their application to the investigations that followed the murder. In relation to the initial RUC investigation specifically, the Court noted that:

[1801] de Silva Review, Volume I, at [448/23.90].
[1802] de Silva Review, Volume I, at [448/23.90].
[1803] de Silva Review, Volume I, at [448/23.89] to [448/23.90].

a. the investigative procedures conducted by the police lacked independence which raised "*serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued.*"[1804] In particular, the RUC officers were part of the police force which was suspected by the applicant and other members of the community of issuing threats against Patrick Finucane and who were all under the responsibility of the Chief Constable of the RUC, who played a role in the process of instituting any disciplinary or criminal proceedings; and

b. although it was apparent that a gun believed to have been used in the murder had come into the hands of loyalists via a member of the UDR, the officer leading the investigation stated that none of the 14 persons being interviewed had any connection with the security forces.[1805]

22.9. Sir Desmond considered that the findings made by the ECtHR in relation to the independence of the investigation were particularly pertinent in view of the wider allegations relating to the contact between RUC officers and loyalists in Castlereagh. This included alleged comments by RUC officers recorded in two FRU CFs in respect of which Brian Nelson was recorded as the source:

a. The first CF, dated 9 March 1989, recorded that when Thomas "Tucker" Lyttle was questioned in custody RUC CID officers, not from the murder investigation team, commented that "*the attacks on Pat Finnucane* [sic] *and Gerard Slane had been the best hits the UDA had had in a long time*".[1806] This report was

[1804] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [76].
[1805] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [75].

passed to the SB by the FRU but there is no evidence of any follow-up action by the RUC.[1807]

b. A further CF, dated 29 November 1989, recorded alleged comments made by RUC officers to L/22 when he was questioned in respect of the murder, namely that they had been questioned "*in a friendly fashion concerning the murder of Pat Finucane*" and "*the RUC congratulated them on a fine job.*" Although there was no corroboration for the report, he commented that it was difficult to conceive of a reason why L/22 would invent such an elaborate account. Sir Desmond was also unable to find any record of the FRU passing the information to the SB and this omission would in itself have prevented any follow-up action to identify the officers allegedly responsible.[1808]

22.10. Whilst noting that the reported comments in the CFs could not be corroborated, Sir Desmond noted that, alongside his conclusion as to discussions between officers and loyalists in custody about Patrick Finucane, they were "*potentially part of a pattern.*" [1809]

22.11. In relation to the investigation of the issue of collusion by the security forces, Sir Desmond stated that, having examined the case in detail, it was clear that the CID investigation did not examine the possibility of collusion between the security forces and the loyalists who killed Patrick Finucane. [1810] Detective Superintendent (D/Supt) Simpson, the SIO conducting the enquiry into the murder, explained in his statement to the Stevens III Investigation that the allegation of

[1807] de Silva Review, Volume I, at [440/23.42].
[1808] de Silva Review, Volume I, at [440/23.43 and [440/23.44].
[1809] de Silva Review, Volume I, at [440/23.45].
[1810] Finucane v United Kingdom (Application no. 29178), 1 July 2003 at [74]; de Silva Review, Volume I at [438/23.34]; *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* [2019] UKSC 7, at [3].

collusion was an issue that prevailed at the time of the initial investigation:

> *"The allegation of collusion between the security forces in general and loyalist Paramilitary groups was one that prevailed at the time of my investigation. However in light of what I knew regarding Finucane there was no possibility of me pursuing that allegation as a Senior Investigating Officer on a murder enquiry, although I did not actually seek permission to investigate the issue of collusion. These allegations also related to other murders … but again it was not in my remit to sanction an investigation of that nature. It would have been a matter for HQ CID authorities to instigate such broad sweeping allegations as they crossed Divisional and Regional boundaries."*[1811]

22.12. In his 2003 "Overview and Recommendations", Sir John Stevens concluded that (i) "crucial information was withheld" from the SIO, D/Supt Simpson; (ii) that this withholding of intelligence was evidence of collusion; and that in future the SIO, on murder investigations should receive "*full co-operation and relevant intelligence from Special Branch*."[1812]

The Withholding of Intelligence from the CID Murder Investigation Team

22.13. Sir Desmond considered the approach of the SB to the murder investigation against the background of the "*long-standing strains in the relationship between the SB and CID during the Troubles*", as previously discussed[1813]. In the context of the investigation into the murder of Patrick Finucane, the key issues included (i) comments made by D/Supt Simpson with regard to the SB withholding intelligence and the comments of the Assistant Chief Constable

[1811] de Silva Review, Volume II, at [644]-[656].
[1812] Sir John Stevens, 'Stevens Enquiry: Overview and Recommendations' (17 April 2003).
[1813] de Silva Review, Volume I, at [440/23.46] to [441/23.48].

responsible for the RUC CID and (ii) the documentary evidence in relation to the withholding of intelligence.

(i) Comments made by D/Supt Simpson

22.14. D/Supt Simpson, the SIO leading the enquiry into the murder of Patrick Finucane, described his relationship with SB in his statement to the Stevens team in the following way:

> "*It must be stressed that Special Branch controlled this relationship and that CID officers of whatever rank were unable to force their hand in any way. Briefly the role of Special Branch was the countering of terrorist activity and to this end they collected all intelligence and handled a large number of informants. As the SIO on this clearly terrorist related murder investigation I was never given a briefing by Special Branch or ever passed any relevant files. The strategic direction of the Finucane murder investigation was therefore planned in the absence of any input from SB in relation to the victim, possible suspects or motives for the shooting. In particular I was never informed that Patrick Finucane had a SB file; never made aware of the existence of William Stobie and his knowledge around the movements of the murder weapons; never made aware of the existence of Brian Nelson who also passed information to the Army with regard to Finucane. All or any of the above even in the most guarded of terms would have made an enormous difference to the direction of the Finucane investigation and its eventual outcome...*
>
> *All aspects of CID criminal investigation were however subject to SB sanction. This was in order to protect any operation that SB might have had in relation to addresses or subjects. This would impact on an enquiry, including a murder, when an address*

needed searching or someone needed arresting. All intelligence was checked through the SB Source Unit and the CID regulated by their decision on any matter. In this regard there was no appeal and SB would never tell you why an address could not be searched or a suspect arrested. In the past I had personal experience of SB entering a serious crime scene before my being allowed to enter and conduct my search for evidential material and I was not told the reason for the SB involvement. In relation to our 'working relationship' with SB I would go as far as to say that any attempt by me or my colleagues to overturn a decision by SB would result in a negative response."[1814]

22.15. However, the most serious allegation made by D/Supt Simpson was made in his book, *Duplicity and Deception,* but omitted from his statement to the Stevens team and related to comments made by Wilfred Monahan, the Assistant Chief Constable (ACC) responsible for the CID:[1815]

"Much to my surprise, on the morning of Tuesday, 14 February, two days after the killing of Finucane, I received a phone call from RUC Headquarters informing me that Assistant Chief Constable Wilfred Monahan, in overall charge of the CID in Northern Ireland, was to pay me a visit in the Antrim Road incident room. This was unusual … I regarded this as something of a minor state visit …"

Altogether his visit lasted about twenty minutes, and then I saw him back down to his car. Before he opened the door of the vehicle, he paused briefly, turned to me and said, 'Alan, if I were you I would not get too deeply involved in this one.'"[1816]

[1814] de Silva Review, Volume I, at [441/23.53] and Volume II at [137]-[138].
[1815] de Silva Review, Volume I, at [442/23.57].
[1816] Simpson at [35].

22.16. As ACC Monahan was deceased by the time of the de Silva Review, he was unable to respond to this allegation. However, Sir Desmond considered that it was difficult to conceive of a reason why D/Supt Simpson would invent and publish such an account.[1817] The most he considered his Review could do was to point to a coincidence in timing; at 9:30am on 14 February 1989, the morning of the ACC's visit, D/Supt Simpson had commissioned his team to produce intelligence briefs on 13 UDA personalities.[1818] D/Supt Simpson noted that ACC Monahan was briefed that 'morning' and, while there is no detail to indicate whether Brian Nelson was mentioned, ACC Monahan was aware of his role by September 1989 but Sir Desmond could not be sure that he was aware of Nelson in February of that year. [1819]

(ii) The documentary evidence

22.17. Sir Desmond considered the documentary evidence in relation to the withholding of intelligence to establish whether D/Supt Simpson's consistent statements that he was given virtually no assistance by the SB were borne out.[1820] In doing so, he noted that, in 1999, the RUC conducted a CID-led 'C' Department Review concerning the passage of intelligence in the case of Patrick Finucane which "*included a summary of various RUC SB50 documents produced after the murder of Patrick Finucane, which linked specific individuals with the crime. Six SB50 documents included observations to the effect that the CID had been informed of the intelligence contained on the document.*" [1821]

[1817] de Silva Review, Volume I, at [443/23.59-23.60].
[1818] de Silva Review, Volume I, at [443/23.61].
[1819] de Silva Review, Volume I, at [443/23.63-23.64].
[1820] de Silva Review, Volume I, at [443/23.65].
[1821] de Silva Review, Volume I, at [443/23.67].

22.18. However, Sir Desmond noted that there were issues in relation to at least four of these SB50s; in respect of one, which related to intelligence from William Stobie, it was possible the CID team was only informed nine months after the date recorded on the SB50. In relation to three others, they were produced by an officer who appeared to have failed to record intelligence received in late February 1989 linking Brian Nelson to Patrick Finucane's murder. [1822] As a result, Sir Desmond considered that comments recording that the CID had been informed must be treated with caution. [1823]

22.19. The original murder investigation files recorded only three messages being passed by the RUC SB to the CID during the entire course of the investigation, namely:

a. On 13 February 1989, an SB officer told the investigation team that the UFF had claimed responsibility for the murder;[1824]

b. On 17 February 1989, one of William Stobie's handlers, DC R/08, passed intelligence from a different source that L/25, L/33 and L/20 had been seen together on the morning of 13 February;[1825]

c. On 16 November 1989, more than nine months after the murder, a summary of personalities seen by William Stobie on 12 February 1989 was passed to the CID. [1826]

22.20. By contrast, by the end of February 1989, the SB had received "*reliable and highly significant intelligence regarding the murder*" which included, in summary:

[1822] de Silva Review, Volume I, at [444/23.68].
[1823] de Silva Review, Volume I, at [444/23.68].
[1824] de Silva Review, Volume II, at [612].
[1825] de Silva Review, Volume II, at [613].
[1826] de Silva Review, Volume II, at [614].

a. Intelligence provided by William Stobie both before and after the murder linking a number of key UDA figures to the attack;

b. The seven names of the individuals Brian Nelson believed to be involved;

c. "*Reliable"* intelligence linking L/28, L/20 and Kenneth Barrett to the attack, including an indication that Kenneth Barrett may have been one of the gunmen;

d. Further "*reliable"* intelligence indicating that L/28 and L/20 were involved in the murder; and

e. Security Service intelligence indicating that Brian Nelson had "*undoubtedly*" carried out the 'recce' of Patrick Finucane's home.[1827]

22.21. Sir Desmond considered that the contemporaneous investigation files were an accurate record of the information passed by the SB to the CID.[1828] Given that the most potentially useful lead passed to the CID, i.e. the naming of L/20, L/33 and L/25, was expressed only in the form of a sighting of the three of them together, it was not difficult to understand why the CID team would have not thought of this as compelling information linking them to the murder.[1829] This is in stark contrast with the intelligence in SB's possession, i.e. the names of the key UDA figures believed to be responsible for the attack within four days of the murder.[1830]

22.22. Sir Desmond pointed to three further illustrations of the withholding of intelligence by the SB:

[1827] de Silva Review, Volume I, at [444/23.73].
[1828] de Silva Review, Volume I, at [444/23.71].
[1829] de Silva Review, Volume I, at [444/23.70].
[1830] de Silva Review, Volume I, at [445/23.74].

a. First, it was "*undoubtedly true*" that D/Supt Simpson was not informed at any stage of the agent roles played by William Stobie and Brian Nelson. Sir Desmond noted that the effect of withholding this information was to prevent the proper investigation of the role of agents in the murder.[1831] In his view, the need to protect sources could not justify the withholding of critical intelligence from the RUC CID and that there were no ongoing SB operations at the time which could justify the withholding of intelligence on the grounds that CID action could cause disruption to a wider intelligence-led project.[1832] This failure was compounded by the fact that there was no evidence to suggest that the intelligence that Brian Nelson had conducted the 'recce' prior to the murder was ever pursued with the FRU or to indicate that the SB shared this intelligence with the CID.[1833]

b. Second, in 1998, RUC SB Detective Constable (DC) R/22 admitted for the first time that he had received intelligence from an RUC agent implicating L/03 in Patrick Finucane's murder.[1834] A subsequent RUC investigation established that R/22 had probably received this information in 1994 while the agent was staying at his home.[1835] The agent claimed that he had also told an SB officer in 1989 that L/03 was linked to the murder, although there were no records to corroborate this claim. [1836]

c. Third, SB failed to pass on, either at all or in a timely manner, intelligence from William Stobie on 15 February 1989 that he was asked by L/03 to collect a 9mm Browning pistol from L/20's

[1831] de Silva Review, Volume I, at [445/23.75].
[1832] de Silva Review, Volume I, at [445/23.76].
[1833] de Silva Review, Volume I, at [446/23.78].
[1834] de Silva Review, Volume I, at [446/23.82].
[1835] de Silva Review, Volume I, at [446/23.83].
[1836] de Silva Review, Volume I, at [447/23.84].

house.[1837] Sir Desmond considered that the intelligence William Stobie provided on 15 February was "*potentially highly significant*"[1838]with what should have been a valuable opportunity to recover the murder weapon and to arrest one of the UDA figures who may have been involved in Patrick Finucane's murder. While such an operation would not have been without difficulties and risks, there was no evidence that the possibility of exploiting this intelligence was even considered by the SB the SB.[1839] Sir Desmond concluded that the withholding of this critical intelligence by the SB from the CID was unjustified.[1840]

The failure of the CID to exploit its own intelligence

22.23. Despite the withholding of intelligence by the SB from the CID, Sir Desmond considered that it was also "clear that the RUC CID failed to exploit their own intelligence in order to arrest key suspects for the murder." [1841]

22.24. While the quality of intelligence received by the CID was poorer than that received by the SB, the CID team did know on 13 February 1989 that (i) the 9mm Browning pistol used in the murder of Patrick Finucane had previously been used in the attempted murder of T/16 on 20 September 1988 and (ii) that L/33 and L/20 were believed to have been involved in the shooting of T/16.[1842] The SB did not pass information on that L/20 was likely storing the murder weapon in his home on 15 February 1989 but had the CID acted on the potential link

[1837] de Silva Review, Volume I, at [429/22.66] and Volume II at [616].
[1838] de Silva Review, Volume I, at [429/22.68].
[1839] de Silva Review, Volume I, at [429/22.68].
[1840] de Silva Review, Volume I, at [431/22.78].
[1841] de Silva Review, Volume I, at [447/23.85].
[1842] de Silva Review, Volume I, at [447/23.85-23.86] and Volume II, at [615].

between L/20 and Patrick Finucane's murder, "*they may conceivably have had the opportunity to recover the murder weapon.*"[1843]

22.25. In addition, on 17 February 1989, the CID received the information referred to above that L/20 had been seen with other loyalists on the morning of 13 February 1989. A CID source also provided intelligence on 12 May 1989 that L/20 had been amongst a loyalist group and was in a "*celebratory mood*" on 12 February 1989.[1844] Despite this, L/20 was never arrested by the CID team investigating the murder. [1845]

The Recruitment of Kenneth Barrett

22.26. The RUC's failure to ensure an adequate investigation was particularly significant when considered in light of the decision by SB to recruit Kenneth Barrett as an agent after he 'admitted' his involved in the murder when speaking to RUC officers on 3 October 1991, although he qualified his admission by stating that this was 'hypothetical.'[1846] It is of note that this did not represent an admission made under caution, a point acknowledged by Detective Sergeant (DS) Brown in his book, *Into the Dark*:

> *"The problem we had now was that nothing that Barrett had said to us was admissible evidence against him. It could only be used to corroborate other evidence. It was not admissible against him in a court of law."*[1847]

22.27. According to Sir Desmond, the evidence suggested that there was a difference of opinion between the SB and the CID over the significance of the admission.[1848] In his book, DS Brown considered

[1843] de Silva Review Volume I, at [447/23.87].
[1844] de Silva Review, Volume I, at [447/23.88].
[1845] de Silva Review, Volume I, at [447/23.88].
[1846] de Silva Review, Volume I, at [448/23.90-23.91].
[1847] Brown at [181].
[1848] de Silva Review, Volume I, at [448/23.92].

that Kenneth Barrett should have been pursued as a suspect in a murder investigation rather than treated as a potential informant:

> "*Barrett was now no longer in my sights as a potential informant. He was now a self-confessed murderer. Our rules governing the handling of informants meant that Barrett's confession ruled him out as far as ever becoming a Police informant or agent. It was one thing to suspect him of murder. It was a totally different matter to have evidence of his involvement in it. I fully intended to convict him of that brutal murder*." [1849]

22.28. Similarly, DC McIlwrath, DS Brown's CID colleague, made the following comment in his statement to the Stevens III investigation:

> *"At this time I believed we could have been talking to one of the murderers of Mr Finucane. I believed that Barrett had the ability to be a cold blooded killer."* [1850]

22.29. By contrast, the documentary record suggested that the SB took a very different view.[1851] A SB report sent by DC R/06, one of Kenneth Barrett's subsequent SB handlers, to D/Supt R/20 after the 'admission' on 3 October 1991 "*clearly showed that the SB did, indeed, wish to recruit Barrett as an agent.*"[1852] In respect of the 'admission', the report noted:

> *"At no time did the source admit to any involvement in murders by the UDA or any other incidents. When talking about such incidents the word source used when placing himself in a scenario was 'hypothetically talking'."* [1853]

[1849] Brown at [78].
[1850] de Silva Review, Volume I, at [449/23.93].
[1851] de Silva Review, Volume I, at [449/23.97].
[1852] de Silva Review, Volume I, at [450/23.104].
[1853] de Silva Review, Volume II, at [107]-[109].

22.30. DS Brown alleged that R/06 told him on 3 October 1991 that the SB already knew that Kenneth Barrett murdered Patrick Finucane but that he should not pursue this lead.[1854] Sir Desmond noted that it was true that SB had known for several years that Kenneth Barrett was linked to the murder.[1855] DS Brown's contemporaneous note records his dissatisfaction with SB's approach; a note in respect of his meeting at 1:40pm on 4 October 1991 was as follows:

> *"Attend D/Supt R/20's office re transcript of audio tape*
>
> *Discuss future handling of source [Barrett] with D/Supt [R/20] … [Special Branch] Good idea? Discuss with D/Supt [R/18] [CID] re – own reasons for feeling time is much too soon for this."*[1856]

22.31. DS Brown's entry for 4 October 1991 noted that: "SB jealousy obvious and very dangerous."[1857]

22.32. At a further meeting between Kenneth Barrett, DS Brown, DC McIlwrath and DC R/06 on 10 October 1991, DS Brown recalled that he was repeatedly instructed by R/06 not to bring up the subject of the murder of Patrick Finucane. The subject arose only once – when he asked Kenneth Barrett whether L/05 had been involved.[1858] The transcript of the recorded conversation contained the following excerpt:

> *"McIlwrath: I was surprised to hear that he [L/05] wasn't involved in Finucane because I thought he was one of the trigger men?*
>
> *Barrett: No.*

[1854] de Silva Review, Volume I, at [450/23.99-23.100]; Brown at [183]-[184].
[1855] de Silva Review, Volume I, at [450/23.101].
[1856] de Silva Review, Volume I, at [450/102] and Volume II at [115].
[1857] de Silva Review, Volume I, at [450/23.103].
[1858] de Silva Review, Volume I, at [450/23.105-23.106]; Brown at [194] and [196].

...

[DS Brown]: Has he got no balls or what?

Barrett: I think he's got balls for talking about it, you know.

[DS Brown]: Aye

Barrett: But that's about as far as it goes. He's not a trigger man.

R/06: See those ... see those two IDs on the police you give us last week.

Barrett: Mmm hm.

R/06: Those two policemen, can you update that any further?" [1859]

22.33. Sir Desmond noted that R/06's apparent interjection after the murder of Patrick Finucane could lend credence to DS Brown's suggestion that the SB did not want the subject to be raised.[1860]

22.34. DS Brown's subsequent account of his dealings with the SB included allegations of personal threats being made against him and claims that the SB used Kenneth Barrett as a way of removing him from his position. R/06's contemporaneous notes in turn accused DS Brown of having inappropriate dealings with Kenneth Barrett, though these allegations cannot be substantiated. As DS Brown declined to pursue those allegations when questioned by the Stevens III team, Sir Desmond considered that it was difficult to resolve these conflicting statements. [1861]

22.35. Despite this, DS Brown did continue to pursue the investigation of the murder of Patrick Finucane to the dismay of the SB.[1862] This was

[1859] de Silva Review, Volume I, at [451/23.107].
[1860] de Silva Review, Volume I, at [451/23.108].
[1861] de Silva Review, Volume I, [451/23.109] to [451/23.110].
[1862] de Silva Review, Volume I, [452/23.111].

confirmed by SB records; a report from R/06 to a Detective Inspector in SB, dated March 1992 outlined concerns that DS Brown continued to press Kenneth Barrett and other UDA members for information and confirmed that SB wanted to sideline DS Brown and take over the 'sole handling' of Kenneth Barrett as an agent. [1863] The SB note concluded with the comment that: "*Source instructed not to terminate relationship with D/Sergeant Brown at present but to keep him on the 'Long Finger'*." [1864]

22.36. In his book, DS Brown reflected on how the tension in the relationship between SB and CID as a consequence of the Walker reforms and the primacy of intelligence and SB. In particular, he described an interaction with Kenneth Barrett on 2 November 1991 and provided his thoughts:

> *""Sam [a SB officer] says I'm not to speak to you two. He hates you, Jonty. He says you are going to put me in jail for the Finucane murder," he said.*
>
> *I wasted no time. Two could play at this game. I was determined that if there was going to be a fight for credibility then the CID were going to come out on top. The problem was, I could not exclude Sam in the same manner that he could exclude me. The Walker guidelines were clear and nonnegotiable. But yet so often in the past when the Walker recommendations came down on our side, the Special Branch agenda had still taken precedence over important CID operations. On those rare occasions, the Special Branch had successfully argued that the directives of the Walker Report were intended to be mere guidelines. My CID authorities would not have dared to argue with that."* [1865]

[1863] de Silva Review, Volume I at [452/23.112] to [452/23.113].
[1864] de Silva Review, Volume I at [453/23.115].
[1865] Brown.

22.37. Similarly, Deputy Chief Constable Stalker was clear in his view that SB had too much power over CID when it came to deciding the investigative order of affairs for a police inquiry into a serious terrorist incident.[1866] In the Operation Kenova Interim Report, it was noted that, at the time, this was considered the best operating model and it was easy to criticism in hindsight. However, adopting an approach that gave intelligence primacy to its recipients and those handling agents, without any inspection, oversight mechanisms or cost benefit analysis was a "*serious failing*". [1867]

22.38. Sir Desmond found that SB took a conscious decision, taken at SB Superintendent level, to recruit Kenneth Barrett as an agent rather than seek to bring him to justice for his role in the murder of Patrick Finucane.[1868] Further, it was possible that knowledge of Kenneth Barrett's prima facie 'admission' and recruitment extended further up the RUC hierarchy.[1869] He also found that DS Brown could not fairly be blamed for having failed to pursue the investigation of Kenneth Barrett. Indeed, to the SB's displeasure, DS Brown did continue to pursue the potential case against Barrett and others for at least several months following the October 1991 'admission'. [1870]

22.39. A separate issue considered by Sir Desmond in relation to Kenneth Barrett's recruitment was the disappearance of the recording of the meeting on 3 October 1991 in which Kenneth Barrett had made the 'admission'. Evidence from both DS Brown and DC R/06 confirmed that a tape recording had been made of the meeting on 3 October 1991. However, when two tape recordings were provided by a RUC D/Supt to the Stevens III Investigation, the second was a copy of the

[1866] Operation Kenova Interim Report at [150/51.14].
[1867] Operation Kenova Interim Report at [51.15].
[1868] de Silva Review, Volume I at [455/23.132].
[1869] de Silva Review, Volume I at [455/23.132].
[1870] de Silva Review, Volume I at [453/23.117].

first.[1871] The D/Supt stated that the copies were handed to him by DC R/06.[1872] The Stevens III team commissioned the Metropolitan Police to analyse whether the 10 October conversation had been taped over the conversation on 3 October. The analysis confirmed that it had not been tampered with and must, therefore, have been a separate tape to that recorded on 3 October 1991. [1873]

22.40. DS Brown considered that the 10 October meeting was staged as part of the conspiracy to remove any trace of Kenneth Barrett's earlier admission, pointing to Kenneth Barrett's apparent frustration at being asked the same questions twice.[1874] However, having considered a transcript of the 10 October meeting, Sir Desmond was unpersuaded by this suggestion; it was actually R/06, not Kenneth Barrett, who flagged that the same ground had been covered before, nor did DS Brown appear to have taken a 'back seat' with regard to the questioning of Kenneth Barrett. [1875]

22.41. Despite dismissing that specific theory, Sir Desmond found force in DS Brown's general allegation that the disappearance of the tape resulted from an active decision by SB officers to get rid of the recording of the 'admission'.[1876] Sir Desmond was satisfied that it was a "*deliberate act designed to thwart the RUC CID*" in its investigation. This was on the basis that it must have been apparent to the SB officers that the recording was "*highly significant*" as it included a *prima facie* admission to a very high-profile murder and would have recorded Kenneth Barrett's significant comments that an RUC source had provided the UDA with intelligence on Patrick Finucane.[1877] It was much more significant than the recording of the

[1871] de Silva Review, Volume I, at [453/23.118] to [453/23.121].
[1872] de Silva Review, Volume I, at [453/23.121].
[1873] de Silva Review, Volume I, at [454/23.123].
[1874] de Silva Review, Volume I, at [454/23.124].
[1875] de Silva Review, Volume I, at [454/23.125] to [454/23.126].
[1876] de Silva Review, Volume I, at [455/23.127].
[1877] de Silva Review, Volume I, at [455/23.127] to [455/23.128].

10 October which was retained and provided to the Stevens III Investigation. [1878]

[1878] de Silva Review, Volume I, at [455/23.127].

23. STEVENS I AND THE PROSECUTION OF BRIAN NELSON

Obstruction of the Stevens I Investigation

Introduction

23.2. Sir Desmond de Silva QC was in no doubt that Stevens I was seriously obstructed by the failure of both RUC Special Branch and the Army's FRUr to provide highly relevant material. [1879] Sir Desmond identified six critical aspects of the obstruction of the Stevens I Investigation:

a. The instructions allegedly given by the Chief Constable of the RUC in relation to the provision of intelligence information.

b. The briefing provided by the Army and the RUC Special Branch to Stevens I.

c. The FRU's seizure and withholding of Brian Nelson's 'intelligence dump'.

d. The withholding of the 'file' of MISRs relevant to the Stevens I Investigation.

e. The withholding by the RUC Special Branch of the Security Service compendium of leaks.

f. The 'tip-offs' to UDA members of pending arrests by the Stevens I team.

Instructions given by the GOC and the Chief Constable

23.3. It is accepted by all involved that the Chief Constable of the RUC, Sir Hugh Annesley, had directed that the Deputy Head of Special

[1879] de Silva Review, Volume I at [472/24.89].

Branch, ACC Brian Fitzsimons, would act as the point of reference for all intelligence matters arising during Stevens I.1880

23.4. However, the General Officer Commanding Northern Ireland (GOC), General Sir John Waters, said in briefings in 1989 and 1990 to the Chief of the General Staff and the Secretary of State for Defence, that the Chief Constable had given instructions that the Stevens I team was to have no access to intelligence material or the units involved in gathering it, without prior clearance from the RUC Special Branch.[1881] General Waters maintained this position in his written submissions to the de Silva Review.[1882]

23.5. However, in his submissions to the 'The Report of the Patrick Finucane Review, December 2012' by Sir Desmond de Silva QC ("de Silva Review"), Sir Hugh emphatically denied that he had ever instructed the Army to deny Stevens I access to intelligence material. [1883]

23.6. Sir Desmond was unable completely to resolve the conflict because the veracity of the contested instruction hinged on what had been said during an unminuted conversation on 26 September 1989.1884 Notwithstanding this, Sir Desmond reached the view that he was unable to rely on the GOC's claim that the Chief Constable had issued an instruction to deny the Stevens I team access to all intelligence information. [1885] In reaching this view, Sir Desmond gave two reasons:

a. First, having appointed Lord Stevens and promised him full co-operation in public and in private, it would have been "*extraordinarily reckless*" for Sir Hugh to have instructed that

[1880] de Silva Review, Volume I at [463/24.39].
[1881] de Silva Review, Volume I at [461/24.28] to [461/24.29].
[1882] de Silva Review, Volume I at [461/24.30].
[1883] de Silva Review, Volume I at [462/24.33].
[1884] de Silva Review, Volume I at [461/24.31] and [462/24.36].
[1885] de Silva Review, Volume I at [463/24.39].

the Stevens I team would have no access to intelligence information. [1886]

b. Second, Sir Desmond considered it instructive that when General Waters wrote to Sir Hugh on 25 May 1990 (almost eight months after their unminuted conversation), he wrote that the instruction had been made, not by Sir Hugh, but by the Deputy Head of Special Branch. [1887]

Briefing provided by the Army and the RUC Special Branch

23.7. On 24 September 1989, members of the Stevens I team attended a briefing by the Army at Army Headquarters in Lisburn.[1888] During the briefing, one of the investigating officers asked whether the Army ran agents in Northern Ireland. In response, the Chief of the Army's G2 Intelligence Section explained that (i) the role of the Army in Northern Ireland was "primarily to assist and support" the RUC; and (ii) as such, the Army "did not use informants". [1889]

23.8. Sir Desmond considered this briefing to be "extraordinary". Although he accepted that the Chief of the G2 Intelligence Section was acting under the instructions of senior officers when making this statement, he did not accept that those senior officers could justify their position that they were acting under instructions based on the advice of RUC Special Branch.[1890] Further, Sir Desmond found that the Army's claim that RUC Special Branch told them not to reference the Army's covert intelligence matters in the briefing was unsubstantiated.[1891] This deception, in Sir Desmond's view,

[1886] de Silva Review, Volume I at [462/24.37].
[1887] de Silva Review, Volume I at [463/24.38].
[1888] de Silva Review, Volume I at [463/24.41].
[1889] de Silva Review, Volume I at [463/24.41]; John Stevens, *Not for the Faint-hearted* at [5] to [6].
[1890] de Silva Review, Volume I at [464/24.44].
[1891] de Silva Review, Volume I at [464/24.45].

amounted to the conscious obstruction of a criminal investigation. [1892]

23.9. Three days later, on 27 September 1989, a briefing paper was provided by the RUC Special Branch to the Stevens I team.[1893] The briefing was titled '*Involvement of Ulster Defence Regiment personnel in subversive / terrorist organisations*' and set out RUC Special Branch's analysis of the extent to which Ulster Defence Regiment (UDR) personnel had been involved with loyalist paramilitary organisations. [1894]

23.10. However, no briefing was provided to the Stevens I team regarding the involvement of RUC personnel with loyalist paramilitary organisations.[1895] This caused Sir Desmond to express "*grave reservations*" about the briefing provided by RUC Special Branch to the Stevens I Investigation. [1896]

<u>The seizure and withholding of Brian Nelson's 'intelligence dump'</u>

23.11. On 22 September 1989, two days before the Army provided its briefing to the Stevens I Investigation, A/05, the Officer Commanding of the FRU from December 1986 to March 1990, ordered the FRU to seize Brian Nelson's 'intelligence dump'.[1897] The 'intelligence dump' contained what Sir Desmond described as "*vital evidence*" to the Stevens I Investigation.[1898] An index produced on the day it was seized recorded that it included: maps and street plans; photographs of people; vehicles associated with people; names, addresses and dates of birth of people; 'Personality' cards (which contained details

[1892] de Silva Review, Volume I at [464/24.44].
[1893] de Silva Review, Volume I at [464/24.45].
[1894] de Silva Review, Volume II [829] to [832].
[1895] de Silva Review, Volume I at [464/24.46].
[1896] de Silva Review, Volume I at [464/24.45].
[1897] de Silva Review, Volume I at [465/24.49].
[1898] de Silva Review, Volume I at [468/24.69].

of persons of potential interest to loyalist terrorists); and photographs of Sinn Fein members.[1899]

23.12. A CF produced on that day recorded that the rationale for this action was to enhance Nelson's personal security.[1900] On the same day, the RUC Source Unit's Daily Intelligence Book recorded that "*All material has been removed from UDA int. cell and is now in possession of FRU for research*".[1901] On the basis of this entry, Sir Desmond was in no doubt that the RUC Source Unit was aware that the FRU was in possession of Nelon's 'intelligence dump'. [1902]

23.13. However, Sir Desmond found there was no documentary evidence that this information was passed by the RUC Source Unit to the Deputy Head of Special Branch, ACC Fitzsimons.[1903] A/05 claimed that he had personally informed ACC Fitzsimons that the FRU was in possession of the 'intelligence dump' on 22 September 1989, but this was denied by ACC Fitzsimons. [1904]

23.14. On 12 January 1990, Brian Nelson was arrested by the Stevens I team.[1905] The Stevens I team was provided with the 'intelligence dump' four days later, on 16 January 1990, almost four months after it was seized by the FRU.[1906] Lord Stevens described the number of documents contained within it as "*colossal*". [1907]

23.15. During that four-month period, Thomas 'Tucker' Lyttle, described by BBC Panorama investigative journalist, John Ware, as the UDA's 'boss' in West Belfast, had instructed Nelson to show Mr Ware his

[1899] de Silva Review, Volume II at [540] to [547].
[1900] de Silva Review, Volume I at [465/24.50].
[1901] de Silva Review, Volume I at [467/24.65].
[1902] de Silva Review, Volume I at [467/24.66].
[1903] de Silva Review, Volume I at [467/24.66].
[1904] de Silva Review, Volume I at [467/24.62] to [467/24.63].
[1905] *In re Finucane's Application for Judicial Review* [2019] UKSC 7, at [para 10].
[1906] de Silva Review, Volume I at [468/24.69].
[1907] John Stevens, *Not for the Faint-hearted* at [192].

'intelligence dump' in order to evidence the scale of the security force leaks to the UDA.[1908] According to Mr Ware, this led to Nelson routinely requesting that the FRU return his 'intelligence dump' to him so that he could satisfy Lyttle's instruction.[1909]

The withholding of the 'file' of MISRs

23.16. On around 29 September 1989, at the request of ACC Fitzsimons, A/05 provided a file to him which contained a compilation of 42 MISRs outlining Nelson's reporting of a series of RUC and UDR leaks during the period 1987-89.[1910]

23.17. This file was not provided to the Stevens I team until 17 October 1990, over a year after it was created.[1911] In his statement to the Stevens I Investigation, ACC Fitzsimons explained that when he received the file, he perceived the sensitivity of the documents and had *"major grounds for concern, should any use be made of these in terms of source protection*". [1912]

The withholding of the compendium of leaks

23.18. On 11 October 1989 the Security Service's Head of Assessments Group (HAG) provided ACC Fitzsimons with a file it had compiled on security force leaks to loyalist paramilitaries.[1913] The following day, the Security Service Legal Adviser gave clearance for the file to be provided to the Stevens I Investigation.[1914] However, the RUC Special Branch never shared the file with, or provided a brief about its contents to, any of the Stevens Investigations.[1915]

[1908] Ware, Neither Confirm Nor Deny at [133]; de Silva Review, Volume II at [781].
[1909] Ware, Neither Confirm Nor Deny at [134].
[1910] de Silva Review, Volume I at [468/24.71] to [469/24.72].
[1911] de Silva Review, Volume I at [469/24.73].
[1912] de Silva Review, Volume I at [469/24.75].
[1913] de Silva Review, Volume I at [469/24.76] to [470/24.78].
[1914] de Silva Review, Volume I at [470/24.79].
[1915] de Silva Review, Volume I at [470/24.80].

The 'tip-offs' about pending arrests

23.19. The Stevens I team planned to conduct a series of arrests of loyalist paramilitary figures, including Brian Nelson and Tommy Lyttle, on 8 January 1990. On 6 January 1990, this information was leaked to the UDA.[1916] John Ware has written that the source of this leak came from the RUC Special Branch.[1917]

23.20. Sir Desmond addressed the allegations that Nelson was subsequently told by his FRU handlers to leave Northern Ireland. Sir Desmond found that the documentary evidence was unclear, citing an occasion when a CF recorded his handlers telling him not to leave.[1918]

23.21. Lord Stevens told the de Silva Review that he received information about Nelson's tip-off from Mr Ware.[1919] In his memoir, Lord Stevens wrote that he saw Mr Ware and his producer on an evening flight to Belfast on 7 January 1990, who said they had "*come for the arrests*"; because of their presence, Lord Stevens wrote, the arrests were postponed.[1920] Mr Ware disputes this: his recollection is that he and his producer deliberately avoided the Stevens team on the flight because they did not want to reveal their plans to film the arrests.[1921]

Fire at the premises of the Stevens I Investigation

23.22. On 10 January 1990, the night before the new date of the arrest operation, a fire broke out in Sea Park, the secure compound where the Stevens Investigation was based.[1922] Notwithstanding this

[1916] de Silva Review, Volume I at [470/24.82].
[1917] Ware, Neither Confirm Nor Deny at [139].
[1918] de Silva Review, Volume I at [470/24.82].
[1919] de Silva Review, Volume I at [470/24.83].
[1920] John Stevens, *Not for the Faint-hearted* at [8].
[1921] Ware, Neither Confirm Nor Deny at [154].
[1922] John Stevens, *Not for the Faint-hearted* at [1].

episode, the Stevens I team would arrest Brian Nelson on 12 January 1990. [1923]

23.23. The '*Overview and Recommendations*' report published by the Stevens III Investigation recorded this incident in the following way:

> "*The night before the new operation my Incident room was destroyed by fire. This incident, in my opinion, has never been adequately investigated and I believe it was a deliberate act of arson*." [1924]

23.24. Sir Desmond de Silva's view was that:

> "*Given the timing of the fire, I have no reason to doubt Sir John Stevens' conclusion in this regard, though I note that the original CID investigation into the incident concluded that the fire was not caused by an act of arson".* [1925]

23.25. The RUC's investigation was carried out by Detective Superintendent Alan Simpson, one of the RUC CID detectives who investigated Patrick Finucane's murder. His report, which was submitted within nine days,[1926] found that:

> "*... in all probability the fire had been caused accidentally, perhaps even by the careless disposal of a lighted cigarette end*". [1927]

23.26. In his book, *Duplicity and Deception: Policing the Twilight Zone of the Troubles*, Alan Simpson gives a detailed account of the work of his investigation. His team, which included two forensic scientists specialising in investigating fires and a third scientist who was the

[1923] de Silva Review, Volume I at [411/21.78].
[1924] Sir John Stevens, Stevens Enquiry 3: Overview & Recommendations (17 April 2003),at [para 3.4] (CAIN Web Service).
[1925] de Silva Review, Volume I at [471/24.85].
[1926] Simpson at [58].
[1927] Ware, Neither Confirm Nor Deny at [159].

Head of the RUC's Fire Department, found no evidence of an incendiary device or of a fire accelerant at the Sea Park office. [1928]

23.27. The conclusion of Alan Simpson and his team was disputed by Lord Stevens who in his memoir described Mr Simpson's investigation as having been "*perfunctory*" and disproven by the Stevens Investigation team's own inquiries. [1929] This is a characterisation which Mr Simpson rejects. [1930]

23.28. Lord Stevens recalled that on the night of the fire, he sent for the head of the RUC Special Branch and ACC Wilf Monahan. Just before midnight, the two men arrived at the scene. In his memoir, Lord Stevens writes:

> "*Both men came round, and both said, 'We think we know who did this.' That was the first time I heard of a unit called the FRU, and the first time I heard the name of a certain colonel. It was whispered in my ear – I will not say by whom – that he and the Force Research Unit were directly responsible for the fire*." [1931]

23.29. In his submission to Sir Desmond, A/05 described this allegation as "*a quite astonishing accusation, made without evidence and done deliberately to create suspicion against us*." [1932] For his part, Alan Simpson expressed doubt, in strong terms, about the truth of this theory. [1933]

[1928] Simpson at [49] to [52].
[1929] John Stevens, *Not for the Faint-hearted* at [10].
[1930] Simpson at [58].
[1931] John Stevens, *Not for the Faint-hearted* at [5].
[1932] de Silva Review, Volume I at [471/24.85].
[1933] Simpson at [56] to [57].

23.30. Ultimately, Sir Desmond concluded that there exists no evidence whatsoever to connect the FRU, or indeed any individual or organisation, to the fire. It remains unexplained. [1934]

The decision to prosecute Brian Nelson

Introduction

23.31. In July 1990, the Stevens team submitted its case against Brian Nelson to the DPP(NI) [1935] The decision to prosecute Brian Nelson was ultimately one for the DPP(NI), subject only to the power of direction held by the Attorney General, Sir Patrick Mayhew QC (later the Lord Mayhew of Twysden). [1936]

23.32. As they were considering the case against Nelson, attempts were made by Cabinet ministers, including the Secretary of State for Defence and the Secretary of State for Northern Ireland, to prevent the prosecution. [1937] Those attempts were made (i) before the DPP(NI) reached a preliminary conclusion as to whether to bring a prosecution on 22 February 1991, and (ii) after this date, when the Attorney General formally consulted Cabinet ministers for their views on the prosecution, in accordance with the Shawcross Convention.

23.33. The Shawcross Convention had, in 1951, established a duty on the Attorney General, in deciding whether to authorise a prosecution, to acquaint himself with all the relevant facts in order to determine whether prosecution is in the public interest. The process for so doing may include consulting with government colleagues, but there is no obligation to do so. The responsibility for the decision

[1934] de Silva Review, Volume I at [471/24.86].
[1935] de Silva Review, Volume I at [473/24.95].
[1936] de Silva Review, Volume II at [747].
[1937] de Silva Review, Volume I at [489/24.187].

ultimately rests with the Attorney General; he is not to be put under pressure by his colleagues during the consultation process. [1938]

Attempts to stop the prosecution before the DPP(NI)'s preliminary conclusion

23.34. On 21 September 1990, the Attorney General wrote to the Secretary of State for Defence, Tom King (now Baron King of Bridgwater), to inform him that the DPP(NI) was considering the evidence against Nelson.[1939] The Secretary of State for Defence received written advice from his officials on 26 September 1990, which set out the "*complicated public interest issues*" associated with "*disclosures that might arise if Nelson were to appear as a witness or to be prosecuted*".[1940] The following day, a meeting took place between the Home Secretary, David Waddington (later, Lord Waddington), the Attorney General, the Secretary of State for Defence and other relevant ministers. The note of the meeting recorded the Secretary of State for Defence's view that Brian Nelson "*should not go near the courts*" but that "*if Nelson had gone beyond the limit, he could not be protected from penalties*". [1941]

23.35. The Secretary of State for Defence followed this meeting with a letter to the Attorney General on 3 October 1990, which was copied to the then Prime Minister, John Major (now Sir John Major), the Home Secretary, the Secretary of State for Northern Ireland, Peter Brooke (later Baron Brooke of Sutton Mandeville), the Director General of the Security Service, Sir Patrick Walker, and the Cabinet Secretary, Sir Robin Butler.[1942] In the letter, the Secretary of State for Defence said

[1938] de Silva Review, Volume I at [473/24.96] to [473/24.97].
[1939] de Silva Review, Volume I at [474/24.101].
[1940] de Silva Review, Volume I at [474/24.102].
[1941] de Silva Review, Volume I at [475/24.107] to [475/24.108].
[1942] de Silva Review, Volume I at [476/24.113].

he remained "*extremely concerned*" about the prospect of Nelson's prosecution. [1943]

23.36. He went on express his belief that "*it would be extremely serious if Nelson were to disclose in public what he knows about the handling of agents in Northern Ireland*" before concluding:

> "*... there is likely to be a compelling case in the public interest for preventing his prosecution if doing so is the only way to avoid public disclosure*". [1944]

23.37. In the letter, the Secretary of State for Defence responded to the Attorney General's request for the Ministry of Defence's assessment of Nelson as an agent by describing him as "*the best source any agency had in the loyalist paramilitary groups*".[1945] An annex to the letter set out "*some significant items*" provided by Nelson.[1946] This had been provided to the Secretary of State for Defence by the FRU, via GS Sec 2 within the Ministry of Defence.[1947] Sir Desmond did not publish the annex within Volume II of his Report, but he described its contents as presenting a:

> "*... highly misleading and factually inaccurate outline of Nelson's supposed role in saving the lives of those he targeted for murder*". [1948]

23.38. On 12 October 1990, the Secretary of State for Northern Ireland wrote to the Attorney General setting out his view that "*the consequences*

[1943] de Silva Review, Volume II at [741].
[1944] de Silva Review, Volume II at [741].
[1945] de Silva Review, Volume I at [742].
[1946] de Silva Review, Volume II at [742].
[1947] de Silva Review, Volume I at [476/24.110].
[1948] de Silva Review, Volume I at [476/24.111].

for our intelligence operations of a decision to prosecute will be grave". [1949]

23.39. On 22 February 1991, the DDP(NI) reached his preliminary conclusions on the evidential test with respect to Brian Nelson. He considered there was sufficient evidence to prosecute Nelson for the murders of Terence McDaid and Gerard Slane.[1950] He also concluded that there was sufficient evidence to prosecute Nelson for the murder of Patrick Finucane, by charging him with the offence of aiding and abetting the possession of a document likely to be of use to terrorists. The document in question was the photograph taken of Patrick Finucane and Patrick McGeown, which Nelson gave to Kenneth Barrett five days before the murder. [1951]

Exercise of the Shawcross Convention

23.40. On 11 March 1991, the Attorney General wrote to the Secretary of State for Defence to inform him that the DPP(NI) had reached a preliminary conclusion that there was sufficient evidence to prosecute Nelson in respect of two charges of murder, four charges of conspiracy to murder, one charge of attempted murder and various other offences. [1952]

23.41. The purpose of the Attorney General's letter was to seek the views of the Secretary of State for Defence on the public interest considerations of the prosecution, which he would communicate to the DPP(NI).[1953] The letter was copied to the Prime Minister, the Home Secretary, the Secretary of State for Northern Ireland, the

[1949] de Silva Review, Volume I at [476/24.114].
[1950] de Silva Review, Volume I at [478/24.125].
[1951] de Silva Review, Volume I at [478/24.126].
[1952] de Silva Review, Volume II at [747] to [748].
[1953] de Silva Review, Volume II at [747].

Director General of the Security Service and the Cabinet Secretary. [1954]

23.42. The Attorney General set out that the DPP(NI) had proceeded on the assumption that Nelson's anticipated defence – namely, that his purpose was to frustrate the commission of the offences in question – would be available to him in law; for his part, the Attorney General emphasised that the extent of the defences available to informants in these circumstances remained uncertain.[1955] Nevertheless, the Attorney General said that Nelson's representatives could be expected to seek disclosure of sensitive material which may be relevant to this defence. [1956]

23.43. Although the Attorney General noted that the DPP(NI) did not consider that there was sufficient evidence to prosecute any member of the security forces in connection with Nelson's activities, he expressed that he was "*much troubled by the relationship between the Army and Nelson*". [1957]

Response of the Cabinet Secretary

23.44. The first response to the letter came from the Cabinet Secretary, who sent a minute to the Prime Minister on 15 March 1991. The purpose of the Cabinet Secretary's minute was to provide the Prime Minister with:

> "*... an assessment of the damage to our intelligence interests which would accrue from proceeding against Nelson on murder charges*". [1958]

[1954] de Silva Review, Volume II at [752].
[1955] de Silva Review, Volume II at [748].
[1956] de Silva Review, Volume II at [750].
[1957] de Silva Review, Volume II at [751].
[1958] de Silva Review, Volume II at [760].

23.45. In this regard, the Cabinet Secretary wrote that following the inevitable exposure of the personnel, records and activities of the FRU in court, it was virtually certain that the unit would "*suffer a severe setback and might even have to be disbanded*".[1959] The Cabinet Secretary noted that although the FRU could be criticised for its running of Nelson, it "*has conducted and is conducting highly successful agent operations which have saved lives*". [1960]

23.46. Although he acknowledged the "*grave political risks*" of not prosecuting Nelson, the Cabinet Secretary concluded by suggesting that the best way of persuading the Attorney General not to prosecute Nelson would be to argue that:

> "*... while the damage a prosecution would do to the intelligence effort is certain, the prospects of a successful prosecution are much less so*". [1961]

23.47. Sir Desmond reached the view that the "*overall tenor*" of the minute suggests that the Cabinet Secretary did not think Nelson should be prosecuted. [1962]

<u>Response of the Secretary of State for Northern Ireland</u>

23.48. On 18 March 1991, the Secretary of State for Northern Ireland responded to the Attorney General. The Secretary of State for Northern Ireland concluded "*that the balance of the public interest, in terms of my responsibilities, is against prosecution*". He reached this view on the basis that:

> "*The difference in terms of public confidence between prosecution (successful or otherwise) and a decision not to*

[1959] de Silva Review, Volume II at [760] to [761].
[1960] de Silva Review, Volume II at [760].
[1961] de Silva Review, Volume II at [762].
[1962] de Silva Review, Volume I at [481/24.139].

prosecute seems to me uncertain. The damage to the intelligence effort against terrorism of a decision to prosecute, however it turns out, would be both certain and very heavy indeed." [1963]

Response of the Secretary of State for Defence

23.49. On 19 March 1991, the Secretary of State for Defence responded to the Attorney General, copying the Prime Minister. His letter began by setting out his strong belief that it would not be in the public interest to prosecute Nelson for any of the charges. [1964]

23.50. The Secretary of State for Defence expressed the view that there was no reason to believe that Nelson "*will not use all he knows to defend himself*" and that his:

"*... information would, if it came into the public domain, severely damage the effectiveness of our intelligence organisation in the fight against terrorism in Northern Ireland*". [1965]

23.51. The letter went on to refer to the Attorney General's inability to predict how a court would treat the nature of Nelson's role as an agent, before observing that:

"*... a verdict of not guilty would not justify having put the entire intelligence system in Northern Ireland under a microscope in public*". [1966]

23.52. The letter stressed the action taken by the security forces as a result of Nelson's intelligence:

"*... the defence will be well able to justify the claim that Nelson saved life: during his time as a UDA intelligence officer he*

[1963] de Silva Review, Volume II at [764].
[1964] de Silva Review, Volume II at [768].
[1965] de Silva Review, Volume II at [770] to [771].
[1966] de Silva Review, Volume II at [776].

provided his handlers with more than 700 threat warnings against a total of some 217 individuals... All these warnings were passed to the RUC Special Branch's Source Unit to prevent any harm coming to the intended victims." [1967]

23.53. Sir Desmond concluded that this letter represented yet another occasion when the Attorney General was being presented with inaccurate information about Nelson's activities as an agent. [1968]

Response of the Prime Minister's Private Secretary

23.54. Also on 19 March 1991, the Prime Minister's Private Secretary, Sir Charles Powell, provided a briefing to the Prime Minister in advance of him meeting the Attorney General, the Solicitor General, Sir Nicholas Lyell QC (later Baron Lyell of Markyate), the Secretary of State for Defence, the Secretary of State for Northern Ireland, the Home Secretary and the Cabinet Secretary. [1969]

23.55. In the briefing note, Sir Charles highlighted four points weighing against a prosecution:

"*- it is far from certain a prosecution would succeed.*

- it would certainly lead to disclosure of sensitive material.

- it would also result in the public exposure of the procedures, techniques and personnel of the Army agent-running unit in Northern Ireland, which plays a crucial role in the fight against terrorism.

- Nelson himself would argue, and his Army handlers support this, that he has saved a large number of lives by his activities (he is

[1967] de Silva Review, Volume II at [769].
[1968] de Silva Review, Volume I at [480/137].
[1969] de Silva Review, Volume II at [765].

said to have provided over 700 threat warnings against 217 individuals)." [1970]

23.56. Sir Charles went on to summarise the views that had been provided to the Prime Minister and the Attorney General by the Secretary of State for Defence, the Secretary of State for Northern Ireland and the Cabinet Secretary. He ended by inviting the Prime Minister to emphasise in the meeting the essence of the arguments made by each of those who had responded to the Attorney General:

"*... that the prospects for a successful prosecution look <u>uncertain</u> while the damage to the intelligence effort looks <u>very certain</u> indeed*" (emphasis original). [1971]

<u>Meetings held by the Attorney General</u>

23.57. On 24 April 1991, the Attorney General met with the Chief Constable of the RUC, Sir Hugh Annesley.[1972] Prior to this, the RUC had been actively engaged in making representations to the DPP(NI) about the merits of prosecuting Nelson. In a letter dated 11 July 1990 sent by ACC Fitzsimons to ACC Monahan, to be forwarded to the DPP(NI), ACC Fitzsimons set out Nelson's supposed value as an agent.[1973] As a result of the contents of this letter, ACC Monahan wrote to the DPP(NI) on 23 July 1990 expressing the Chief Constable's view that Nelson should not be prosecuted.[1974] On 29 January 1991, ACC Fitzsimons wrote another letter to ACC Monahan, again, to be forwarded to the DPP(NI), retracting his earlier contention that Nelson had always endeavoured to assist the authorities to

[1970] de Silva Review, Volume II at [766].
[1971] de Silva Review, Volume II at [767].
[1972] de Silva Review, Volume I at [483/24.148].
[1973] de Silva Review, Volume II at [737] to [739].
[1974] de Silva Review, Volume I at [477/24.120].

neutralise the threat posed by the UDA, but nevertheless setting out his opposition to Nelson's prosecution. [1975]

23.58. Almost two weeks before his meeting with the Attorney General, the Chief Constable had received a letter from Lord Stevens which set out that action was taken by the RUC Special Branch, upon receipt of information provided by Nelson, "*in only two cases to protect the potential victims of Protestant Loyalist assassination*".[1976] The Stevens team had made the Attorney General aware of this figure and, on 25 March 1991, the Attorney General's Office wrote to the Private Secretary to the Secretary of State for Defence setting out that the Secretary of State's statement that "*... Nelson had provided his handlers with more than 700 threat warnings against a total of some 217 individuals and that all these warnings were passed to the RUC Special Branch's Source Unit to prevent any harm coming to the intended victims*" sat "*somewhat uneasily*" alongside the information provided by Lord Stevens. [1977]

23.59. Notwithstanding this information, and the Chief Constable's assessment that the Stevens team's assessment was correct, the Chief Constable argued against the prosecution of Nelson at his meeting with the Attorney General on 24 April 1991. [1978]

23.60. Also on 24 April 1991, the Attorney General held a meeting with the Director General of the Security Service, at which the Director General expressed his view that a prosecution would damage the morale of agents.[1979] The Director General had previously outlined his concerns about a prosecution in a letter to the Home Secretary on 18

[1975] de Silva Review, Volume II at [744] to [746].
[1976] de Silva Review, Volume II at [787].
[1977] de Silva Review, Volume II at [777].
[1978] de Silva Review, Volume I at [483/24.148].
[1979] de Silva Review, Volume I at [483/24.153].

March 1991 which had been copied to the Attorney General's Office. [1980]

The Attorney General's decision

23.61. On 25 April 1991, the Attorney General wrote to the Secretary of State for Defence, copying the Prime Minister, the Home Secretary (Kenneth Baker, now Baron Baker of Dorking), the Foreign Secretary, Douglas Hurd MP, the Secretary of State for Northern Ireland and the Cabinet Secretary.[1981] In that letter, the Attorney General set out his view that the public interest required prosecution.[1982] In offering his reasons, he cited his discussions with Lord Stevens:

> "*As Mr Stevens has said to me, the case goes to the core of what he was asked to investigate. It reveals that Nelson, an Army agent, deliberately distributed documents identifying PIRA suspects not just to the UDA, but to other loyalist paramilitary organisations in circumstances in which he could not possibly monitor, let alone exercise any control over, the use to which they might be put. It reveals also that Nelson furthered to the point of fruition the murderous criminality which the Army are in the Province to forestall.*" [1983]

23.62. The Attorney General invited that any further matters be drawn to his attention by 30 April 1991, ahead of Nelson's next court appearance on 3 May 1991. [1984]

[1980] de Silva Review, Volume I at [480/24.133].
[1981] de Silva Review, Volume II at [790] to [794].
[1982] de Silva Review, Volume II at [794].
[1983] de Silva Review, Volume II at [793].
[1984] de Silva Review, Volume II at [794].

Further representations from Cabinet Ministers

23.63. The Secretary of State for Defence responded on 29 April 1991, setting out that his view remained against prosecution.[1985] On 1 May 1991, the Foreign Secretary responded, expressing that he was in favour of prosecution. [1986]

Meeting chaired by the Prime Minister

23.64. On the evening of 1 May 1991, the Prime Minister chaired a meeting to discuss the public interest arguments that applied to the Nelson prosecution. In attendance were the Home Secretary, the Secretary of State for Defence, the Secretary of State for Northern Ireland, the Attorney General, the Solicitor General, the Cabinet Secretary and the Chair of the Joint Intelligence Committee, Sir Percy Cradock. [1987]

23.65. In advance of that meeting, the Cabinet Secretary had written a minute to the Prime Minister providing an analysis of the Attorney General's letter of 25 April 1991.[1988] In that minute, the Cabinet Secretary expressed concern that the Attorney General had given weight to the question of whether Nelson's activities saved more lives than they cost or endangered. He went on to write:

> "*... the real argument against prosecution is that it will do far greater and more lasting harm to intelligence operations in Northern Ireland on which the struggle against terrorism so crucially depends than the good that could possibly be done by prosecution*." [1989]

23.66. The minute went on to say:

[1985] de Silva Review, Volume II at [797].
[1986] de Silva Review, Volume II at [799].
[1987] de Silva Review, Volume II at [804] to [808].
[1988] de Silva Review, Volume II at [795] to [796].
[1989] de Silva Review, Volume II at [796].

"*You and your colleagues could only let the Attorney know that you strike the balance of public interest differently from him, while accepting that the decision is one which he must ultimately take*". [1990]

23.67. The note of the meeting on 1 May 1991 records that the Secretary of State for Northern Ireland and the Secretary of State for Defence expressed their views that the public interest was against a prosecution. The former set out that the real issues "*were the threats to the gathering of intelligence and the threats to witnesses*".[1991] The latter emphasised his view that "*the odds against a prosecution being carried through to a conclusion were high*" and that a trial would ventilate the problems surrounding inter-agency coordination. [1992]

23.68. The Attorney General asked the Prime Minister for his view. The note records:

"*The Prime Minister said he was very torn. His instinct was that where a charge could be brought with a reasonable prospect of success, it should be brought. But he felt that some of the considerations put forward by the Northern Ireland Secretary were impressive and were a considerable advance on what had been heard before*." [1993]

23.69. The Prime Minister did not, ultimately, express a firm view on whether a prosecution should be brought. [1994]

23.70. The following day, the Attorney General wrote to the Secretary of State for Defence, copying the Prime Minister and those involved in

[1990] de Silva Review, Volume II at [796].
[1991] de Silva Review, Volume II at [804].
[1992] de Silva Review, Volume II at [806].
[1993] de Silva Review, Volume II at [807].
[1994] de Silva Review, Volume I at [486/24.170].

the discussions, confirming that he had reported the views expressed in the meeting to the DPP(NI), and that the DPP(NI) had concluded that Nelson should be prosecuted.[1995] The Attorney General wrote that the Law Officers concurred with the DPP(NI)'s decision. [1996]

23.71. In the de Silva Review, Sir Desmond concluded that the DPP(NI) and the Attorney General deserve significant credit for pursuing the prosecution of Nelson, despite the significant political pressure they faced.[1997] Sir Desmond expressed concern that, had the views of the Secretary of State for Defence and the Secretary of State for Northern Ireland prevailed, "*an individual who actively promoted and facilitated terrorist attacks would have escaped justice*". [1998]

23.72. Sir Desmond also expressed concern that the Secretary of State for Defence was provided with highly misleading advice about the FRU's handling of Nelson, which was subsequently sent by the Secretary of State to the Attorney General and the DPP(NI).[1999] For his own part, the Secretary of State for Defence told the Attorney General that he was "*very concerned that you believe that the information coming to me has not been accurate*" and appears to have been determined to pursue the matter;[2000] however, Tom King left the Cabinet after the General Election in 1992 and was no longer the Secretary of State for Defence. [2001]

Brian Nelson's guilty plea

23.73. On 17 January 1992, the Attorney General held a meeting with the DPP(NI) and prosecuting counsel, Brian Kerr QC (as he then was;

[1995] de Silva Review, Volume II at [800] to [801].
[1996] de Silva Review, Volume II at [800].
[1997] de Silva Review, Volume I at [489/24.186].
[1998] de Silva Review, Volume I at [489/24.187].
[1999] de Silva Review, Volume I at [490/24.188].
[2000] de Silva Review, Volume II at [797] to [798].
[2001] de Silva Review, Volume I at [487/24.173].

later Lord Kerr, who would, in 2019, write the Supreme Court's leading judgment in the judicial review brought by Geraldine Finucane). At that meeting, the DDP(NI) recorded that Nelson's legal representatives had made an approach to discuss a plea, and that he was bound to consider this. [2002]

23.74. On 22 January 1992, Nelson pleaded guilty to 20 offences. This included five charges of conspiracy to murder, but did not include the two charges of murder with which he had originally been charged.[2003] Nor did it include the charge relating to the murder of Patrick Finucane.[2004] The guilty pleas offered by Nelson were acceptable to the prosecution such that all other charges, including the two charges of murder, were not proceeded with. Brian Kerr QC explained to the court that the prosecution's decision had been based:

> "*... solely on an evaluation of the factors likely to affect the outcome of the case and the demands of justice... after a scrupulous assessment of possible evidential difficulties for the prosecution and a rigorous examination of the requirements of justice*." [2005]

23.75. On the basis of the material before him, Sir Desmond concluded that this decision must have been made on evidential grounds, rather than public interest grounds, because the DPP(NI) and the Attorney General had concluded that prosecuting Nelson was in the public interest.[2006] He found that the only public interest consideration taken into account by the DPP(NI) were the evidential difficulties relating to some aspects of the charges against Nelson and the

[2002] de Silva Review, Volume I at [489/24.183].
[2003] de Silva Review, Volume I at [488/24.180].
[2004] de Silva Review, Volume I at [489/24.177].
[2005] de Silva Review, Volume I at [489/24.182].
[2006] de Silva Review, Volume I at [488/24.177].

desirability of ensuring he was convicted for those offences to which he was prepared to plead guilty. [2007]

Evidence given by A/05 at Brian Nelon's sentencing hearing

23.76. On 29 January 1992, A/05 was called as a defence witness at Nelson's sentencing hearing. He was first questioned by Nelson's counsel, Desmond Boal QC, and then subject to cross-examination by Brian Kerr QC. [2008]

23.77. During his evidence, A/05 referred to the very same figures which had been raised by the Secretary of State for Defence during the Shawcross Exercise and disputed by the Stevens team:

> "*We produced on Brian Nelson's information something like 730 reports concerning threats to 217 separate individuals... threats to the life of individuals. In all cases these were passed on for action. Of the 217 of interest, that of the 217 personalities that were named in his reports or our reports, five of them died. One at the hands of the security forces in Gibraltar, one from natural causes and three at the hands of Protestant paramilitaries*." [2009]

23.78. When Desmond Boal QC suggested to him that a number of people owed their lives to Nelson, A/05 replied: "*there was a lot of potentially life saving information that he gave and lives were saved*".[2010] A/05 also said that Nelson:

> "*... did produce a tremendous amount of information referring to their plans and their targets for assassination and this was of course of life saving <u>potential</u>*" (emphasis original). [2011]

[2007] de Silva Review, Volume I at [489/24.185].
[2008] de Silva Review, Volume I at [490/24.191].
[2009] de Silva Review, Volume I at [490/24.192].
[2010] de Silva Review, Volume I at [491/24.196].
[2011] de Silva Review, Volume I at [494/24.213].

23.79. In his report, Justice Cory described the evidence given by A/05 at Nelson's sentencing hearing as misleading, finding that:

> "*The statement that Nelson's actions were responsible for saving close to 217 lives was based on a highly dubious numerical analysis that cannot be supported on any basis*". [2012]

23.80. Sir Desmond therefore considered whether the evidence given by A/05 had misled the sentencing judge, Lord Justice Kelly. He found that it had not been misleading for three reasons.

a. First, having carried out his own analysis of the CFs and MISRs produced by the FRU during Nelson's time as an agent, from 1987 to 1989, which named individuals who could have been potentially under threat from the UDA, Sir Desmond concluded that the figures provided by A/05 had a reasonable numerical basis. [2013]

b. Secondly, Sir Desmond considered that A/05 chose his words with care by referring only to the "*potential*" value of Nelson's intelligence; in so doing, he believed A/05 was cognisant of the distinction between, on the one hand, Nelson's provision of potentially life-saving intelligence and, on the other, whether the RUC exploited this information to protect individuals. [2014]

23.81. Thirdly, Sir Desmond found that Lord Justice Kelly was equally alert to this distinction. In his sentencing remarks, he said he gave "*considerable weight to the fact that [Nelson] passed on what was possibly life saving information in respect of 217 threatened individuals*". [2015] Having found that this numerical basis was reasonable, Sir Desmond concluded that Lord Justice Kelly was not

[2012] Cory Report at [103/1.288].
[2013] de Silva Review, Volume I at [491/24.197] to [494/24.212] and [496/24.224].
[2014] de Silva Review, Volume I at [494/24.213] and [495/215].
[2015] de Silva Review, Volume I at [490/24.193].

misled by A/05's evidence on this matter. [2016] Further, he concluded that the fact that the RUC had generally disregarded this information was not material to the question of Nelson's culpability; a point which had been acknowledged by the Attorney General during the Shawcross Exercise. [2017]

[2016] de Silva Review, Volume I at [496/24.225].
[2017] de Silva Review, Volume I at [496/24.224]; de Silva Review, Volume II at [791].

ANNEX: SOURCE LIST

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