

OMAGH BOMB INVESTIGATION – INDEPENDENT REVIEW

PREFACE

In *The Queen –v- Sean Hoey* judgement of 20 December 2007, Mr Justice Weir noted in his introduction:

“In this Bill the accused is charged with 58 counts related to the alleged offences of murder, conspiracy to murder, causing explosions, conspiracy to cause explosions and possession of explosive substances with intent to endanger life or cause serious damage to property. They arise from thirteen bomb and mortar attacks, attempts at such attacks and the finding of unexploded devices that began on 24 March 1998 and included the infamous car bomb explosion that destroyed much of the shopping centre of Omagh on the afternoon of Saturday, 15 August 1998 with the appalling consequence that twenty-nine members of the public, including a lady pregnant with twins which did not survive, were killed and hundreds of others were injured, many gravely, leaving permanent and widespread physical and psychological scars. The town centre was destroyed. This huge explosion was among the very worst of the numerous terrible events of that recent thirty-year violent period of Northern Ireland history sometimes euphemistically referred to as ‘the Troubles’. The prosecution contended, and there seems little doubt, that those responsible for all these incidents were so-called republicans who did not accept the implications of the Good Friday Agreement for the continuation of their terrorist campaign.”

Having briefly described each of the thirteen incidents, including the car bomb at Market Street, Omagh on 15 August 1998, the three strands of the prosecution case and defence, Mr Judge Weir concluded:

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“I am acutely aware that the stricken people of Omagh and every other right-thinking member of the Northern Ireland community would very much wish to see whoever was responsible for the outrageous events of August 1998 and the other serious crimes in this series of terrorist incidents convicted and punished for their crimes according to law. But I also bear firmly in mind the cardinal principle of the criminal law which, in delivering the judgement of the Court of Appeal in R –v- Steenson and others [1986] NIJB17 at page 36, Lord Lowry LCJ re-emphasised in his concluding observations:

“Justice ‘according to law’ demands proper evidence. By that we mean not merely evidence which might be true and to a considerable extent probably is true, but, as the learned trial judge put it, ‘evidence which is so convincing in truth and manifestly reliable that it reaches the standard of proof beyond reasonable doubt’”

The evidence against the accused in this case did not reach that immutable standard. Accordingly I find Mr Hoey not guilty on each of the remaining counts on the indictment.”

Following the judgment of Mr Justice Weir in the case of R –v- Sean Hoey, which was given on 20 December 1997, the Board convened a special Board meeting on 3 January 2008. At that meeting the Board considered the judgement and questioned the Chief Constable on the preparation of the case, the various stages of judicial consideration in progressing the case, and the Chief Constable’s understanding of the judgement in its totality.

At the conclusion of the meeting the Board decided unanimously to commission an independent external review of issues arising from the judgement. An extract of the statement issued after the meeting is given below:

“The most important issue for Members today was whether the investigation can be progressed with any prospect of a successful

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conviction. The Board noted the Chief Constable's view that the potential for future prosecution was limited unless further witnesses step forward."

The Board also could not, and did not, ignore the robust criticism directed at some police officers by Mr Justice Weir during the trial and in his judgement; the Board, to which the Police Service of Northern Ireland is accountable, could not impotently let such a profound High Court judgment 'lie on file' without serious scrutiny around the implications for policing, and scientific evidence gathering, in particular.

Superficially, a major re-investigation of all aspects of the police investigation seemed attractive. Board Members were conscious, however, that this would duplicate much of the work undertaken over time and referred to at paragraphs 9 to 37 in the Review Report below. Furthermore, such an investigation could not be expected to be completed within 15-18 months. Members concluded that a sharp focus on issues arising from the written judgement of Mr Justice Weir would be more productive in terms of police accountability.

With this in mind the Policing Board set the following five Terms of Reference:

- to review the prosecution evidence offered during the trial to determine what, if any, grounds may exist [eg residual issues, uncontested evidence or other used or unused evidence (forensic or otherwise), which would justify further action by the PSNI by way of prosecution process];
- to consider the various reports and recommendations arising from the deficiencies of the initial investigation; the status of the recommendations and the progress made by PSNI in developing best practice in homicide investigation and forensic evidence gathering and handling;
- in the context of the outcome of the Police Ombudsman's investigation and report into the conduct of two PSNI officers (whose evidence was adversely commented upon by Mr Justice Weir), to consider if there are

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any issues – procedural, administrative or policy – which require further action;

- in the context of clarification and amplification of Mr Justice Weir’s comments inferring that “others may also have played a part”, to comment on any further action which may be required; and
- to identify any lessons, not covered under the above points, which can be learned from this case by the PSNI and other agencies. [The Board recognises that other agencies are not accountable to the Board.]

which it was felt should be the subject of an independent executive overview by a small panel who were familiar with major crime challenges, the context in Northern Ireland and, more importantly, whose policing background would aid an informed and vigorous review.

The Policing Board agreed to the appointment of:

- **Sir Dan Crompton CBE, QPM** - a former Chief constable and ex-HM Inspector of Constabulary (HMI) for the North of England and Northern Ireland, who has long term knowledge of working practices and policies in the RUC and PSNI. He has previously conducted reviews/inspections in other parts of the UK and overseas. His predominant career background is in criminal investigation and internal/external enquiries.
- **David Blakey CBE, QPM, DL** - a former Chief Constable and ex-HMI for Central England and Wales. Was President of the Association of Chief Police Officers (ACPO), and formerly Secretary of ACPO Crime Committee. He has previously undertaken a wide-ranging inspection of policies and practices in the London Metropolitan Police relating to homicide investigation.

The Board also agreed that Sir Dan and David Blakey be assisted by Graham Shaw BA (Hons), a recently retired Detective Superintendent with West Yorkshire police – a former Head of Murder Review, Senior

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Investigating Officer (SIO), and Head of the Scenes of Crime Department. He is currently a trainer on national courses for Detective Inspectors and SIO's.

A requirement of the Policing Board was that the Review Report, by the above panel, should be complete within approximately three months so that it was available to be considered by the Board on 5 June 2008. The attached report has met that requirement.

In all their discussions the Board remained mindful of the views that had been expressed to them of those who had suffered, and continue to suffer, as the result of the Omagh bombing atrocity.

Professor Sir Desmond Rea

Chairman

Northern Ireland Policing Board

Omagh Bomb Investigation - Independent Review

The Northern Ireland Police Board (NIPB) commissioned this review in February 2008 following the 'Judgement' of Mr Justice Weir in the case of Mr Sean Hoey when all charges relating to the Omagh Bomb and other crime scenes were dismissed as a result of the prosecution being unable to present evidence which satisfied the criminal standard of 'beyond all reasonable doubt'. The written 'Judgement' of Mr Justice Weir contained severe criticism about parts of the police evidence which related to the collection, storage, transmission, and recording of forensic evidence.

Media and public interest, following that judgement, caused the NIPB to initiate an independent review covering specific points of concern to them. For ease of reference these are re-produced below:

Terms of Reference

(a) To review the prosecution evidence offered during the trial to determine what, if any, grounds may exist eg. residual issues, uncontested evidence or other used or unused evidence - forensic or otherwise - which would justify further action by the PSNI by way of prosecution process.

(b) To consider the various reports and recommendations arising from the deficiencies of the initial investigation; the status of the recommendations and the progress made by PSNI in developing best practice in homicide investigation and forensic evidence gathering and handling.

(c) In the context of the outcome of the Police Ombudsman's investigation and report into the conduct of two PSNI officers (whose evidence was adversely commented upon by Mr Justice Weir), to consider if there are any issues, procedural, administrative or policy, which require further action.

(d) In the context of clarification and amplification of Mr Justice Weir's comments inferring that 'others may also have played a part', to comment on any further action which may be required, and

(e) To identify any lessons, not covered under the above points, which can be learned from this case by PSNI and other agencies. (The Board recognises that other agencies are not accountable to the Board)

For the purposes of this review (a sharply focused executive review) the NIPB agreed to the appointment of:

Sir Dan Crompton CBE, QPM, a former Chief Constable and HM Inspector of Constabulary (HMI) for the North of England and Northern Ireland. He has conducted previous reviews/inspections both in the UK and overseas, and is familiar with past policing practices and policies in the RUC, and now in the PSNI. His predominant policing experience is in the Criminal Investigations

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Department, and internal/external investigations.

David Blakey CBE, QPM, DL a former Chief Constable and HMI for Central England and Wales. He is also formerly the President of the Association of Chief Police Officers (ACPO) and ex Secretary of the ACPO Crime Committee. In his Inspectorate capacity he undertook a wide ranging inspection of policies and practices in the London Metropolitan Police relating to homicide investigation.

It was also agreed by the NIPB that the above named be assisted by Graham Shaw BA (Hons) who is a recently retired Detective Superintendent with West Yorkshire Police - a former Head of Scenes of Crime, Senior Investigating Officer (SIO), and Head of Murder Review. He is currently a trainer on national courses for Detective Inspectors and SIO's.

Introduction

(1) It is worth drawing to notice at this early stage that this report is the product of an 'executive review' of those matters set out in the five point Terms of Reference. Any review which 'drifted' into a re-investigation, or a level of detail which equated with a de-facto re-investigation, would duplicate work already undertaken (and referred to later) and be at variance with what was intended by the Policing Board.

(2) Despite the confidentiality and security classification of some reports and documents which were pertinent to our work, we have received full co-operation from the PSNI and other Agencies, together with a level of openness in 'head to head' and group meetings which does them credit. This has not influenced or shaped our rigidly independent approach to this work which has been aided by our joint varied policing experience, and the specialist knowledge and skills of Graham Shaw.

(3) We believe it would be helpful to members to deal with the second point in the Terms of Reference first, since this will provide a comprehensive background picture and also 'place' reports, investigative actions, and inspections in a sequence in which they occurred. This should help better understanding of a substantial chain of events. In other words, it provides a chronological sequence of events against which other information in this report flows.

(4) One final point under this heading (which is to state the obvious) is that we were only capable of reviewing activity or inactivity by policing resources in Northern Ireland. We are in no position to judge, or comment on, any related incidents and investigations which occurred in the Republic.

To consider the various reports and recommendations arising from the deficiencies of the initial investigation; the status of the recommendations and the progress made by the PSNI in developing best practice in homicide investigation and forensic evidence gathering and handling.

(5) The chronology of events from the date of the bomb in Omagh (15/8/1998) is set out below. Some of these events overlap but, where this occurred, reference will be made so that the 'picture' is clear to the reader.

The Murder Enquiry

(6) Following the bombing atrocity a major incident room was set-up to cope with the demands of the enquiry. It was evident at an early stage that the magnitude of the incident, and the information and intelligence 'flows' it generated, would require that the Home Office Large Major Enquiry System (known as HOLMES) should be put in place as an integral part of the whole investigation (Note: HOLMES is a bespoke tailored computer system for major enquiries of this type since it aids the management of huge volumes of information)

(7) The Omagh Bomb incident, in terms of its scale, number of fatalities, size of crime scene, contamination of the crime scene area by building debris and, as it transpired, triggered by an imported bomb, would have taxed the abilities of any law enforcement agency in the world. The demand on police resources both on the day and the weeks that followed was predictably extremely challenging. It seems clear to us that in the aftermath of the bomb the volume of information overwhelmed the allocated resource capacity of the RUC to 'place' all of that information on the computer database perhaps because of insufficient numbers of trained Holmes staff and unfamiliarity with operating HOLMES to maximum benefit. This resulted in 'backlogs' of data not being put on the computer in a timely fashion. Another factor is that the HOLMES 1 computer was not brought into use for this enquiry until several days after the bombing incident - the system having to be moved from Strabane to Omagh for the purposes of the enquiry. Much good investigative work was taking place, not least around mobile phone telephonic 'traffic', but the computer database was not up to date, and this impacted on both the management of the investigation and lines of enquiry being pursued.

(8) Despite the investigative effort, time elapsed with no arrests, and the prospects of a successful conclusion were diminishing. Senior CID personnel decided it was time to 'take stock', re-examine the investigative effort and direction thus far, and employ a review mechanism which had been developing for some time in England and Wales, and has now become known as 'Murder Review'.

The Murder 'Review'

(9) The purpose of 'Murder Review' is to provide an independent scrutiny for the benefit of a SIO in charge of a difficult and undetected murder, or other major enquiry - usually within a few weeks of the crime having been committed. The Review Team examine lines of enquiry, use of the HOLMES database, and general thrust of the investigative effort either to provide reassurance that the enquiry is heading in the right direction or suggest

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corrective action. It can best be described as a quality assurance mechanism for the investigative process. If the review is conducted early (within six weeks) it has many benefits. It is seen as a supportive mechanism to the SIO, and any missed evidential opportunities or lines of enquiry are not so dated that the defects become incapable of being rectified. If two seasoned investigative minds are of 'one accord' about the right investigative route, this strengthens the whole investigative effort and strategic and tactical approach to the enquiry.

(10) The Omagh Bomb investigation was subjected to Murder Review (by Detective Chief Superintendent McVicker and his team) and this commenced on 27th March 2000 - some 18 months after the bombing incident on 15/8/1998. This does not constitute a conscious or engineered delay or oversight by the PSNI - but reflects, perhaps, the slower adoption of 'Murder Review' as a concept compared with some (though certainly not all) Police Forces in England and Wales. The Omagh Bomb review by Detective Chief Superintendent (D/C/S) McVicker was the first of its type in Northern Ireland. It was predictable that this review would expose some cultural issues seen elsewhere in the UK following the first one or two 'Murder Reviews'. Nobody readily welcomes a review of *their* work since the findings and recommendations can be interpreted as a form of criticism and a challenge to professionalism. A review which exposes frailties or weakness, even early in an investigation, can be very much resented. These were the early reactions to the review process in parts of the UK but, very quickly, SIO's learnt that the intention of an early review was to be supportive to the overall effort of the SIO and Murder Enquiry team.

(11) A delayed (for whatever reason) Murder Review generates a number of problems. Time elapsed since the crime was committed, the sheer volume of digital and paper based information, and dealing with open, closed or uncompleted lines of enquiry, represents a huge task for any quality assurance team. The greater the time lapse before launching a 'Murder Review' the greater will be the prospects of the Review Senior Officer, in this case D/C/S McVicker, finding that corrective, or additional, action is necessary. This indeed occurred, with the result that some officers close to the investigation felt that his final published review document was unsupportive and disproportionately critical.

(12) We take a substantially different view. We believe that any 'Murder Review' conducted 18 months after the commission of the crime is highly likely to produce a substantial, rather than brief report, and will point to omissions, incomplete lines of enquiry, or different direction for enquiry effort. If a 'Murder Review' is to be worth anything it has to be courageous, incisive, and honest in its findings and we believe the McVicker report met that criteria. The report made 274 recommendations which mostly concerned issues of organisation and management in the enquiry, but also identified shortcomings in HOLMES use, resources, and the need to review decisions in a number of lines of enquiry.

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(13) Our reading of his report (published in November 2000) and that of other contemporary records and documentation does seem to reveal an unhelpful lack of clarity both in the chain of command and individual responsibility in this enquiry. Improvements came with the restructuring of the lines of command in 2002. Being appointed SIO in this enquiry was an enormous challenge for a newly appointed Detective Superintendent and we pay tribute to how Mr Baxter has discharged this heavy responsibility over six years.

The Police Ombudsman's Report

(14) The Police Ombudsman launched an enquiry in August 2001 as a consequence of a complaint that the (then) RUC had not acted upon intelligence in their possession prior to the 15th August 1998.

(15) The enquiry was expanded by the Ombudsman in September 2001 to take account of some matters, and recommendations, referred to in the McVicker report.

(16) The Ombudsman's Report was published on 12th December 2001 and commented upon numerous issues including:

- How the RUC had dealt with anonymous information.
- How information from a 'police informant' had been handled.
- The delay in implementing some of the McVicker recommendations.
- Intelligence 'flows' in the RUC - with particular relevance to Special Branch.
- The structure in the RUC, its resources, strategies, policies, practices and processes in handling murder enquiries.

The Chief Constable's Response

(17) The then Chief Constable robustly responded, publicly and at length, to the Police Ombudsman's Report. There was a sharp debate in which the Chief Constable challenged many of the Ombudsman's findings, and this ultimately led to a special meeting of the NIPB, conducted over three days.

Policing Board action

(18) Arising from the above, and the totality of the Ombudsman's Report, the Policing Board issued a statement outlining four key commitments:

- The Board appoint a Deputy Chief Constable to act as independent scrutineer of the investigation
- The Chief Constable request HMIC to conduct a full review of murder enquiries (which effectively incorporated all the matters referred to in the last bullet point of paragraph 16)
- The Board request HMIC to carry out a focussed review of Special Branch

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- The Board establish a monitoring system for the implementation of any recommendations arising from the above reviews.

The work of Deputy Chief Constable Michael Tonge and Detective Chief Superintendent Philip Jones (Merseyside Police)

(19) The above two officers were commissioned by the Policing Board (via HMIC) to carry out the work described at bullet point one in the above paragraph. They commenced this work on 28th January 2002. (*Note: This was swift action by the Policing Board - only five weeks after the publication of the Ombudsman's Report*) The scrutiny concentrated on the recommendations in the McVicker Report and, particularly, those where it was thought that pursuit of outstanding lines of enquiry could lead to an identification of suspects.

(20) 'Outsiders' being parachuted into an enquiry of this type might well have expected internal resistance and resentment, but both officers (to our personal knowledge) experienced co-operation and a professional working relationship with the then SIO, his Deputy and their enquiry team.

(21) The Merseyside team was augmented by a Detective Chief Inspector from Merseyside and intense work took place between January 2002 and April 2003. Periodic formal reports were made to the Policing Board by Deputy Chief Constable Tonge.

(22) Merseyside were able to 'sign off' their work in April 2003 particularly in relation to:

'Scrutinising the current enquiry and the Omagh Bomb Review Report to ensure that all opportunities to gather evidence are maximised and that all recommendations relating to the Omagh investigation are fully addressed'.

Blakey Report

(23) As a response to the Police Ombudsman's Report (and also the second bullet point at paragraph 18 above) the Chief Constable, PSNI, via HMIC, commissioned Mr David Blakey HMI to examine policy, practices and procedures in relation to murder enquiries in the context of Northern Ireland. This was important since a 'transfer' of policies and best practices in the rest of the UK might not have been entirely relevant to Northern Ireland.

(24) A comprehensive report with 10 recommendations (published in May 2003) dealt with ownership of murder investigations in the Province, the role of Regional Crime Advisers, training for DCU Commanders, and other issues relating to the management and support structure for murder enquiries. One of the recommendations (No 6) specifically related to the importance of ensuring the integrity of the exhibits handling process.

(25) This work ran in parallel to that carried out by the Merseyside Team and in order to comply with the Policing Board's fourth commitment referred to at bullet point 4 in paragraph 18, arrangements were made for HMIC to monitor

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compliance and implementation of the report's recommendations (Reference will be made again to this later)

Crompton Report

(26) This was initiated by the Policing Board as a direct response to the Police Ombudsman's Report, and was also designed to meet the commitment outlined in bullet point 3, paragraph 18.

(27) The review was commenced in February 2002 and focused on:

- The relationship between CID and Special Branch (SB)
- Intelligence flows
- Use of intelligence, and the sharing of it with Senior Investigating Officers (SIO's)
- The wider use of intelligence as a means to prevent and detect crime
- Structural issues around the receipt, holding of, and dissemination of intelligence.

(28) Recommendations were made in the report (published on 29th October 2002) relating to the above and, like the recommendations in the Blakey Report, arrangements were made for HMIC to monitor compliance and implementation.

Stevens 3 Enquiry

(29) The former Commissioner of the London Metropolitan Police, Sir John Stevens, undertook a number of enquiries in Northern Ireland which broadly centred on allegations of collusion between the security forces and loyalist paramilitaries in Northern Ireland. His third report (known as Stevens 3, and published in April 2003) was the culmination of a lengthy enquiry, and made 21 recommendations. Interestingly, his remit in this enquiry (somewhat broader than that for Blakey and Crompton) made some recommendations about major investigations and the sharing of intelligence which were a total 'match' of those in the other two reports. There was a recommendation too about 'methods and processes of exhibit management' - a central feature of Mr Justice Weir's written 'Judgement' in the Sean Hoey trial. It should be noted that this recommendation was almost identical to that contained in the Blakey Report (Recommendation 6 - see paragraph 24 above)

(30) Sir John Stevens last recommendation referred to the need for an independent review of the PSNI's implementation of the all recommendations in his report. This particular exhortation complimented bullet point 4 in the NIPB's commitment shown at paragraph 18.

(31) In liaison with HMIC the Policing Board arranged for the recommendations in the Blakey, Crompton and Stevens reports to be monitored simultaneously. We believe this was a holistic and integrated approach to the linked 'platforms' of recommendations that the Policing Board had before them.

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(32) It will be noted too, from what is set out above, that the work of Tonge and Jones, Blakey, Crompton, and Stevens, were almost running in parallel. An immense amount of work was taking place between January 2002 and April 2003 - even if this was some 18 months after the Omagh Bomb.

Monitoring by HMIC

(33) A monitoring regime by HMIC has been a consistent exercise since the end of 2002 principally focusing on the recommendations of the Blakey, Crompton and Stevens reports. These reports have taken the form of HMIC awarding red, amber, or green status (the Traffic Light status allocation) to each of the recommendations dependent on how PSNI was seen to have implemented each.

(34) In relation to the above, a paragraph in the report to the Special Meeting of the NIPB on 3rd January 2008 accurately sets out the current position. This paragraph is reproduced below:

*On behalf of the Board, HMIC has monitored a combined Implementation Plan for the Blakey, Crompton and Stevens 3 reports. Sufficient progress had been made in implementing these recommendations for HMIC to recommend to the Board in 2007 that separate monitoring of the Implementation Plan cease. There are four recommendations still to be signed off, of which three relate to forensics and will continue to be inspected by Criminal Justice Inspection Northern Ireland (CJINI). The fourth relates to staffing in Crime Operations and will be monitored by the Board's Human Resources Committee. **(Note: We will return to the forensic issues below under the sub-heading relating to the joint review by HMIC/CJINI of 'A Review of Scientific Services in the PSNI')***

International Scientific Peer Review Panel

(35) Within the approximate time sequence of matters set out above, it is of interest to note that in December 2003 the SIO in the Omagh Bomb enquiry established an International Scientific Peer Review Panel to review the scientific dimension of 'the Omagh case'. The panel was made up of scientific specialists (Professors) from Toronto, John Jay College, New York, and Lausanne University, Switzerland, with a facilitator (himself with a scientific background) from the Crime Faculty at the Police College, Bramshill, Hampshire, England.

(36) Clearly the SIO and enquiry team felt (quite rightly) that scientific evidence, and the quality of it, would be crucial in any trial relating to the Omagh Bomb, and the Review Panel's role was to review and validate the recovery of exhibits, scientific examinations, and conclusions. This was a good initiative and represented 'thinking outside the box'.

(37) Examination of the peer review papers provided to the PSNI shows a concentration on scientific examination of exhibits, and professional opinion

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emerging from that examination, leading to conclusions about the reliability of such evidence. Certainly the PSNI assembled a comprehensive array of scientific skills and the report in its entirety was impressive. However, the panel acknowledged that they could not comment on the recovery of exhibits in the cases linked to Omagh as they had not reviewed the documentation. By inference, as opposed to specific comment, they indicated satisfaction with the recovery of the exhibits in the Omagh case since they had reviewed the continuity of those exhibits. This certainly had value, but the continuity of exhibits is only one side of a 'two sided coin'. The other side is represented by scientific evidence only being as good as the purity of exhibit collection, transmission and, particularly, storage. We are left wondering therefore if in the deliberations of these specialists the quality of sample collection and storage was more or less taken for granted, whilst in the course of the trial it became a major feature.

Joint Review by HMIC/CJINI - 'Scientific Support Services in the PSNI'

(38) Given the emergence of issues relating to Forensic Science in many of the reports examined earlier in this paper, it was timely that the CJINI/HMIC published a joint report ("*A Review of Scientific Support Services in the PSNI*") in December 2005. The report covered the range of scientific submissions across all criminal offences, not only the most serious. In all, 25 recommendations emerged, which were designed to improve the performance of the PSNI in terms of how its scientific support function was supporting crime investigation and detection across Northern Ireland.

(39) The PSNI's early view was to accept all but one of the recommendations which referred to fatal and serious road collision investigation. However, this recommendation too has now been accepted.

(40) A review of progress around the recommendations took place during the Spring of 2007 with a report being published in August of that year. At that time 8 of the 24 accepted recommendations had been implemented to the point the Inspectors considered it appropriate to 'sign them off'.

(41) Because of the 16 'outstanding' recommendations from the original report a revisit was very recently made to the PSNI by the Inspectors.

(42) Arising from this visit, CJINI/HMIC readily acknowledge that PSNI has shown good and energetic improvement from the Review carried out in 2005, but there is a concern that some crucial recommendations only attract the Joint Inspectorate 'Amber' status. (Note: 'Amber' should be taken to mean that progress has been made but not sufficient to 'sign off' the recommendation). One of the recommendations (No 20) concerns quality control and continuity of evidence issues around some exhibits being submitted to the Forensic Service for Northern Ireland (FSNI) during the period November 2007 to January 2008. This recommendation is not remarkably different from Recommendation 15 in the Stevens 3 report (See paragraph 29 above) and Recommendation 6 in the Blakey Report (Paragraph 24 above). That said, the joint Inspectorate Review noted, and

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record, that the PSNI have now taken steps which have proved effective in reducing non-compliance - this relating to quality control around exhibit submission. The FSNI confirm that compliance rates have markedly improved and their records underline this welcome trend.

(43) All this, in the interest of balance, needs to be set in the context of the PSNI progressing the many recommendations arising from the work of Tonge and Jones, Blakey, Crompton, Stevens 3, and those stemming from the joint review by HMIC/CJINI. The vast majority of these have been successfully addressed but, if there is some weakness, it has been centred on exhibit collection, labelling, and storage ie, it has been a strand running through several reports (Blakey, Stevens, CJINI/HMIC) and culminating in the criticism of Mr Justice Weir.

(44) We are satisfied that these problems largely lie in the past, and would have been seen in a number of other UK Police Forces had *they* been subject to the same level of scrutiny about their forensic evidence gathering practices up to 10 years ago. Nevertheless, Board members will be concerned about the present and we are heartened about the energetic efforts made of late which has lead to the FSNI noting the improvements in the quality of PSNI forensic submissions. The challenge now for the PSNI is to ensure that these improvements are seen across the organisation ie, a corporate achievement, rather than developing piecemeal from one DCU to another, with detectable performance differences ie, packaging and labelling etc. The importance of the subject is such that there would be merit in a follow-up review by the CJINI/HMIC in approximately 12 months time, a view which has been conveyed to review staff who have worked on the most recent report *(Note: At the time of submitting this report we became aware of a PSNI 'Action Plan' to address issues raised in the CJINI/HMIC Review - see paragraphs 42 to 44 - and, helpfully, the plan matrix shows lead responsibilities and completion dates)*

Dip-sampling PSNI current practices

(45) In order to pursue the above matters further and examine best practice in Homicide investigation (see latter part of this Term of Reference at paragraph 4) visits were made to the Incident Room at Omagh, and to the Incident Rooms of two other current murder investigations.

(46) The overall picture is one of a Service which has adopted all new and relevant practices in Homicide investigation ie. Core Investigative Doctrine 2005, Murder Investigation Manual 2006, Policy Logs and ACPO Guidelines on achieving best evidence. There was evidence too that investigative staff had a good understanding of the documentation referred to, and the content was being practically applied.

(47) The opportunity was taken to 'dip sample' individual exhibits, and examine storage and recording practices. It is clear that lessons from the past have been learned since storage and recording had been professionally

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undertaken (Note: We would have expected this since the creation of a Crime/Operations Department should lead to increased investigative expertise and greater professionalism in scientific evidence gathering. It is 'the picture' seen elsewhere ie, London, Strathclyde, Manchester, and Birmingham etc)

(48) We did not seek to duplicate the very focused work recently undertaken by CJINI and HMIC but, rather, confirm to our satisfaction that there was parity between our 'dip sampling' findings, and those of the Inspectors in CJINI and HMIC. This proved to be the case, but we would exhort PSNI to deploy their best efforts to ensure that when the next visit from CJINI/HMIC takes place (probably April/May 2009) that current progress is seen to extend to the point that all the Joint Inspectorate recommendations are able to be 'signed off'.

In the context of the outcome of the Police Ombudsman's investigation and report into the conduct of two PSNI officers (whose evidence was adversely commented upon by Mr Justice Weir), to consider if there are any issues - procedural, administrative or policy - which require further action.

(49) In November 2006 during the trial of Sean Hoey the Trial Judge, Mr Justice Weir, referred to the Police Ombudsman transcripts of the evidence given by a Detective Sergeant and PSNI Scenes of Crime officer (SOCO) - a police staff member. Their evidence related to how scientific exhibits were collected, and whether not they were wearing the appropriate clothing to prevent contamination.

(50) It is clear the Judge was sufficiently concerned by the nature of the evidence to refer transcripts during the currency of the trial - an unusual course of action since our experience is that when such infrequent incidents occur the 'referral' is almost always made at the end of a trial.

(51) Unlike elsewhere in the UK the referral by Mr Justice Weir was made direct to the Police Ombudsman. In other areas of the UK a letter would be sent by the Trial Judge to the Chief Constable, or a Chief Officer would be called before the court. Either course of action would result in Chief Officers becoming aware of the precise area(s) of concern.

(52) The DCC (PSNI) became aware of the referral and the general grounds on which the referral was made from officers at the trial. Both he and the Police Ombudsman's staff were clear that the Judge had made a referral based 'on a concern' that he had about the evidence given by the Detective Sergeant, and SOCO. So, 'concern' was the tone of language used at that stage - not the much stronger tone which later appeared in Mr Justice Weir's 'Judgement'. The DCC had three options at this stage:

- Take no action.
- Re-position the officers within the PSNI.
- Suspend both from any duties within the PSNI.

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He decided (rightly in our view) not to suspend or re-position the officers at that time since this could have had an adverse effect on the trial, with the officers having no opportunity to respond to the serious matters 'attaching' to their sworn evidence. Furthermore 'a concern' as the DCC would contend, is significantly different from a Judge determining 'deliberate and calculated deception'- which in legal parlance amounts to a '*finding of fact*'.

(53) There was no representation from PONI to the PSNI at this time that either officer should be suspended or re-positioned within the PSNI. They (PONI) decided to embark on the investigation, collect evidence, and then make a judgement on where this was taking them - an entirely supportable strategy (Note: It is our experience in England and Wales that the issue of suspension is considered at various stages into an investigation of serious misconduct or alleged criminal conduct, and our understanding is that the policy in PONI is identical)

(54) Following its enquiries PONI presented an Interim Report to the PPS in August 2007. There was good reason why the report was given 'interim' status since no investigator would wish to submit a 'closed-off', or final report, until the conclusion of the trial (More issues may arise at a later stage of the trial, or additional comments might be made by the Trial Judge which are relevant to the enquiry.)

(55) Whatever the content of the Interim Report was, it did not cause the Police Ombudsman to recommend or suggest to the PSNI (this is usually done through the Chief Superintendent, Professional Standards Department) that the officers be suspended or re-positioned ie, transferring them to a post not involving contact with the public, or in gathering evidence and submitting it before a court.

(56) The trial of Sean Hoey was concluded in mid January 2007, and Mr Justice Weir issued his lengthy and very analytical written findings (the 'Judgement') on 20th December 2007.

(57) The concern that the Judge had when initially referring the evidence of the Detective Sergeant and SOCO to PONI was reflected in distinctly more robust terms in his written 'Judgement'. We have seldom seen more caustic criticism of police evidence since the officers were, in effect, branded as liars and their evidence declared totally unreliable.

(58) Suspension or re-positioning were again considered by the DCC on 21st December 2007 following telephone contact between himself and PONI, during which he was informed that no grounds existed (at that stage) for re-positioning or suspending the two members of staff (Note: On this date PONI were aware of the headline nature of the Trial Judge's 'Judgement', but did not have the full 28 page transcript). The strong impression we have is that custom and practice had developed whereby the DCC, for reasons outlined in the paragraph below, would await any recommendation or suggestion from PONI before deciding the action to take as outlined in the bullet points at paragraph 52.

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(59) It should be noted that, in circumstances such as these, the DCC is in a partially unsighted position ie, the case was referred directly to PONI by the Trial Judge, the investigatory staff at the Ombudsman's Office are responsible for collecting evidence and none of the information gathering machinery lies within the responsibility of the DCC, or Professional Standards Department in the PSNI.

(60) Following detailed consideration and assessment of the written 'Judgement', together with public interest and confidence issues, PONI recommended on 10th January 2008 that both officers be re-positioned. We are sure that, in so recommending, PONI opined that the precise wording used by the Judge ie, 'deliberate and calculated deception', amounted to a 'finding of fact'. This is a very significant factor!

(61) The DCC acted on PONI's recommendation of 10th January 2008 and re-positioned one officer. The other had earlier been routinely transferred to administrative duties which did not involve the public or evidence gathering responsibilities.

(62) The authors of this report discussed all the relevant issues at length and our early view was that it would have been our judgement to suspend both PSNI members on either 20th or 21st December 2007.

(63) We came to this provisional conclusion because the Omagh Bomb outrage was the biggest single atrocity in the UK, with the exception of the Lockerbie aircraft bomb. The trial of Sean Hoey was not only a matter of great public interest, it was lengthy and costly and the lead-in to it involved a massive amount of time, energy, and dedication by the SIO and his murder squad team. For a senior Judge to 'throw out' all charges, partly on what he saw as discreditable police scientific evidence, is a matter of profound concern. This was bound to be exacerbated in the public mind by the abnormally critical nature of his written 'Judgement' and the publicity it attracted.

(64) In arriving at this early view we gave greater weight to public perception and expectation, which we felt was the 'tipping point'. The public have a right to expect certain standards in public life, particularly from the police, and the result of this case will have shaken public confidence.

(65) Our more reflective view, which followed further meetings, reinforced the belief that not all the arguments were 'stacked on one side of the fence'. The Ombudsman's enquiry, for instance, will not just take into account the nature of the evidence offered in court proceedings, but all the attendant circumstances which surrounded the giving of that evidence. This will present a far broader picture. So far, this has not compelled the Police Ombudsman to recommend suspension - a factor which must have had some influence on the DCC. There may, or may not, be criminal or disciplinary proceedings to be faced by the officers eventually, but if the latter is the end scenario, officers suspended would be recalled to duty having suffered the ignominy of

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suspension for months, and a possible infringement of their Human Rights. The impact of suspension should not be underestimated! (Note: Given the length and detailed nature of the Police Ombudsman's enquiry, which has been live since November 2006, without any recommendation for the suspension of the Detective Sergeant and SOCO officer, it would not be unreasonable speculation to point to the possibility that both PONI and the PPS **might** find no evidence, or insufficient evidence, of 'deliberate and calculated deception' as referred to by Mr Justice Weir in dismissing all charges against Sean Hoey. There may well be some issues arising from the evidence given by the two officers, but it seems to us (our speculation again) that this is more likely to be of a disciplinary, or advice, nature.)

(66) If the above scenario proves to be the final outcome, then the findings will be significantly different than portrayed by Mr Justice Weir since his reference to 'deliberate and calculated deception' implies criminal conduct ie, conspiracy to pervert the course of justice, or even perjury.

(67) The bullet points shown below underline the complexity of the decision in this case:

- The DCC, on or about the 20th December 2007, contacted PONI to elicit if there were any grounds to take 'action' against the officers. He was told there were no such grounds.
- Following custom and practice arrangements he could have awaited contact from PONI about any recommended change in the status of the officers - but he initiated the contact.
- The DCC has no clear picture of the progress or findings of any such enquiry since this rests solely with those charged with conducting the investigation ie, PONI investigators. (Note: We fervently believe the PONI investigation will be detailed and thorough)
- Could the DCC be subjected to legal challenge under Human Rights legislation by suspending officers in the absence of any evidence (other than the Judge's commentary) that under oath they had engaged in 'calculated and deliberate deception?'
- Contrary to the argument outlined at paragraph 64, should the DCC be swayed about likely public perception, if his own knowledge base is greater than that of the public or even the media?

(68) This unique set of circumstances is capable of being robustly debated, almost to the point of exhaustion. Our final judgement is that the arguments for the police officers not being suspended are as compelling as those 'for'. On balance, we believe the decision to re-position, suggested by PONI and acted upon by the DCC, was appropriate, even if the decision between the one and the other was marginal. (Drawing the definitive line between the maintenance of standards, public trust, and the 'rights' of officers is not always straightforward, but it is right that the crucial decisions do rest with line

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management at a senior level) Whilst the final decision of PONI and the PPS will shed much light around the evidence both PSNI members gave in the Sean Hoey case, this has no bearing on the original decision to re-position earlier in the year. But the PPS decision, in particular, will demonstrate (with the benefit of hindsight) whether or not justice was served by the decision taken on 10th January 2008. We sincerely trust the PPS judgement in this case is delivered as soon as possible since the bulk of the case file has been with them for some time.

Memorandum of Understanding

(69) In the absence of a 'Protocol' or Memorandum of Understanding (MoU) both the Office of the Police Ombudsman and PSNI have suffered from a lack of clarity in process. This had been recognised by both 'parties' prior to our exploration of the issues, and a MoU was signed on 20th February 2008. Subject to some minor 'tidying-up' of detail, we believe the Document will serve to clarify both lines of communication and intervention.

Effect of disclosure of Police Misconduct

(70) This sub-section of the report would be incomplete without drawing members attention to the rules (Code of Practice) governing 'Revelation and Disclosure of Police Misconduct'.

(71) The authority under which these Codes of Practice were drawn-up some years ago is the Criminal Procedure and Investigations Act 1996. At the time Lord Goldsmith, HM Attorney General, commented that...."The golden rule is that fairness requires full disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the Defence"

(72) Guidance given under the Codes dictate that details of disciplinary proceedings against police officers who subsequently are called as witnesses in court might be disclosable under the Act. In addition, there may be exceptional occasions when the interests of justice require that other information is revealed to the prosecutor, and disclosure considered. (Note: The comments by Mr Justice Weir in respect of the two SOCO officers may well fall into this latter category)

(73) It follows from what is set out above that, dependent on the findings of the Police Ombudsman's enquiry, both police witnesses could be 'captured' by these rules, if not singularly by the comments of the Trial Judge. This would have serious implications for their future worth as police witnesses. Where police officers are affected by these disclosure rules the process has become known as '*Taint*' which aptly describes the effect of disclosure by the prosecution to defence lawyers.

In the context of clarification and amplification of Mr Justice Weir's comments inferring that 'others may also have played a part', to comment on any further action which may be required

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(74) Paragraph 50 of Mr Justice Weir's written 'Judgement' contains the following:

".....Such was my disquiet at their evidence (Note: This refers to the two Scenes of Crime Officers [SOCO's]) and that of others connected with this matter that upon its completion I had transcripts of the evidence on this issue sent to the Police Ombudsman. The effect of this, as I find deliberate and calculated deception in which others concerned in the investigation and preparation of this case for trial beyond these two witnesses may also have played a part, is to make it impossible for me to accept any of the evidence of either witness....."

(The underlining in this reproduced text is that of the authors of this report to draw to attention the specific commentary of the Trial Judge)

(75) It is not clear who Mr Justice Weir is referring to when, in the text of the 'Judgement', he refers to 'others' who may also have played a part. One could speculate that it refers to the SIO or members of the investigatory team, or it might refer to other Scenes of Crime staff, or scientific witnesses. Conceivably, it could also refer to PPS staff since reference is made to 'others concerned in the investigation *and preparation* of this case'.

(76) The Chief Constable clearly had a concern about this part of the Trial Judge's commentary (he may well have wanted to consider an internal investigation) to the extent that he wrote to Mr Justice Weir on the 21st December 2007 seeking clarification and amplification.

(77) The Lord Chief Justice responded on the 8th January 2008, having consulted Mr Justice Weir on his return from holiday. His response was that the Trial Judge did not identify 'those other officers', nor did he reach any conclusion as to who they might be. He added that it was *not* the intention of the 'Judgement' to identify particular individuals whose conduct required investigation.

(78) This was a very difficult long running trial for Mr Justice Weir with a requirement to handle huge volumes of information - some of it highly contentious. Nevertheless, we are left wondering why this passage was included in the 'Judgement'. In such a high profile case every single word, finding, or suggestion is likely to be rigorously examined by interested parties. On the basis of what is set out in paragraph (75) above we conclude that the 'Judgement' in this respect amounted to speculation by Mr Justice Weir, but we (and others) are left uninformed as to what triggered that speculation.

(79) The Police Ombudsman's staff are already completing an investigation into the evidence given by the two Scenes of Crime officers following the referral of their transcripts of evidence by Mr Justice Weir. That investigation, not too far from completion, will look at all the surrounding circumstances which impacted on the evidence given in court. If the information and evidence that the Ombudsman's investigation unearths involves other PSNI staff (police or civilian) this will clearly feature in their report (Note: At the time

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of drafting this report we have no information that the investigation, so far, involves alleged improper or unprofessional conduct by any other PSNI staff)

(80) On the basis of our commentary above, no further action is required at this time by the Policing Board.

'Beefed-up' statements.

(81) We are conscious that within the Sean Hoey trial suggestions were made by Defence Counsel, and later taken-up by the trial Judge, about police 'beefed-up' statements. This is part of the Police Ombudsman's investigation and any finding around police impropriety or otherwise must be left to the determination of PONI investigating officers.

(82) Although not conversant with all the fine detail around the specific Defence submission or allegation we are familiar with the term 'beefed-up' statements. The label is capable of more than one interpretation. At it's worst, the term can describe an attempt to wrongfully bolster a statement to the point of including untruths, or manufacturing, manipulating, and embellishing evidence to cover gaps in the prosecution case. It can be deliberately designed to strengthen the prosecution case and limit the ability of Defence Lawyers to challenge gaps or inaccuracies in the continuity of evidence, particularly where collection, storage, recording and transmission of exhibits are concerned. Beefing-up a statement(s) in this way has serious implications for the credibility of the prosecution case and, at the extremes, could lead to allegations of perjury by witnesses.

(83) The term described, however, is capable of a far different meaning. A review of evidence in any case (serious or otherwise) particularly where exhibits are concerned, can reveal to the SIO or Prosecuting Authorities gaps in evidence in proving continuity. Often this is the product of an inexperienced officer not including detail in his/her statement which links one set of actions to another or fails to show seamless transmission of exhibits. In other instances, it is simply an omission from a statement, which should not occur, but occasionally does. It is neither bad practice nor professional 'slight of hand' to rectify such omissions *provided* additions to statements represent fact, with honesty being an underlying feature. Amendments and additions of this type have historically been made in other parts of the UK, either at the behest of the SIO or lead prosecuting lawyer. But there is one important caveat here. To demonstrate honesty of purpose, any addition or amendment to a statement should be in the form of a separate statement which commences with the words.....'Further to my statement of....(date).....'. Such a separate statement has the effect of making clear that the content is an addition to the original, which crucially leaves that original un-amended or unaltered.

(84) An alteration to an original statement is, in our view, bad practice since it is likely to attract suspicion as to motive, if not accusations about 'beefing up'. This can always be a temptation where statements are held on a computer database, though the configuration of the database is designed to prevent this

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from happening. The intention may well not be dishonest - but it invites trouble and challenge! A separate statement avoids such pitfalls.

(85) We do not know what the Police Ombudsman's investigation will produce and what is set out above is certainly not intended to speculate about the likely findings. Nevertheless, we thought it appropriate to explain that 'beefing up' does not singularly have negative connotations. It is an emotive expression designed for maximum impact, and perfectly understandable that it is used by Defence Lawyers, but it does not necessarily mean that the expression is appropriate in all cases when amendments or additions have been made to statements. **But** (and this is a heavy qualifying factor) if the circumstances fall within paragraph (82) above we acknowledge the serious consequences for any criminal trial, and the profound implications for the credibility of any witness involved.

To review the prosecution evidence offered during the trial to determine what, if any, grounds may exist eg, residual issues, uncontested evidence and other used or unused evidence - forensic or otherwise - which would justify further action by the PSNI by way of prosecution process.

(86) A holistic look at the case put before Mr Justice Weir will amply demonstrate that this was not the strongest of prosecutions, in the sense that there were not huge reserves of evidence on which to rely. There is nothing unusual about this scenario. A successful prosecution usually relies on a confession, witnesses coming forward or scientific evidence. In certain types of trials (terrorism, gang warfare, drug related gun crime, extortion etc) a confession is unlikely and loyalty and fear inhibit witnesses coming forward. So, there is an increasing reliance on gathering strands of scientific evidence which when pieced together can persuade a court in its findings.

(87) The prosecution against Sean Hoey was reliant on a number of strands of evidence, each strand having to be 'proved' in its own right, in order to convince the Trial Judge that the assembly of Timer Primer Units (TPU's), based on physical characteristics, had one maker. DNA evidence was available, not in respect of the Omagh Bomb, but in relation to others from which the prosecution sought to strengthen its contention about 'common authorship' of the TPU's. In short, the evidence proffered at the trial was based on the hypothesis that in a series of 13 offences (activated bombs, or an attempt to), all the TPU's were made by the same person. The prospects for a conviction heavily depended on each of the strands being proved 'beyond all reasonable doubt'. It is worthy of note that whilst sub-editors in the media gave headline descriptions of the Sean Hoey trial as the 'Omagh Bomb Trial', the bulk of the evidence concerned activated bombs, or bomb attempts, in other locations.

(88) We now know that 'holes' in the prosecution case were linked to exhibit collection, storage, recording, and transmission. In one respect problems that occurred with exhibits found in 1998 could have been seen in other parts of

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the UK. Exhibits examined at the FSNI and then returned to the RUC would have been regarded by both as examinations complete. That they might be required at a later date for a new form of DNA examination would, perhaps, understandably not have occurred to either organisation. Even so, it has to be said the trial exposed frailties, and a certain sloppiness, in handling and storing exhibits (chiefly at a District level, and not from the Omagh bomb scene) - albeit it was 10 years ago.

(89) The Judge's commentary and criticism about exhibit collection and storage has sizeable implications for the worth of any scientific evidence which remains in this case - which is precious little. It matters not that there has been tremendous advances in scientific analysis and anti-contamination measures in the last ten years. If there were defects in the collection process, that will now be regarded by courts as corrupting any conclusion by the FSNI, however carefully any examination is undertaken.

(90) In short, the lack of exhibit integrity not only rendered the exhibits produced at the Hoey trial as 'tainted' and unusable, it would most likely have the same impact on any resurrected prosecution, even if this was feasible.

Outstanding lines of enquiry

(91) A visit to the Incident Room (IR) at Omagh showed there are still 70 'actions' not yet complete. A number of these have been with the An Garda Siochana for some time and relate to the interviewing of people who are of interest to the enquiry, or the obtaining of DNA samples. We are conscious of the cross border difficulties which arise here, but we feel these 'actions' should be pressed just in the event that some new line of enquiry emerges. Realistically, we accept this is a remote possibility but, perhaps, remoteness ought to be given a chance.

(92) The PSNI do not lack good intelligence about the Omagh Bomb - it has this almost in abundance. The difficulty, shared by all UK Police Services, is converting good intelligence into admissible evidence to put before a criminal court. It is not likely that a confession will be made, or that substantial witnesses will come forward - but it is not impossible. People do develop consciences and witnesses sometimes change their mind about coming forward to give witness. However, in the absence of good scientific evidence, a confession, or reliable witnesses, we conclude, as did the Chief Constable, that it is unlikely that a new prosecution can be launched at present.

To identify any lessons, not covered under the above points, which can be learned from this case by PSNI and other Agencies, (The Board recognises that other agencies are not accountable to the Board)

The PPS and the PSNI

(93) We believe there would be merit in a closer working relationship between the Public Prosecuting Service (PPS) and PSNI which, as far as possible,

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should mirror the current model adopted in England and Wales. This is not to say this model is perfect or problem free - it is not, but in difficult and serious crime cases, having legal expertise 'up front' ie, during the course of an investigation, can have huge benefits when complex issues arise around the admissibility of evidence, disclosure rules, corroboration, and assessment of the particular worth of witnesses.

(94) Under this model a PPS member operates alongside an SIO very early in an enquiry. Complex legal and other issues frequently do arise at an early stage in a difficult enquiry and present real problems for the SIO. Why not have advice 'to hand' which both assists the investigative and prosecution cause?

(95) It could appear to some that such an arrangement compromises independence both for the SIO, who is directing the enquiry, and PPS representative giving advice before a prosecution file is complete ie, pre prosecutorial advice. Our experience is that these arguments, whilst worth consideration, have proved to be more academic than real 'in the workplace'.

(96) We are alive to the historic and cultural arguments that independence is best served, and recognised by others, when there is 'clear water' between Agencies so that influence by one on the other is seen as a more remote possibility. Allegations of collusion in the past will have added strength to this view. The alternative viewpoint however, is that the early pooled views of specialists can assist the decision making process and strengthen the arrangements for presenting a case before a criminal court. We would point to the staffing arrangements in the Serious Fraud Office (London) which is made up of Accountants, Lawyers, Detective Officers and IT specialists. Whilst it could be argued their particular work requires the specialist knowledge of all, the same can be said of many serious mainstream criminal enquiries where CID and specialist legal advice is concerned. In many areas of the UK that type of legal advice is available from solicitors of the Crown Prosecuting Service (CPS) in Local Police Stations both in routine and serious cases.

(97) We appreciate that any move in this direction can not take place in the short term. Pre planning, cost considerations, and each Agency being clear about the role of the other needs to be negotiated to the point of total acceptance. We are convinced this will serve the Criminal Justice system well in Northern Ireland rather than, what appears to us, a slightly old fashioned system of Agencies working rigidly independent of each other, and almost as silo operations.

The FSNI and the PSNI

(98) The relationship between the PSNI and FSNI has matured with the needs of each being recognised, and largely understood. The more routine deployment of FSNI staff at the scenes of major crime will make the collection and storage of scientific evidence more 'watertight'.

(99) The current arrangements, however, for the transmission of exhibits to

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the FSNI and the cost recovery regime for FSNI services, does not encourage efficiencies within either organisation. There will always be the temptation for PSNI to submit 'whatever we have got' to the FSNI, and for the FSNI to accept what is given to them for examination, and then aggregate their costs which determines what the recharge will be to the PSNI for the following financial year. There is insufficient incentive for the PSNI to quality control what is sent to the FSNI which should be based on two considerations:

- What really needs to be sent to the FSNI from an evidential point of view, and what can be 'weeded out' from transmission?
- The impact of the above on re-charge costs.

(100) The above encourages a discipline around exhibit submission which, in turn, aids quality control. We are passionately of the view that quality control lies with the PSNI ie, collection, packaging, storage, transmission and, ultimately, with the Scientific Support Manager and his staff.

(101) The current arrangements of a Service Level Agreement servicing the needs of the customer (the PSNI) and 'the provider' (FSNI) are supportable, up to a point, but efficiencies in both organisations are not encouraged by the costs of the FSNI being accommodated within the PSNI budget, subject to limits on increases above inflation, and the PSNI funding the FSNI via monthly payments.

(102) The FSNI have, commendably, recently employed four Crime Scene Managers: all are trained to manage SIO led major incidents, and are expected to become involved in the SIO's forensic strategy, as well as scene management and scene contamination issues.

(103) These are welcome developments, as is the good working relationship between SIO's and scientific support, and the training being given at all levels in the PSNI. But a giant leap forward would be represented by the FSNI knowing what it's 'outputs' are from staff, and having processes and an information base which will support direct charging. This introduces a little private sector discipline into the customer/supplier relationship. The PSNI will need to monitor and quality control submissions and be clear about forensic examination requirements, and the FSNI will have the responsibility of demonstrating efficiency on 'turn round' rates for both routine exhibits, and DNA.

(104) We are aware systems are being developed, but this requires extra impetus so that the discipline and efficiencies that direct charging generate are seen to benefit the PSNI and the FSNI. This assumes greater importance in a financial climate which will determine 'flat' budget provision for forensic services in the next few years.

(105) The step-change needed, as we mentioned earlier, would be aided by the designation of a 'champion' to drive forward a strategy which will take the PSNI/FSNI into the future.

Conclusions

(106) Within this review we have examined a number of complex issues but, perhaps, the main residual matter is that relating to the preparedness of the PSNI to deal with such an incident, or other major incident of a different type, in the future.

(107) Whilst no one can give absolute 'copper bottomed' guarantees, we believe the PSNI are now well placed to perform with credit as a result of:

- Staff being thoroughly conversant with the use of the HOLMES 2 computer and the benefits it has for them by prompt recording of data, and keeping track of lines of enquiry (No computer, however sophisticated and bespoke designed, can detect crime, but used to maximum advantage is a wonderful tool to aid the detection of major crime)
- Dedicated detectives being available from the Crime Operations Department. We believe the creation of this Department (in April 2003) was timely, and the correct approach to robustly tackling serious and organised crime. The Department has significant advantages over the previous three autonomous, or semi autonomous, regional area structures, not least because patterns, or links, between major crime scenes are more likely to be recognised and acted upon. This applies to all categories of serious crime.
- Officers working together in such a specialist unit, and sharing knowledge and expertise, helps develop tomorrow's specialists.
- The training available for SIO's has far greater priority than hitherto (Note: This needs to be sustained since the loss of experienced CID personnel as a result of 'severance' is a concern for the future)
- Our enquiries, and dip-sampling of current murder enquiries, show Major Incident Room operational officers are conversant with current Best Practice manuals, and exhibit packaging, storage, and recording would match that seen in any other Police Service in the UK.
- Although we have mentioned that there needs to be greater consistency around exhibit collection, packaging, storage, and recording where mainstream crime is concerned (this is largely on DCU's), there is no concern about the quality of this work where specialist CID Units are concerned. Furthermore, in the most serious categories of crime the FSNI is far more routinely seen gathering scientific evidence from the scene of the crime, and have 'turn-out' rotas for staff specifically for the purpose.
- The proposed use of the NICHE computer system for recording exhibits should lead to greater accuracy, and substantially aid exhibit tracking.

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- There has been a willingness by key PSNI staff, in the course of this review, to acknowledge that there are lessons to be learnt from the Omagh investigation, from 1998 onwards. This openness bodes well for the future because we feel it not only encourages a learning culture (we have all learnt from our own mistakes at one time or another) - it also signifies constructive self examination rather than retreating into a form of defensive self-serving protectionism.
- A developing understanding in the PSNI of what accountability really means has led to officers feeling more comfortable about being answerable to others for their actions, linked with a better understanding that the public really do have a concern about the police being seen to be effective where serious crime is concerned. A detected murder(s) most certainly helps family and friends of victims to secure psychological 'closure' on events which have haunted them - something which has not been available to the many in Omagh.

Recommendation

Members are invited to note the contents of this report.

Sir Dan Crompton CBE, QPM

David Blakey CBE, QPM, DL

Graham Shaw BA (Hons)

12th May 2008