

COMMITTEE ON FOREIGN AFFAIRS
Subcommittee on International Organizations,
Human Rights and Oversight

Baroness Nuala O'Loan DBE, Former Police
Ombudsman for Northern Ireland

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INTRODUCTION

1. The Office of the Police Ombudsman for Northern Ireland was established under the Police (Northern Ireland) Act 1998, and came into operation on 6 November 2000. I was the first Police Ombudsman for Northern Ireland, holding office from 6 November 2000 to 5 November 2007. My statutory duty was to exercise my powers in such a manner and to an extent as appeared to me to best secure an effective, impartial and independent police complaints system, and also to secure the confidence of the public and members of the Police Service in that system.
2. In Northern Ireland complaints against the police must normally be made within 12 months. However if a complaint is more than one year old but is grave or exceptional, then the Police Ombudsman must investigate.

THE COMPLAINT

In May 2002 a member of the public, Mr Raymond McCord, made a complaint to me about police conduct which was both grave and exceptional. The Statutory Report on that complaint (which was known internally and is sometimes still referred to as "Operation Ballast") was published on 22 January 2007, and can be found at www.policeombudsman.org That complaint comprised four allegations. The allegations and my subsequent findings in response to these allegations were as follows:

Allegation number one: that a senior UVF figure had ordered the murder of his son and that this individual was a police informant.

Finding: I was able to confirm that a police informant was a suspect in the murder of Mr McCord's son, I could not confirm or deny who that individual was.

Allegation number two: that police failed to carry out a thorough investigation of his son's murder and failed to keep him updated about their investigation.

Findings : I identified failures in the investigation of Mr McCord's son's murder. These failures may have significantly reduced the possibility of anyone being prosecuted for the murder.

There was some material which indicated some contact between specific police officers and Mr McCord, particularly during the days immediately following the murder, There was a failure by those supervising the conduct of the police investigation to consider the benefit of identifying at the very least a single point of contact for Mr McCord. Such provision may have allowed the investigation to progress more effectively, I also substantiated the claim that police failed to keep Mr McCord properly updated about the investigation.

Allegation number three: that no-one had been arrested or charged with the murder of his son. Mr McCord alleged that this was because the man who ordered the murder was a police informant and that this individual and those working for him have been protected from arrest and prosecution over a number of years.

Findings: A number of people were arrested for Raymond McCord Junior's murder, but no-one has been charged with the murder. There was no evidence that anyone was protected from arrest for the murder of Raymond McCord Junior.

With reference to Mr McCord's allegation that a police informant had ordered his son's murder and that this individual and those working for him have been protected from arrest and prosecution for years, we conducted an extensive investigation. It was clear that much intelligence was disregarded and not properly managed by

police. They continued to use Informant 1 despite his criminal record and the extensive intelligence they held in respect of alleged serious criminality, because he had value to them as an informant.

The allegation was therefore **SUBSTANTIATED**, with the exception firstly of that part of it which referred to police failure to arrest anyone for Raymond McCord Junior's murder and secondly, of the fact that whilst I was able to confirm that an informer was a suspect, I could not confirm or deny who that individual was.

Allegation number four : that unidentified police knew that something was going to happen to Raymond McCord Junior and that they didn't warn him or his family about this danger, because they wanted to protect the informer who was responsible for the murder.

Finding: I found no evidence to support this allegation, which was therefore not substantiated.

THE INVESTIGATION OF THE COMPLAINT MADE BY MR McCORD

1. Following preliminary enquiries it became clear that the allegations made justified a wide ranging investigation not only into matters relating to the investigation of Mr McCord's son's murder, but also into the police handling and management of identified informants and information received by and about them from 1991 – 2003.
2. In the course of the investigation, police computer systems were examined, and more than 10,000 police documents were recovered, including material held within intelligence systems, personal records, and police journals, in crime files and from other sources. Corroborating material was also recovered from a number of other agencies and organisations.
3. We sought the cooperation of a number of retired RUC/PSNI senior officers. Officers who were being treated as witnesses were asked to provide an explanation of Special Branch and CID internal practices during this period. Investigators offered to meet retired officers at venues with which they would be comfortable, and at times which would suit them. They were advised of the areas of questioning and provided with significant disclosure of information, at their request. The majority of

them failed even to reply. This was despite the fact that they were assured that witness details would be anonymised in any public statement, and that the personal details and addresses of retired officers would be treated as sensitive information and protected accordingly. Amongst those who refused were two retired Assistant Chief Constables, seven Detective Chief Superintendents and two Detective Superintendents. We were particularly concerned that retired officers, who had had significant responsibilities within Special Branch and who undoubtedly could have assisted this inquiry, refused to do so.

4. Some retired officers did assist the investigation and were very helpful. Officers varied a great deal in the manner in which they responded to questions. Some, including some retired officers, dealt with challenging questions in a professional manner. Others, including some serving officers, gave evasive, contradictory and on occasions farcical answers to questions. On occasions those answers indicated either a significant failure to understand the law, or contempt for the law. On other occasions the investigation demonstrated conclusively that what an officer had told my Investigators was completely untrue.
5. More than 100 serving and retired police officers were interviewed, 24 of them under caution.
6. Three retired officers were arrested because they would not attend voluntarily for an interview under criminal caution, a fourth officer who was to be arrested attended for voluntary interview under criminal caution.
7. The refusal of so many senior officers to co-operate was indicative of disregard for the members of the families of the murder victims who came from both sides of the community. In addition to this, their refusal to co-operate had the effect of lengthening the investigation and depriving the public of their understanding of what happened.
8. My investigators sometimes had to wait an excessive amount of time for replies to their request for information. I accepted that there may be some legitimate reasons for delay however there were some examples where we had to wait for periods ranging from a year to 2½ years before PSNI were able to confirm answers to specific requests. There were also on many occasions on which it took the PSNI three or four months to answer a single question.
9. Intelligence reports and other documents held within the the RUC and the PSNI, most of which were rated as “reliable and probably true”, linked police informants,

and particularly one man who was referred to in my McCord Report as “Informant 1” to the following 10 murders:

- **Mr Peter McTasney**, who died on 24 February 1991;
- **Ms Sharon McKenna**, who died on 17 January 1993;
- **Mr Sean McParland**, who was attacked on 17 February 1994 and died on 25 February 1994;
- **Mr Gary Convie**, who died on 17 May 1994;
- **Mr Eamon Fox**, who dies on 17 May in the same attack as Mr Gary Convie;
- **Mr Gerald Brady**, who died on 17 June 1994;
- **Mr Thomas Sheppard**, who died on 21 March 1996;
- **Mr John Harbinson**, who died on 18 May 1997;
- **Mr Raymond McCord Junior**, who died on 9 November 1997;
- **Mr Thomas English**, who died on 31 October 2000.

10. We also identified less significant police intelligence implicating Informant 1 in five other murders.

11. Intelligence was also found linking informants, and in particular Informant 1 to ten attempted murders between 1989 and 2002.

12. Finally, intelligence found implicated informants, and in particular Informant 1, in a significant number of crimes in respect of which no action, or insufficient action, was taken including:

- Armed robbery;
- Assault and Grievous Bodily Harm;
- Punishment shootings and attacks;
- Possession of munitions;
- Criminal damage;
- Drug dealing;
- Extortion;
- Hijacking;
- Intimidation;
- Conspiracy to murder;
- Threats to kill

13. Intelligence in itself is not evidence. However, intelligence handled correctly can

often be capable of providing evidential opportunities and certainly should stimulate investigative action.

14. In accordance with good practice, in early 2005 I commissioned an independent review of my 'Operation Ballast' investigation by an external consultant. His conclusions, which are reported in my McCord Report were that my investigation was managed professionally, and that the intelligence analysis work undertaken by my staff was "outstanding". He also noted that the PSNI had "an obvious lack of enthusiasm for co-operating with the Police Ombudsman."
15. Following completion of the investigation we sent files to the Director of Public Prosecutions. He directed because of the insufficiency of evidence there could be no prosecution of any serving or former police officer. Our investigation, despite uncovering evidence of widespread wrongdoing, was unable to attribute this to any individual to the standards required by the criminal courts due, not least, to the police policy of deliberate failure to record and retain information.

ISSUES RELATING TO SPECIAL BRANCH INFORMANT HANDLING

1. The most important senior decision making groups responsible for Special Branch operations are the Tasking and Coordinating Groups, which, we discovered, routinely destroyed all materials, logs and records relating to their decision making processes after an operation. Since 1996 this has been a breach of the law.
2. There were significant delays when we requested PSNI to supply informant identities and initially the police were reluctant to supply such information, despite the fact that by law I had the right of access to such information. The matter was resolved when the Chief Constable intervened and things improved considerably from late 2003.
3. A number of important documents were missing, lost or destroyed, including murder files, murder investigation, decision logs, intelligence documents and all original material relating to significant proactive operations.
4. The investigation identified disturbing irregularities in the Special Branch management of 'Informant 1', and others. These irregularities related to the handling, controlling and management of informants, and of the information or intelligence which they produced. There were mechanisms which were used by

other police forces within the United Kingdom to prevent the failings of informant and intelligence handling identified in my McCord Report. Those mechanisms should have involved clear and effective policies for informant handling and information/intelligence use and dissemination, combined with regular training and effective, intrusive management.

5. Although such systems were used to some extent by RUC Criminal Investigations Department, they were not used by RUC Special Branch. In 1997 the RUC introduced new rules for informant handling and management. Indeed PSNI have informed us that in 1997 the RUC produced a manual for informant handling, a detailed code as to how informants should be handled and managed. It would have prevented some of the failings and the collusive acts which I identified, however what happened was that Chief Officers decreed that Special Branch were excluded from adherence to the manual. We were told by PSNI that, in 1998, a Special Branch manual of accountability was produced which should have changed things. Officers told us in interview that this did not happen. There was no regular assessment of informants; there were no annual reviews of informants between 1991 and 1999 (the purpose of the annual review is to look at an informant and see what are they involved in, should they continue to be used as informants?)
6. Since 2000 police use of informants in the United Kingdom has been governed by the Regulation of Investigatory Powers Act, which imposed statutory rules about the review, management, assessment and cancellation of informants. and provided for inspections of informant handling processes by a Surveillance Commissioner. By 2003, previous inspections by the Surveillance Commissioner had not identified significant non-compliance by the Police Service of Northern Ireland. In his report on the 26th February 2003, the Surveillance Commissioner concluded that, whilst he identified some failings, the PSNI had a high level of compliance with the Regulation of Investigatory Powers Act. I referred the handling and management of Informant 1 to him on 15 September 2003, and he then found that the rules had not been complied with in the case of Informant 1, and that there had been a failure to meet National Minimum Standards and to take into account intelligence about Informant 1's own conduct.
7. Prior to 2003 some RUC/PSNI officers facilitated the situation in which informants were able to continue to engage in paramilitary (terrorist) activity, some of them holding senior positions in the UVF, despite the availability of extensive information

as to their alleged involvement in crime. Those informants must have known that they were not being dealt with for crime. Some RUC/PSNI officers were complicit in the failure to deal appropriately with Informant 1 and other informants, both by way of criminal investigation and by ceasing to use them as informants.

8. We identified a series of incidents in which Special Branch officers took steps to ensure that, when police informants committed crime, they were shielded from police officers investigating that crime and from other agencies within the criminal justice system. My concerns were communicated to the Chief Constable in March 2003 and our more serious concerns in the following September.
9. Police described 'Informant 1' in March 1995 as "a particularly difficult source to handle who tells you only a fraction of what he knows and for this reason would require strong, careful and fully controlled and co-ordinated handling." A common view held within the uniformed and CID officers in North Belfast was that 'Informant 1' was a well known terrorist and criminal who was a protected species.
10. The investigation has further established that other police informants who were members of the UVF received financial payments from the police, provided intelligence about crime, and were associated with 'Informant 1', were mostly handled by the same informer handlers as 'Informant 1', provided intelligence on the criminal activities of 'Informant 1' and of each other. Their activities included responsibility for punishment shootings, alleged involvement in murders and the planning of murders, allegedly involvement in attempted murders and were allegedly involved in serious criminality, including drug dealing and knee-capping. They were not given "participating informant" status by the police and were never investigated fully for the majority of these crimes.
11. We estimated, using incomplete and inadequate police records, that payments of at least £79,900 were made to 'Informant 1', which included a series of incentive payments over a twelve year period between 1991 and 2003.
12. From 1991 to 2003 Special Branch systems for information management, dissemination and retention were seriously defective. In effect handlers and on occasion their supervisors did determined what information, if any, went into such systems as did exist and the systems which did exist were not effective. Junior Special Branch officers could and did refuse to supply information to senior officers from outside Special Branch. The general absence of records prevented senior

officers who clearly had significant responsibility for the failings , from being held to account. I said that it was abundantly clear that this was not an oversight but was a deliberate strategy and had the effect of avoiding proper accountability.

13. On the 6th October 2003, following these developments, the PSNI reviewed all their informants. One of the outcomes was that 24% of informants were de-registered, 12% of all informants were cancelled because they were no longer providing useful information and 12% because they were involved in serious crime.
14. Between 2003 and 2007, the PSNI made significant incremental changes and introduced new policies and working practices. A list of those changes is to be found in Appendix 1 on page 154 of my McCord Report.
15. Whilst it is accepted that the Northern Irish situation presented difficulties that no other UK police force faced, that context however provides no justification for the way in which Special Branch handled these informants. Indeed the investigation of terrorism in Northern Ireland would have been greatly enhanced by the ethical and proper handling of informants and their intelligence.

COLLUSION

1. Allegation number three which Mr McCord made was that Informant I and those working for and with him were protected from arrest and prosecution. That was the collusion allegation. All of the informants at the centre of this investigation were members of the UVF. There was no effective strategic management of these informants and as a consequence of the practices of Special Branch the position of the UVF, particularly in North Belfast and Newtownabbey, was consolidated and strengthened over the years.
2. My investigation has not shown that the RUC deliberately set out to conspire with the UVF in the commission of the terrible crimes which came to my attention in the course of the investigation. It has shown that the Special Branch dominated the RUC which resulted in a culture of subservience to Special Branch and organisational dysfunction. There was an absence of proper policy and controls within Special Branch which created a vacuum in which the collusion which I identify in my statement today occurred.
3. Collusion is not a crime. There are two significant definitions of collusion in Northern

Ireland. Lord Stevens, who conducted an investigation into collusion, defined it as *“the wilful failure to keep records, the absence of accountability, the withholding of intelligence and evidence, the extreme of agents being involved in murder.”* Judge Cory who examined the four cases of the murders of Patrick Finucane, Rosemary Nelson, Robert Hamill and Billy Wright defined collusion as *“that army and police forces must not act collusively by ignoring or turning a blind eye to the wrongful acts of their servants or agents, or supplying information to assist them in their wrongful acts, or encouraging them to commit wrongful acts. Any lesser definition would have the effect of condoning or even encouraging state involvement in crimes, thereby shattering all public confidence in these important agencies.”* I used these definitions for the purpose of my investigation.

4. In the absence of any justifiable reason why officers behaved as they did, I identified, from police documentation, records and interviews, collusion in the many situations, including the following circumstances:

- the failure to arrest informants for crimes to which those informants had allegedly confessed, or to treat such informants as suspects for crime;
- the creation of interview notes which were deliberately misleading, failing to record and maintain original notes and failing to record notes of meetings with informants.
- the failure to deal properly with information received from informants, so that informants were able to avoid investigation and detection for crime;
- the arrest of informants suspected of murder, then subjecting them to lengthy sham interviews by their own handlers at which they were not challenged and then they were released on the authorisation of the handler;
- the failure to record in investigation papers submitted to the Director of Public Prosecutions the fact that an informant was suspected of a crime, despite the fact that he had been arrested and interviewed about the crime;
- Instructions were given to junior officers that records should not be completed, and that there should be no record of the Monaghan bombing incident;
- there was an absence of any official record linking a Special Branch informant to the possession of explosives which may and were thought according to private police records to have been used in a particular crime;

- There was a withholding of information about the location to which a group of murder suspects had allegedly fled after a murder and the consequence of that was that CID officers were searching in Belfast for people whom they thought to be the murderers, whilst the Special Branch had information about the actual location to which they had gone ;
 - on a number of occasions intelligence indicating that up to three informants had been involved together in murders and in a particular crime or crimes was withheld;
 - forensic exhibits such as metal bars used to beat people and all sorts of other material were destroyed or lost;
 - searches of a police informant's home and of other locations including an alleged UVF arms dump were blocked;
 - local police were not informed properly of the detail of what Special Branch knew about an impending attack, and no action was taken by Special Branch to try and disrupt that attack;
 - not acting on witness and other evidence received in particular crimes when the subject of that evidence was an informant;
 - cancelling the "wanted" status of murder suspects "because of lack of resources" and doing nothing further about these suspects.
5. The RUC decisions not to adopt proper rules relating to the handling, supervision, and management of informants meant that it was not possible to attribute responsibility to individual officers for actual breach of rules.

CONCLUSION

1. Following the investigation of Mr McCord's complaint I substantiated the bulk of that complaint. I found that as a consequence of the practices of Special Branch the position of the UVF, particularly in North Belfast and Newtownabbey was consolidated and strengthened.
2. During my McCord investigation we examined a small part of the informant handling of RUC/PSNI Special Branch in relation to the activities of a number of Special Branch officers of all ranks in relation to Informant 1 and also the other informants

who were associated with him. I concluded that there was no reason to believe that the findings of the investigation were isolated. Many of the findings were systemic and the implications of this were, I said very serious.

3. The effect of the dysfunction which we identified was that, whilst undoubtedly Special Branch officers were effective in preventing some bombings and shootings and other attacks, some informants were able to engage in terrorist activities, including murders, without the Criminal Investigation Department having the ability to deal with them for some of those crimes.
4. While acting as informants, and with the knowledge of Special Branch and some CID officers, UVF members were able to move through the ranks of the UVF to senior positions. Informant 1's activities were not challenged by Special Branch and the activities of those who sought to bring him to justice were repeatedly blocked. Records were minimised, exaggerated, fabricated and must also have been destroyed. Informant 1 would have been well aware of the level of protection which he was afforded.
5. The investigation of the complaint demonstrates graphically the dangers of a separated and effectively unaccountable specialist intelligence department with extensive and largely uncontrolled powers. Because of the absence of systems no effective analysis could have been made by the RUC/PSNI over the years, of the implications of the totality of the information about and the activities of the informants who have been identified during the investigation. I found that on a number of occasions police did not use the opportunities they had for the purposes of detecting and preventing crime.
6. I made a series twenty recommendations in my McCord Report. They were brought to the attention of the Chief Constable before the publication of the Report and he responded to each of the recommendations. The recommendations, together with that response are to be found on page 147 of the Report.
7. Intelligence work requires that those involved act with absolute integrity and professionalism. This investigation has demonstrated that one of the greatest dangers to any anti-terrorist work is that if those charged with intelligence gathering and investigation don't abide by the rules and if those who manage them don't manage them effectively, the risk of attack is enhanced not reduced.
8. Finally, it remains the case that the majority of officers within the RUC/PSNI served bravely and honourably some even making the ultimate sacrifice and nothing in this

report detracts from that. On many occasions in the course of the work of my office we identified examples of excellent policing past and present. This was in stark contrast to the collusion and systemic failures by some officers which have been identified in the McCord Report .

BARONESS NUALA O'LOAN DBE

22 October 2009