



**PUBLIC STATEMENT**

**OPERATION KENOVA – SUMMARY OF  
DECISIONS NOT TO PROSECUTE**

**SECTION A – INTRODUCTION**

1. This Public Statement provides a summary of final prosecutorial decisions that have now issued in relation to files submitted by Operation Kenova, and the reasons for them. It should be read together with the [Public Statements dated 6 December 2023](#) (“the December Public Statement”) and [6 February 2024](#) (“the February Public Statement (No.1)”) which provided information about the background to Operation Kenova and the approach to decision-making. They also described the challenges that arise from the absence of original source materials and in relation to any attempt to rely upon intelligence records as evidence in criminal proceedings. Such challenges have again featured prominently in the decisions covered by this Statement.
2. In the December Public Statement, we explained that decisions in relation to 10 files remained outstanding. Since then, we have received two further files from Operation Kenova. The February Public Statement (No.1) dealt with decisions taken in six files and the remaining six files are dealt with herein.
3. The final six files in which decisions have now issued related to a number of incidents in the late 1980s and early 1990s. They are dealt with in terms of Incidents and Suspects reported below. The incidents were:
  - (i) Incident 1 – the abduction in 1987 of **Victim A**, who was released.

- (ii) Incident 2 – the abduction and murder of **Victim B** in 1988.
- (iii) Incident 3 – the abduction and murder of **Victim C** in 1989.
- (iv) Incident 4 – the abduction of **Victim D** in 1989, who was released.
- (v) Incident 5 – the abduction and murder of **Victim E** in 1994.

4. The persons reported for decisions as to prosecution were:

- (i) Three retired soldiers – **Suspect 1, Suspect 2 and Suspect 3** – who worked within the Force Research Unit (FRU) as agent handlers.
- (ii) Two retired soldiers who worked within the FRU in senior positions, either as Operations Officer (**Suspect 4**) or Commanding Officer (**Suspect 5**).

These suspects were reported in relation to Incidents 1-3.

- (iii) Seven civilians alleged to have been members of the Provisional IRA (PIRA) at the time of these incidents. **Suspect 6** and **Suspect 7** were reported in respect of Incidents 2 and 3. **Suspect 8** was reported in respect of Incident 3 only. **Suspect 9** was reported in relation to Incident 4 and **Suspect 10, Suspect 11 and Suspect 12** were reported in relation to Incident 5.

5. Also reported was the individual referred to at paragraph 1.4 of the December Public Statement and who was reported as a suspect on all but one of the Kenova files<sup>1</sup>. As explained at paragraph 1.5 of that Statement, the fact that this individual has died means that no decisions as to prosecution have, or will, issue in respect of their alleged criminality. The position is the same in respect of a further suspect who was reported in connection with Incident 3.

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<sup>1</sup> This individual was also not reported on the two additional files that were recently received.

6. The civilians are alleged to have been members of PIRA who had roles either in the detention of victims (Victim A and D) or in the detention and murder of victims (Victims B, C and E). They were variously reported for offences of murder, conspiracy to murder and false imprisonment.
7. The retired soldiers are alleged to have handled an agent (hereafter referred to as “the Source”) within PIRA’s Internal Security Unit (ISU) during the period when Incidents 1 - 3 occurred. They were reported for the offence of misconduct in public office.
8. The main allegations against the handlers were similar to those outlined in the February Public Statement (No.1). In summary, they were that:
  - (i) It would have been obvious to them that the Source’s role within the ISU would have involved the Source in criminal activities; and they failed to mitigate the obvious risks associated with this.
  - (ii) Their priority was the welfare of the Source, to the detriment of the safety of others; and they failed to disseminate intelligence or take appropriate preventative action in the cases above in order to protect the Source.
  - (iii) The Source participated in activity beyond that which was permitted in the relevant guidance on agent handling, and they failed to take appropriate action.
9. There were other handlers and collators within FRU during the relevant period, but they were either deceased or treated by Operation Kenova as witnesses, and not suspects.
10. In order to understand the nature and strength of the available evidence as against the FRU personnel it is necessary to consider the relevant factual and legal context. In this regard reference should be had to Section B of the February Public Statement (No.1) which set out: (i) the structure of the FRU; (ii) its relationship with the RUC and MI5; (iii) the applicable law and guidance

in relation to handling agents and the criminal liability of agents who participated in crime; and (iv) the law in relation to the criminal offence of misconduct in public office.

11. In terms of the FRU's operating protocols, Section B of the February Public Statement (No.1) set out, at Part A, details of the structure and operating protocols that existed within the FRU in the early 1980s. In general terms, the role of the handlers remained unchanged throughout the late 1980s. Their primary responsibility was to gather intelligence and pass it up the chain of command. Decisions in relation to whether it was appropriate to recruit a particular source, or to disengage with a source, would be taken at the more senior levels of either Operations Officer (Ops Offr) or Commanding Officer (CO FRU). Some of those who previously acted in these senior roles whilst the Source was run by the FRU were either deceased or were treated by Operation Kenova as witnesses, not suspects.
12. Updated Directives and Instructions were issued by the Army in 1986 and by CO FRU in 1988. The 1986 Directive was almost identical to the earlier Directives and Instructions dealt with in the February Public Statement (No.1) except, regarding 'Dissemination of Intelligence', it specified that once exploitable intelligence had been provided to the RUC Special Branch (RUC SB) any '*Further dissemination of such intelligence is not to be undertaken without agreement of the RUC Special Branch and HQ FRU.*'
13. A Directive was issued by the CO FRU (Suspect 5) in 1988 which dealt with the re-organisation of the FRU and its establishment as a fully independent and operational unit within the Army intelligence structure from 14 July 1988. The Directive stated that important intelligence or operational headlines were to be passed to CO FRU personally or, in his absence, the Ops Offr, including a daily report on operations. It recorded that all agent case files were to be transferred from the offices of MI5's Assistant Secretary Political (ASP) to HQ FRU. It also confirmed that the Ops Offr would have specific responsibilities relating to the Source (as distinct from any of the other agents that were run by the FRU).

14. An outline of each of the relevant incidents is provided in **Section B** and a summary of the interviews of Suspects 1-5 is provided in **Section C**. The details of the decisions in respect of each suspect are provided at **Section D**.

## **SECTION B – THE INCIDENTS**

15. This Section provides a brief description of the five incidents that were covered by this series of files. It includes a summary of the available intelligence records as this is relevant to what Suspects 1 - 5 are alleged to have known about the activities of the Source. We have taken a similar approach to that taken in the previous Public Statements of anonymising both the victims and the witnesses and of providing limited detail in relation to the factual background to each of the incidents. This is again intended to minimise any potential re-traumatisation of the victims and families.

### Incident 1- the abduction of **Victim A**

16. On a date in 1987 **Victim A** was abducted and detained by members of PIRA ISU. He was questioned and subsequently released later that same day. No allegation was made to police at the time and no suspects were arrested. Victim A subsequently provided statements to Kenova investigators alleging that he was detained and interrogated by members of PIRA, some of whom were armed, and that he sustained a significant injury as a result of being assaulted during the interrogation. He was only willing to give evidence against one individual who was allegedly involved. That one individual is deceased.
17. Available intelligence records indicated that the Source reported in advance on PIRA's plan to interrogate Victim A. This reporting included details of where Victim A would be abducted from, the safe house in which he would be detained, and the identities of those involved in the planning. The reporting

from the Source included their assessment that Victim A was 'unlikely' to be killed. Further reporting after the incident indicated that Victim A had been released. The Source reported their involvement, with others, in Victim A's interrogation and in the decision to release him.

18. Some individuals named by Victim A were also named in the FRU records as being involved in this incident, whilst others named by him were not.
19. An entry in a later Source Record Document appeared to show that there had been dissemination of pre-incident intelligence a month before the abduction. This particular document contained no reference to the intelligence outlined above at paragraph 17. A further entry in the same document indicated that positive action had been taken by the FRU regarding the information received.
20. **Suspects 1 – 5** were interviewed by Kenova, although Suspects 1 -3 were not asked specifically about this case. Their interviews are summarised in Section C.

#### Incident 2 – the abduction and murder of **Victim B**.

21. In 1988 **Victim B's** body was discovered after shots were heard by local residents. Victim B was last seen alive by family members the previous day. The cause of death was gunshot wounds to the head. PIRA claimed responsibility for the murder.
22. Available intelligence records indicated that the Source reported PIRA suspicions regarding Victim B in the months leading up to the murder; and that this reporting was passed on to the RUC SB. The Source's reporting also included the alleged role of **Suspect 6** in meeting with others to discuss the suspicions around Victim B and giving permission for Victim B to be questioned by the PIRA Security Team (although no interrogation proceeded at that time).

23. There was also a record of a police informant having reported, months before the murder, that the PIRA Security Team was looking for Victim B to interrogate him.
24. Further reporting of rising PIRA suspicions and planning regarding Victim B was provided by the Source two weeks before the murder and disseminated to the RUC SB.
25. Approximately one week before the murder a further record indicated that the Source reported PIRA's plan to entice Victim B to a named location from where he would be taken for interrogation. Estimated dates as to when this would take place were provided. The records indicated that copies of this reporting were communicated by way of a MISR<sup>2</sup> to a number of recipients, including several within the RUC SB. A date of dispatch was recorded for only one of these copies and that was four days before Victim B was lifted by the PIRA ISU. It was not clear whether this recorded date of dispatch applied to the other copies.
26. Four days before the murder, the Source reported the date, time and place of Victim B's planned abduction by PIRA. The identities of those to be involved, and details of the safe house to which Victim B would be taken, were also reported. The recorded date of dispatch in relation to the relevant MISR post-dated the murder by a week. There was also a record of telephone contact taking place between the Source and their handlers on the day on which Victim B was taken by the PIRA ISU (the day before his body was found) but the content of that contact was not available.
27. There was a MISR containing a detailed summary of reporting provided by the Source two days after the murder. The Source reported that Victim B attended the previously identified location and had been taken to the safe house where he was interrogated. Victim B was detained overnight and shot later that

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<sup>2</sup> A MISR was a Military intelligence Source Report and was the document used by the FRU to communicate a summary of intelligence to other agencies, including the RUC. They were considerably less detailed than the transcripts of tape recordings of meeting or the contact forms which were completed prior to the MISRs. No transcripts or contact forms were available in these cases.

evening. The Source reported their involvement in the interrogation, along with other named individuals, including **Suspect 7**. The record indicated that the Source had left the house and that they were later told that the “execution detail” had arrived at the house a couple of hours thereafter. There was nothing in the content of the MISR that indicated that the Source had returned to the address in the intervening period.

28. There was witness evidence obtained by Kenova which indicated that Victim B had been warned by police, weeks before his murder, of the PIRA Security Team’s possible interest in him and that ways of mitigating the risk were likely discussed with him.
29. There was a further account from a witness who worked in the FRU at the time of Incident 2. The witness claimed to have been aware of the non-dissemination of information but was unable to give particular examples of when this occurred. She claimed to have challenged Suspects 1 and 2 (as well as a collator who worked within the FRU at the time), “probably as a collective”, on one occasion. This was possibly in respect of Incident 2 but the witness was unsure. The witness claimed that the handlers ‘implied’ that the dissemination of information would have identified the Source. She also said that the handlers explained that the Source’s information saved many lives.
30. **Suspects 1 – 7** were interviewed by Kenova in respect of Incident 2. Suspects 6 and 7 made no comment. The interviews of Suspects 1-5 are summarised in Section C.

### Incident 3 - the abduction and murder of **Victim C**.

31. In 1989 **Victim C’s** body was discovered in West Belfast after shots were heard by police stationed nearby and by local residents. The cause of death was gunshot wounds to the head. The victim had also been shot in the back. PIRA claimed responsibility for the murder.



32. Victim C was last seen alive by a family member the previous day. Whilst arrests were made at the time, no-one was charged until almost a year later when another incident took place at the same address. The victim in that later incident was rescued by police and the homeowners present at the time were arrested (with others). They made admissions during police interview that their address had been used the previous year to interrogate Victim C. Both homeowners were convicted in 1991 of the false imprisonment of Victim C. Their convictions were later overturned on appeal.
33. One householder, during interview after caution, identified, by a first name only, an individual involved in Victim C's detention and interrogation. It was alleged that this person was **Suspect 7**. His account was provided one year after the events he described. He made an after-caution witness statement at the time. He did not identify any suspects by name but provided physical descriptions instead. The householder died in 2017.
34. The intelligence records indicated that during the 12-month period leading up to Victim C's murder, the Source reported on PIRA's ongoing suspicions of, and inquiries, into Victim C. The reporting included details of plans to abduct and interrogate Victim C and initial questioning of him by PIRA personnel, and later by the Security Team, after which he was released. The Source reported on the increasing risk to Victim C's life throughout this period. In many instances the Source's intelligence was corroborated by reporting from RUC sources. The records indicated that the Source provided advice to their handlers on how Victim C might avoid further PIRA suspicion and inquiries. The Source reported several weeks before the murder that a decision had been taken that the Security Team should arrest and interrogate Victim C again. This reporting was disseminated to the RUC SB throughout this period prior to Victim C's murder. The available records further indicated that Victim C had taken steps to avoid the PIRA Security Team.
35. The final documented FRU record of the threat to Victim C before his murder is contained in a letter to the Head of RUC SB from CO FRU (**Suspect 5**)

approximately three weeks beforehand. It advised of the widespread allegations against Victim C, the possibility of his abduction in the near future, and what action should be taken in the event that he was reported missing by a family member. This included the arrest by police of a number of named individuals, including the Source. The letter stated, "*This HQ is unlikely to receive more specific prior warning of [Victim C's] abduction.*" It was alleged that this letter represented a deliberate decision by Suspect 5 to withhold further information received for source protection reasons and that it was inconceivable that further reporting would not be available from the Source having regard to the Source's central role within the PIRA ISU and its investigation of Victim C.

36. There were two further records of police receiving from the FRU information that emanated from the Source. The first was four days before the date on which Victim C was detained by PIRA ISU. The second was a day before his detention. The records referred to the Source reporting a suspected Control Wired Improvised Explosive Device (CWIED) in the general area where Victim C would later be detained. The second report was more specific as to the relevant location and included a specific street name. Neither record made any reference to Victim C. There was a witness who recalled that the relevant estate was subject to an "out of bounds" order requiring police to seek clearance before entering it. There was no documentation located that was relevant to any such order, but an available inference was that an order had been made as a result of the intelligence regarding the CWIED. The day after the murder the Source reported again on the CWIED and speculated that the device may have been removed.
37. There was information that a CWIED had exploded approximately three weeks earlier in West Belfast, killing a soldier.
38. There was a relevant RUC SB intelligence record relating to information received from a police source which appeared to have been received the day before the abduction of Victim C and which anticipated the abduction taking place within a matter of days.

39. Kenova also recorded a statement from a witness who claimed to have reported, in the early hours of the day on which Victim C was later abducted, his understanding of an imminent threat to Victim C. There was a record which corroborated contact between the witness and police at that time, but no detail capable of confirming whether any mention of Victim C was made.
40. There were records and witness accounts which indicated that Victim C had been repeatedly warned by police of the threat to him, but that he had refused to heed the warnings.
41. The Source subsequently reported on the events which had culminated in Victim C's murder. The Source reported that they had been advised, two days before Victim C was abducted and interrogated, of PIRA's intention to do so imminently. The Source reported their involvement in the interrogation of Victim C with others, including Suspect 7. According to the record, the Source phoned their handler as soon as possible after they had left the house at which Victim C had been held and they were no longer in the company of other PIRA members. This call was recorded as having taken place 10 minutes before the shooting was reported to police and 20 minutes before Victim C's body was found.
42. A witness who began handling the Source three years after Victim C's murder provided a statement to Kenova, 30 years after the murder, that in 1992 he saw a record in the Source's file which indicated that the Source had pushed for Victim C's execution. This was said to be because Victim C suspected that the Source had been working for the Army and Victim C therefore posed a risk to the Source's security. No such record was recovered by Kenova.
43. In relation to **Suspect 6**, there was intelligence received after the murder, from two separate sources, that indicated that he had been involved. There were entries, in a later Source Record Document, that recorded Suspect 6 as having shot and killed Victim C after Victim C's attempt to escape. This was inconsistent with one of the more contemporaneous pieces of intelligence.

44. The Source Record Document also contained an entry which stated that **Suspect 8** had restrained Victim C before he was shot. It was not clear from the entry whether this information was provided by the Source. This information was not contained in any contemporaneous reporting by the Source.
45. Suspects 1-8 were interviewed under caution by Operation Kenova in relation to Incident 3. Suspect 6, Suspect 7 and Suspect 8 all made no comment. The interviews of Suspects 1-5 are summarised in Section C.

#### Incident 4 - the abduction of **Victim D** in 1989

46. On a date in 1989 Victim D was told to report to an address at which he was subsequently detained and interrogated by PIRA. He was detained for approximately eight or nine hours before being released. He alleged that he was assaulted during his detention. The matter was not reported to police contemporaneously.
47. Operation Kenova recorded a statement from Victim D in 2022 in which he named several individuals who were alleged to have been involved in his ordeal in 1989, including **Suspect 9**. Victim D subsequently died. The statement of Victim D was the sole evidence of the involvement in the incident by Suspect 9.
48. Victim D alleged that Suspect 9 lived close to him at the time of the incident and that it was Suspect 9 who told him to report to the address where he was subsequently detained by PIRA. He further alleged that, when he went to the address in question, Suspect 9 met him on his arrival and led him upstairs to a bedroom where his interrogation took place. Subsequent enquiries by Operation Kenova disclosed that Suspect 9 had lived in close proximity to Victim D but had not done so for many years at the time of the alleged abduction.
49. Victim D provided an account that, during the course of his interrogation, he was hooded or facing a wall and that this was done so that he was unable to see his interrogators. However, he said that prior to his release he was moved

to another room from which he had a clear and unobstructed view of the front of the property and was able to clearly see his interrogators as they left the premises where the interrogation had taken place.

50. There was limited intelligence material available in relation to the 1989 incident. This material provided some support for the account of Victim D that he had been detained by PIRA in 1989 but it did not provide support for the involvement of Suspect 9.
51. Victim D also alleged in his statement that he had been falsely imprisoned and interrogated by PIRA on a previous occasion in 1981 and named a number of individuals whom he alleged to have been involved in abducting and falsely imprisoning him at that time. He did not allege that Suspect 9 was involved in this earlier interrogation. He said that two other named individuals were also detained by PIRA at the same address and at the same time. Operation Kenova investigators spoke to one of these individuals, but he refused to make a statement. However, he denied that he had ever been detained or interrogated by PIRA in 1981, although he told the investigators that an attempt had been made to shoot him at around that time.
52. There was some limited intelligence material in relation to the 1981 incident. This did not provide support for Victim D's account that he and the other two named individuals had been detained and interrogated by PIRA. It provided some support for the account of the individual spoken to by Operation Kenova.
53. Suspect 9 was interviewed under caution and made "no comment" replies to most questions asked. However, he denied knowing Victim D and said that he had no recollection of being involved in the events described in the statement of Victim D. It was put to him that he had lived in close proximity to Victim D and he said that he was aware of a family of that surname who had lived close to him, but that he did not know Victim D.

## Incident 5 – The Murder of **Victim E** in 1994

54. In 1994 Victim E's body was discovered by a local resident in a rural area. The same resident had heard a number of gunshots in the locality a number of hours earlier. A post-mortem established that the cause of death was gunshots to the head which were inflicted at close range and would have caused rapid death.
55. Contemporaneous enquiries by police established that Victim E had told a number of relatives that it was her intention to take a bus trip on the day of her disappearance with a number of friends and acquaintances. The date of Victim E's disappearance was approximately two weeks prior to the recovery of her body. Most of the relatives with whom police spoke at that time did not know the names of the individuals with whom Victim E was intending to travel. However, one relative provided an account to police indicating that Victim E had said that she was intending to travel with **Suspect 10**.
56. Suspect 10 was interviewed by police in 1994. He made no comment when interviewed by police and was released without charge at that time.
57. A statement recorded from the same relative of Victim E by Operation Kenova indicated that there had been some confusion at the time of their earlier account and that at some points during their account, when they appeared to be referring to Suspect 10, they had in fact been referring to another individual. They reiterated however that they were certain that Victim E had said on the day that she went missing that she was intending to make a bus trip with Suspect 10. They made a further statement in which they said that they knew Suspect 10 and that they knew that Suspect 10 was an associate of Victim E.
58. Operation Kenova recorded a statement from a witness in 2019 in which he alleged that he had seen Victim E getting into a taxi with a number of individuals including Suspect 10, **Suspect 11** and **Suspect 12** on the date of her disappearance. One of the other individuals identified by the witness as getting into the taxi with Victim E was spoken to by investigators and claimed that he had been in prison at the relevant time. The prison records were not available

but there was support for that claim in other records reviewed by Operation Kenova.

59. During meetings between this witness and Operation Kenova investigators, and prior to taking his statement, the witness had provided different and inconsistent accounts of his knowledge of the circumstances of Victim E's disappearance and subsequent murder.
60. There was some intelligence material which suggested that Suspect 10 had asked Victim E to accompany him on a trip to the Republic of Ireland at around the time of her disappearance.
61. There was some intelligence which post-dated the murder of Victim E. While this intelligence material named a number of individuals said to have played a role in Victim E's detention and murder, it did not indicate involvement in the detention or murder on the part of Suspect 10, Suspect 11 or Suspect 12.
62. Suspect 10 was interviewed by Operation Kenova under caution in 2021. He made a prepared statement in which he denied any knowledge of, or involvement in, the abduction and murder of Victim E. He made no other comment in response to questioning.
63. Suspect 11 was interviewed under caution in 2021 and made no comment in reply to any questions asked.
64. When interviewed under caution Suspect 12 provided a prepared statement in which she denied any involvement or knowledge in connection with the murder of Victim E. She accepted that she had known Victim E and recalled being told that Victim E had been murdered which had left her feeling shocked. She denied that she had been in a taxi with Victim E immediately prior to Victim E's disappearance and said that she had not seen Victim E for a number of weeks prior to her murder being reported.

## SECTION C – SUMMARY OF INTERVIEWS OF SUSPECTS 1-5

65. **Suspect 1** made no comment throughout his after caution interview by Operation Kenova. It was suggested to him that he had co-handled the Source with Suspect 3 between 1987 and 1990. When previously interviewed by PSNI<sup>3</sup> in 2014, he told officers that he fulfilled the role of ‘collator’ for the team which managed the Source during a period between 1987 and 1988. On a date in 1988 he became co-handler of the Source and he left that post in early 1990. Therefore, Suspect 1’s evidence was that he was *not* a handler of the Source during Incident 1 and 2 but was co-handler when Incident 3 occurred.
66. **Suspect 2** made no comment throughout his after caution interview by Operation Kenova. When previously interviewed after caution by PSNI in 2014, he made no comment other than to confirm that he handled the Source during an identified period between 1986 and 1990.
67. **Suspect 3** made no comment throughout his after caution interview by Operation Kenova. It was suggested to him that he had co-handled the Source with Suspects 1 and 2 and was second in command (Assistant Ops Offr) to Suspect 4. When previously interviewed by PSNI in 2014, he told officers that he handled the Source during an identified period between 1986 and 1988. This meant that he was not a handler of the Source when Incident 3 occurred. Kenova questioned him about Incident 3 because, as explained above, information from the Source about Victim C was received throughout the course of 1988.

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<sup>3</sup> Operation Dedlock was a PSNI investigation of an incident in 1990 and related allegations, dealt with in the December Public Statement, which resulted in a preliminary report being submitted to the PPS. No decision as to prosecution was taken at that time because the investigation of that incident was subsumed within Operation Kenova.



68. **Suspect 4** made no comment throughout his after caution interview by Operation Kenova. However, he gave a witness statement to the Stevens III<sup>4</sup> enquiry in 2001 regarding a separate investigation of the FRU. He was later interviewed under caution by Stevens III and provided a further detailed statement in 2002. Whilst the accounts contained within those statements were not evidence in the present cases, they gave a clear indication of the issues which would arise in any prosecution. In those statements Suspect 4 confirmed he was Ops Offr between 1986 and 1989. He specified when he left the post and returned to England, which was weeks before the murder of Victim C. He claimed that the FRU's role was confined to obtaining intelligence which was added to the wider intelligence picture in the possession of the RUC SB and MI5. Until July 1988 the Ops Offr received intelligence 'headlines' after every meeting with every FRU source. After July 1988 the operating instructions were amended, which meant that the Ops Offr no longer reviewed intelligence received from sources with a single exception (which he did not identify).
69. It was the Ops Offr's responsibility (along with the Asst Ops Offr) to ensure that the right bodies received the relevant information. Once intelligence was received from a source it was provided to the RUC, MI5 and senior Army officers. The Ops Offr would discuss with Detachment Commanders options for exploiting intelligence. Significant discussion of intelligence and exploitative operations were oral and often not recorded. Urgent intelligence that required immediate action was communicated to the RUC SB by secure telephone. There was continual discussion between the FRU, the RUC and MI5. Any action to be taken was a matter for the RUC SB. He stated that it was no longer possible to review 'powerful factors' that influenced decision making many years previously. There were several tiers within FRU to detect and control improper behaviour by a source. If illegal activities were identified, then CO FRU had responsibility for ensuring that appropriate action was taken.

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<sup>4</sup> The investigation conducted by Sir John Stevens into the murder of Patrick Finucane and other allegations of collusion raised by British Irish Rights Watch.

70. **Suspect 5** made no comment throughout his after caution interview by Operation Kenova. However, he gave a statement to the Stevens I enquiry<sup>5</sup> in 1990 and, like Suspect 4, an after-caution statement to Stevens III in 2002. While these statements were in regard to separate investigations of the FRU unrelated to the Source, and were not evidence in the present case, they gave a clear indication of the types of issues that would arise in the event of any prosecution.
71. Suspect 5 confirmed that he was CO FRU during a period between 1986 and 1990. The role of the FRU was to support the civil authorities, i.e. the RUC and MI5. It was responsibility of the RUC SB, through the TCG<sup>6</sup>, to exploit FRU intelligence. He claimed that the RUC was not required to obtain the FRU's permission before exploiting intelligence and that the FRU could not have insisted that it did so. The TCG received all types of intelligence from the Army, the RUC and MI5 and would consider multiple factors when deciding if and how to exploit intelligence. Such judgements could only be made by those with access to all tactical intelligence (i.e. the RUC SB). Decisions required a great deal of deliberation with significant co-operation taking place between the Army and the RUC. It was the FRU's expectation that the RUC would take appropriate action to prevent crimes that the FRU reported to it. Due to the sheer volume of casework and pressure of time a considerable amount of information would be passed verbally to the RUC SB. He stated that he regularly had unrecorded conversations with RUC SB officers and that urgent information would be distributed to the RUC SB by telephone. Operational decision-making was a constant challenge and the reality was not reflected in the documents that had been presented to him. Where information had been passed verbally to the RUC SB it was preferable to leave detail out of the written reports (MISRs) which followed for agent protection purposes.

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<sup>5</sup> This was an investigation commenced in 1989 by Sir John Stevens into the issue of leaks from members of the security forces to the UDA.

<sup>6</sup> The TCG was the Tasking and Coordinating Group which was a unit under the command of RUC SB which received intelligence from police, army and MI5 sources, as well as technical sources, and brought together the operational resources of the RUC and Army to mount operations.

72. He referred to the 1986 Directive and Instructions which stated that the FRU's primary aim was the penetration of terrorist groups which was to be done in accordance with the law. He stated that its practical application was vexed and complex and it needed to be understood in a way that enabled operations to take place despite the apparent contradiction due to the fact of an agent's membership of a terrorist group being itself unlawful. In his view an agent's involvement in criminality could only be tolerated if the agent's intention was to ensure that the commission of a substantive offence would be prevented. All FRU officers acted in the belief that the true intention of agents was benign. FRU agents would at times find themselves close to the centre of ongoing criminal activity, but it was the agent's purpose to report such information to the FRU so it could be distributed for exploitation. Decisions were made in the firm belief that they were officially sanctioned, lawful and in conformity with practice. He stated that MI5 knew his approach to the application of the 1986 Instructions and Directive and that, bearing in mind "MI5's oversight of FRU's operations" and also the operational co-operation between the FRU and the RUC SB, it was not acceptable to suggest that the FRU's work was not officially sanctioned.

## SECTION D – SUMMARY OF REASONS FOR DECISIONS

### Suspects 1 - 5

73. **Suspect 1** became a co-handler of the Source in 1988. He was not a handler at the time of either Incident 1 or Incident 2 but was at the time of Incident 3 and this was confirmed by Operation Kenova. He was a collator during Incidents 1 and 2. The role of collator entailed mainly administrative functions relating to the receipt and inputting of intelligence. It could also involve logistical responsibilities in relation to arranging meetings and providing security cover when required to the handlers when they met with a source. A collator had no specific responsibility for the initial collection or dissemination of the Source's intelligence, although there was some witness evidence which indicated that a collator might, from time to time, attend meetings between a handler and a source, or perform the role of co-handler if necessary, for example, when a handler was unavailable. There was, however, no direct evidence that Suspect 1 had attended specific meetings with the Source or 'acted up' in this way into the role of co-handler on dates relevant to Incidents 1 and 2.
74. **Suspect 2** was a handler of the Source when Incidents 1-3 occurred.
75. **Suspect 3** handled the Source during the period when Incidents 1 and 2 occurred but was not a handler when Incident 3 occurred, having vacated the post over six months before Victim C's death. It was alleged in respect of Incident 3 that, as handler, he had received intelligence during the 6-month period, before his departure, about PIRA suspicions regarding Victim C and that plans were being discussed regarding his abduction and interrogation and that therefore he was aware of the risk of Victim C being killed.
76. **Suspect 4** was Ops Offr between 1986 and 1989 but may not have been in post when Incident 3 took place.

77. As explained above, **Suspect 5** was CO FRU between 1986 and 1990.
78. Consideration was given to whether there was a reasonable prospect of conviction of Suspects 1-5 for the offence of misconduct in public office. The allegations fell into two broad categories: (i) that the FRU officers had criminally misconducted themselves in relation to their general running of the Source as an informant with the PIRA ISU; and (ii) that they had criminally misconducted themselves by failing to share with police certain intelligence received from the Source that related to imminent threats to life.

### *General Conduct in Running the Source*

79. Much of the case against Suspects 1-5 arose from the fact that the FRU were running a Source who was involved in PIRA ISU interrogations which could, and on a number of occasions did, result in the death of the victim. However, in relation to Suspect 1 - 5's general conduct regarding the running of the Source it was considered that there was no reasonable prospect of conviction for the reasons set out in the February Public Statement (No.1) at paragraphs 68-74. Whilst the decisions explained in that Statement related only to handlers, the analysis in relation to any criminality arising from the general conduct regarding the running of the Source applied also to the Ops Offr and the CO FRU. The points identified within that analysis were as follows:
80. **First**, there were significant difficulties in proving, by way of admissible evidence, that the Source participated in any of the incidents described above. The narrative provided in Section C above in relation to what is understood to be the extent of the Source's involvement is based primarily upon intelligence records or hearsay accounts from witnesses who are deceased or have withdrawn their evidence. They are therefore unlikely to be admissible in criminal proceedings for reasons similar to those described in the December Public Statement. The admissibility challenges were exacerbated by the fact that it was not possible to prove beyond reasonable doubt which of the handlers were present for particular debriefs.

81. In relation to Suspect 1, there was the further difficulty in that it was not possible to prove that he had any role in handling the Source at the time of Incidents 1 and 2. In relation to Suspect 3, it was clear that he was no longer in Northern Ireland when reports regarding the renewed threat to Victim C were received in the months preceding Incident 3. There was no evidence capable of disproving Suspect 4's account given to Stevens III that he was no longer in post in the three or more weeks preceding Incident 3. The conduct of Suspects 1-4, therefore, could not be assessed as against the circumstances of all three incidents (Incidents 1-3).
82. **Second**, even if the Source's involvement could be proven by way of admissible evidence, there was significant legal uncertainty as to whether the Source was themselves a party to any conspiracy to murder, if their participation was undertaken with a view to providing information to the security forces that would allow them to take steps, where possible, to frustrate the criminal intent of their PIRA associates.
83. **Third**, whether or not the Source was, as a matter of law, party to the conspiracy to murder of their PIRA associates by virtue of their participation in interrogation, the legal position was sufficiently unclear that those within the FRU, who were not lawyers and had received no legal training or advice, could not be recognised for believing that the participation of the Source in interrogations in such circumstances could be permitted.
84. **Fourth**, as explained at paragraphs 15-21 of the February Public Statement (No.1), there was no clear guidance for handlers as to what was acceptable at the time when running agents who were embedded within proscribed organisations. The Home Office Guidance from 1969 was recognised as being unsuitable for application to such agents and the FRU Directives and Instructions were, as noted by Sir Desmond de Silva in the Report of the Patrick Finucane Review, "manifestly unsatisfactory". The absence of adequate guidance was a failure of government over a period of many years and no allegation of criminal misconduct regarding any personal failure to

devise and implement proper guidelines could be sustained as against the senior FRU officers.

85. **Fifth**, there was a body of evidence capable of showing generally that intelligence that was received was passed on to senior Army officers and to the RUC SB. Importantly, as regards the handlers, their particular role was confined to the gathering of intelligence from the Source and the more strategic decisions in relation to the management of the Source were for the Ops Offr and CO FRU.
86. **Sixth**, there was evidence which supported the proposition that both the RUC SB and MI5 were aware of the fact that the FRU was running an agent within PIRA ISU. This included evidence of engagement between CO FRU on the one hand, and the Director and Coordinator of Intelligence (DCI) and senior RUC SB officers on the other, in relation to various matters relating to the Source. This was capable of supporting the belief of the suspects that there was nothing potentially unlawful arising from the fact that FRU were running such an agent. In relation to CO FRU, there was also evidence that he provided regular briefings to his own superior officers on the work of FRU which, on the evidence available, appeared likely to have included matters relating to the Source. At the very least, there was insufficient evidence to prove that they did not.
87. **Seventh**, there was no evidence to establish that the Source was ever directly involved in the shooting of any of the victims referred to above, or present when they were shot.
88. Consideration was also given to whether the case against Suspect 5 could be strengthened by the deployment of evidence in relation to alleged misconduct relating to his oversight of a different source. However, the alleged misconduct in relation to the different source had been the subject of a previous no prosecution decision and the prospects of proving it to the criminal standard had further diminished over time. Furthermore, the alleged misconduct was of a different nature and, even if proven, would not have altered the analysis outlined above in relation to any criminal misconduct arising from his oversight

of the Source in this case. There were other differences between the two cases which had the potential to undermine any prosecution of the current case. In all the circumstances it was considered that the prospects of conviction of Suspect 5 could not be enhanced by reliance upon evidence relating to the management and oversight of the other source.

### *Dissemination of Relevant Intelligence*

89. In addition to the general responsibilities and conduct of Suspects 1 – 5 during the relevant period, consideration was given to the specific allegations, arising in the context of Incidents 1 – 3, that key intelligence was not disseminated to the RUC SB in a timely manner.
90. In regard to **Incident 1**, the key allegation was that the intelligence referred to at paragraph 17 above was not disseminated to the RUC SB in advance of Victim A's abduction and interrogation, thereby depriving the TCG of the opportunity to consider how the intelligence might be exploited. The basis for the allegation was the fact that no police intervention occurred, and there was no other record of police intervention being considered.
91. There were, however, a number of evidential difficulties with this allegation. First, there were a number of MISRs created and the purpose of a MISR was to share intelligence with FRU stakeholders including the RUC SB. Second, the book which recorded the distribution of MISRs during the relevant period could not be located. Third, the record referred to at paragraph 19 could not be proven to constitute a comprehensive log of all intelligence received and shared with police and therefore no clear inference of a failure to disseminate could be drawn from the fact that the relevant intelligence was not specifically mentioned in it. Fourth, the content of the MISRs made it clear that the FRU had received pre-abduction intelligence and the distribution of them *post* incident (assuming that there had been no pre-incident oral communications) would have immediately revealed a failure on their part to share urgent intelligence relating to a threat to life. Fifth, the fact that police did not take any overt action by way of intervention in this case did not establish that the



intelligence was not shared with the RUC SB. The TCG could have decided, based upon the full range of information available to it, that it could not intervene in this case. Sixth, no records of TCG decision-making at the time were available. This was not a feature specific to this case but was a feature of TCG record keeping and retention practices more generally. Seventh, there was a body of evidence that indicated that urgent intelligence would have been communicated orally, and not in written form. In relation to the handlers (at the time of this case, Suspects 2 and 3) any allegation was further undermined by the fact that any decision of the nature alleged would have been the responsibility of the more senior officers. It was also not possible to be sure on the basis of the available records which of the handlers had received the relevant intelligence from the Source.

92. In relation to **Incident 2**, the allegation was that the detailed and specific reporting from the Source received four days before the murder (as referred to at paragraph 26 above) was only shared with the RUC SB a week after the murder. This allegation was based upon the evidence of the date of dispatch, as recorded in the relevant military log, in relation to the MISR containing the relevant intelligence. However, a number of similar difficulties arose in this case. If there had been no prior communication, the subsequent sending of the MISR containing details of the planned abduction would have immediately revealed a serious failing on the part of the FRU to share urgent intelligence relating to a threat to life. The real possibility of a prior telephone or face to face communication could not be discounted on the basis of the available evidence. The evidence of the witness referred to at paragraph 29 above was insufficiently clear and reliable to prove a failure to disseminate in this particular case; or to identify any particular individual as having been responsible for such a decision, had it been taken. As was noted above, there was further evidence of telephone contact with the Source on the day on which Victim B was abducted but it was not possible to prove what relevant information, if any, had been received as a result of that contact and that any relevant information in relation to Victim B was not passed orally to the RUC SB.

93. In relation to **Incident 3**, the key allegation was that the CO FRU (Suspect 5) had taken a decision not to share with police future reporting in relation to the imminent abduction of Victim C that could create a risk to the Source; and that such information must in fact have been received by the FRU and withheld. The basis for the allegation was the letter referred to at paragraph 35 above, together with the circumstances of the Source's alleged involvement in the investigation and interrogation of Victim C. There was also relevant context in that the available documentation indicated that there were heightened suspicions amongst PIRA in relation to the Source's role, which had been significantly enhanced as a result of recent interventions conducted by police on the basis of the Source's intelligence.
94. The difficulty in this case was that it could not be proven that the Source had in fact reported any information in relation to Victim C after the date of the letter from CO FRU to the RUC SB. The only records of matters reported by the Source related to the CWIED. Furthermore, the letter itself did not suggest that intelligence would not be shared. It suggested that it was unlikely to be received and this may have been the FRU assessment if the Source had become concerned about their own personal security as a result of recent events. There were other plausible interpretations of the letter, including that it may have been an attempt by CO FRU to place increased pressure on the RUC to take additional action to ensure that Victim C was not abducted at all.
95. A further aspect of the allegation in this case was that the reporting in relation to the CWIED had been manufactured in order to generate an "out of bounds" order that would have assisted in keeping police away from the area in which the interrogation was to take place. As noted above, there was no evidence in relation to the order other than that of a single witness and no detail in relation to its precise scope. Furthermore, the initial reporting in relation to the general area in which the CWIED was believed to be located was four days before the abduction and it could not be proven that the location for the abduction had been chosen at that time; or that the Source would be able to ensure that the interrogation took place in an area affected by any order that the police might subsequently put in place. Whilst the timing of the second report of the CWIED

coincided with the date when the Source was told that Victim C would be available for interrogation, it was not possible to prove to the criminal standard that the report was contrived; or, if it was, whether the FRU knew that to be the case.

96. In all the circumstances there was no reasonable prospect of proving, on the available evidence, that relevant intelligence in relation to the abduction and interrogation of Victim C had been received by the FRU and withheld from the RUC SB; or that that was the intention of the CO FRU when he wrote the letter to the Head of RUC SB.
97. For all of the reasons outlined above it was considered that the available evidence was insufficient to prove to the criminal standard that potentially life-saving intelligence in relation to incident 1-3 was not disseminated by the FRU to the RUC SB.

### **Suspect 6**

98. The allegations against Suspect 6 related to Incidents 2 and 3.
99. In regard to Incident 2, the only material available in relation to Suspect 6's alleged role in the murder of Victim B was the two intelligence records referred to at paragraph 22 above. These indicated that he had met with others to discuss Victim B and, shortly afterwards, had given permission for Victim B to be questioned by the PIRA Security Team. These were records of information provided by the Source to the FRU. It was not clear from the second record whether the Source had heard this information directly from Suspect 6 or whether the Source had been told this by someone else.
100. In regard to Incident 3, the only material available in relation to Suspect 6's alleged role in the murder of Victim C was the intelligence records referred to at paragraph 43 above. These were inconsistent in relation to whether he had been one of the gunmen.

101. The above records were multiple hearsay. They comprised the sole evidence in relation to these particular allegations. As explained in the December Public Statement, where hearsay evidence is the sole or decisive evidence against an accused, this calls for particularly careful scrutiny to determine whether its admission would be fair in all the circumstances. Any attempt to rely upon the documents as evidence was highly unlikely to succeed in light of the difficulties relating to the use of intelligence records and multiple (anonymous) hearsay in criminal proceedings that were outlined in sections 4 and 5 of the December Public Statement.
102. Consequently, there was no admissible evidence against Suspect 6 and the Test for Prosecution was not met.

### **Suspect 7**

103. The allegations against Suspect 7 related to Incidents 2 and 3.
104. In regard to Incident 2, the only material available in relation to Suspect 7's alleged role in the murder of Victim B was reporting from the Source which alleged that Suspect 7 was present at various times during Victim B's interrogation.
105. In regard to Incident 3, the only material available in relation to Suspect 7's alleged role relating to the murder of Victim C was: (i) reporting from the Source that Suspect 7 was involved in Victim C's interrogation; and (ii) the hearsay statements of the householder (referred to at paragraph 33 above). These statements were unlikely to be admitted for the reasons set out at paragraphs 10.7-10.10 of the December public statement.
106. The intelligence records were multiple hearsay and, in regard to Incident 2, comprised the sole evidence. Any attempt to rely upon the records as evidence was highly unlikely to succeed in light of the difficulties relating to the use of intelligence records and multiple (anonymous) hearsay in criminal

proceedings that were outlined in sections 4 and 5 of the December Public Statement.

107. Consequently, there was no admissible evidence against Suspect 7 and the Test for Prosecution was not met.

### **Suspect 8**

108. The allegation against Suspect 8 related to Incident 3. The only material available in relation to Suspect 8's alleged role in the murder of Victim C was a later record created in a Source Record Document that Suspect 8 had restrained Victim C before he was shot. It was not clear whether this information was provided by the Source, or another (anonymous) source. There was no contemporaneous record of the information.

109. This record was multiple hearsay and comprised the sole evidence in relation to this particular allegation. Any attempt to rely upon the record as evidence was highly unlikely to succeed in light of the difficulties relating to the use of intelligence records and multiple (anonymous) hearsay in criminal proceedings that were outlined in sections 4 and 5 of the December Public Statement.

110. Consequently, there was no admissible evidence against Suspect 8 and the Test for Prosecution was not met.

### **Suspect 9**

111. The sole evidence implicating Suspect 9 was the statement of a deceased witness. This was hearsay evidence. There were a number of concerns regarding the reliability of the account provided by the deceased witness who had, in the context of his witness statement, made admissions to involvement in serious offending including dishonesty offences. There was also reason to believe that Victim D's recollection of the events described in his statement may have been impaired. In particular his description of his detention in 1981

and 1989 tended to suggest that he may have conflated certain aspects of the two events and available intelligence material indicated that the reason for Victim D's detention by PIRA in 1989 may have been different from that which Victim D put forward in his statement.

112. The reliability of his account was further undermined by his description of his 1981 detention in which he said that he had been detained by PIRA along with two other named individuals. An account provided to Operation Kenova by one of these individuals, which was supported to some extent by contemporaneous intelligence material, undermined the account of Victim D. In circumstances where Victim D is deceased these issues could not be adequately explored in a criminal trial.
113. The two abductions in 1981 and 1989 had not been reported to police at the time and there was no forensic evidence in this case or opportunities for further forensic investigation.
114. While the statement of a deceased witness is potentially admissible in criminal proceedings, in all the circumstances and in particular where the statement of Victim D was the sole evidence against Suspect 9, it was highly unlikely that the statement of Victim D would be admitted in evidence.
115. Consequently, there was no admissible evidence against Suspect 8 and the Test for Prosecution was not met.

### **Suspects 10-12**

116. The key evidence against Suspects 10, 11 and 12 was the evidence of a witness who provided an account to Operation Kenova in 2019 in which he said that he had seen Suspects 10, 11 and 12, together with others, get into a taxi with Victim E on the date of her disappearance. The witness did not form the impression, at the time of his observation of this event, that Victim E was being restrained or otherwise forced to unwillingly get into the taxi.

Furthermore, there was available evidence which suggested that Victim E was an associate of Suspect 10 which diminished the extent to which any such inference could be drawn from this evidence.

117. The account of this witness was undermined by virtue of the fact that he identified another individual as getting into the taxi with Victim E who appears to have been in custody at the relevant time. His account was further undermined by the fact that, prior to providing a written statement to Operation Kenova, he provided an oral account which differed in very significant respects from the account provided in his written statement. The differences included that, in his earlier oral account, he identified individuals as being involved in Victim E's detention whom he did not mention in his subsequent written statement. He also identified a number of individuals in his written statement whose involvement he had not mentioned in his initial oral communication with Operation Kenova. Certain other information provided by the witness to Operation Kenova was not supported by available intelligence material.
118. The evidence of the relative of Victim E, taken at its height, provided evidence that Victim E intended to travel willingly with Suspect 10, a person with whom she was known to associate, and others on the date when she was last seen by her family. Both this evidence, and evidence of the sighting of Victim E on the date of her disappearance, related to Victim E's intentions and movements on a date more than two weeks prior to her murder. There was no available evidence capable of proving at what point during the intervening period Victim E was detained by PIRA, or the identity of those individuals who were involved in her abduction at that time or subsequent murder.
119. In the circumstances it was considered that the available evidence would have been insufficient to prove that any of the three Suspects reported by Operation Kenova committed any offence in connection with the murder of Victim E. The available evidence provided no reasonable prospect of conviction and the Test for Prosecution was not met.