

## **ROSEMARY NELSON INQUIRY**

**Day 10: 28th April 2008**

### **Opening submissions by Mr Rory Phillips QC, lead Counsel to the Inquiry (continued)**

Mr Phillips opened proceedings by referring the Inquiry to a report by British Irish Rights Watch (BIRW) dated November 1999. According to this report, Jonathan Powell, Chief of Staff to Prime Minister Tony Blair, had stated at a meeting on 18 July 1998 that the security of the Garvaghy Road Residents Coalition (GRRC) was a matter of concern that should be dealt with urgently. Jonathan Powell had also said on 21 July that he would instruct the Northern Ireland Office (NIO) to “attend to the security of the GRRC within the next 48 hours”. According to the BIRW report, Rosemary Nelson had allowed the GRRC to make an application to the Key Persons Protection Scheme (KPPS – the scheme was administered by the NIO and aimed to provide enhanced protection to individuals deemed to be under elevated threat from terrorists) on her behalf. She remained uneasy, however, about a security assessment being made by the Royal Ulster Constabulary (RUC) as she believed that threats against her were “predominantly emanating from... RUC officers”. Mr Phillips noted that this assertion ran contrary to a statement made by Mr Mageean of the Committee on the Administration of Justice (CAJ) who had told the Inquiry that, for Rosemary Nelson, KPPS was “a non-starter”.

According to the BIRW report, “the GRRC repeatedly attempted to obtain protection for Rosemary Nelson and for the Coalition”. Mr Phillips noted that there was controversy over whether Rosemary Nelson was ever specifically mentioned. An NIO official made contact with Mr Mac Cionnaith, a leading member of the GRRC, on 22 July to discuss his security concerns. He wrote an internal memo saying that he had explained to Mr Mac Cionnaith that KPPS applications should be made by individuals and that they would be treated on an individual basis depending on “advice from the Chief Constable regarding the level of threat that may exist to the individual”. He also said that Mr Mac Cionnaith could provide details of security concerns on behalf of members of the GRRC.

Mr Mac Cionnaith met NIO officials on 23 July and asked for “consideration to be given for Councillor Duffy, his coalition partners and himself to be admitted to the Key Persons Protection Scheme”. He stated that several threats had been made against him, including unidentified telephone calls of which the local police were aware. He stated that two individuals had entered a community centre looking for him when he was not there and that those present had later identified one of those individuals from a newspaper photograph as being a close associate of Billy Wright (considered to be a well-known Loyalist terrorist – his death is the subject of a separate inquiry). Rosemary Nelson, acting as solicitor for the GRRC, had applied on his behalf and on behalf of Councillor Duffy for personal protection weapons. Following this meeting, Mr Mac Cionnaith apparently did not follow the matter up by faxing details of threats against members of the GRRC to the NIO official. The

same NIO official appeared to have left the KPPS branch of the NIO on 24 July, but prior to leaving he wrote a letter to the RUC Security Branch. This letter referred only to Councillor Mac Cionnaith and to Councillor Duffy. It set out that they had requested inclusion in KPPS and asked the RUC to conduct a threat risk analysis on those two individuals.

Mr Phillips then referred to a press release issued by Mr Mac Cionnaith on the day of Rosemary Nelson's murder. He stated that "The British Government also bear a heavy responsibility at the very highest levels for Rosemary's murder. During talks between representatives of Portadown's Nationalist community and Jonathan Powell... and on a number of occasions since... [the GRRRC] has asked that Rosemary Nelson be provided proper protection under the... [KPPS]. The British Government refused every request". Mr Phillips noted that, according to the evidence of the NIO civil servant, no request specifically concerning Rosemary Nelson in particular was made at the meeting on 23 July.

Mr Phillips then turned to negotiations involving the GRRRC concerning Orange Order parades, which the GRRRC opposed in its neighbourhood and which were of great political importance in Northern Ireland at the time. There were separate meetings on 12 August 1998 involving the Orange Order and the GRRRC (separately) and two negotiators from the NIO, Mr Lynch and Mr McCusker. Mr Phillips referred to a letter dated 26 August from Mr Mac Cionnaith to Mr Lynch in which Mr Mac Cionnaith stated that the "attitude of authorities... reinforces the view... [of a] complete lack of commitment to protect the rights of Portadown Nationalists at all times" and stated that this would need to be addressed "prior to the release of any agreed statement". According to Mr Phillips, this did not "come anywhere near to being a reference to the specific question of personal security".

Mr Phillips then introduced a letter dated 31 August 1998 from the RUC Security Branch to the NIO official who had taken over responsibility for KPPS. This letter stated that Special Branch had no intelligence which would indicate a specific threat to Councillor Mac Cionnaith or to Councillor Duffy. It stated that the level of threat to both men was level 4 i.e. one level too low for inclusion in KPPS. It then stated that "should the ceasefire situation collapse, the level of threat subject to review could be assessed at level 3". Mr Phillips referred to an internal memo by this official on 3 September and to this official's statement to the inquiry. The official stated that "normally, if a person was assessed at a level 4, that would be the end of the matter. However, in [this case], I was aware that there was a political dimension to it all".

The civil servant wrote again to Security Branch on 7 September to ask if the threat environment had changed (there had been developments related to parading and the Omagh bombing had taken place in August). She enclosed a copy of the leaflet "The Man Without a Future" which the inquiry had already seen and which had apparently been in circulation in Loyalist areas of Portadown. She stated that this leaflet made an attack both against Mr Mac Cionnaith and against his solicitor, Rosemary Nelson.

Mr Phillips surmised that the reason why this letter was written most probably had a great deal to do with discussions which were ongoing with the GRRC about the Drumcree parade. He referred to a note of a meeting which took place on 4 September between Mr Leach and GRRC representatives. At this meeting, Mr Leach agreed to “check progress on some personal security matters previously raised by the residents”. Mr Phillips then referred to an NIO memorandum dated 7 September which stated that Portadown was in a “febrile state with increasing tension”. A police officer had been killed. Mr Mac Cionnaith had agreed on Friday to issue a confidence-building statement but had resiled from this on Saturday afternoon because of his view that the police were not doing enough to protect Nationalists.

Mr Phillips then referred to Mr Leach’s statement to the Inquiry. Mr Leach stated that “[the GRRC] had, in effect, made their personal security a pre-condition to starting the proximity talks again, the wider political context was relevant... We wanted to remove any possible irritants [to political progress]... the Drumcree standoff was a significant irritant... Resuming the talks offered the way towards that”.

Security Branch responded on 13 September that Councillors Mac Cionnaith and Duffy “will be placed in vulnerable situations particularly with regard to Drumcree, but no more so than that applicable to others involved in such contentious issues... Taking all matters into consideration, my letter to you dated 31st August 1998 remains extant, including the assessed level 4 threat”. Mr Leach went on to say that ministers could either decide to give the two men protection within KPPS, which could call the integrity of the scheme into question, or they could decide to give them some protection outside the scheme. According to Mr Leach, the Chief Constable had said that whilst Mr Mac Cionnaith could be at considerable risk should he find himself in a Loyalist area, the same was true of many people.

The head of the NIO police division wrote to Mr Leach on 12 October confirming that the two men would not normally qualify for KPPS, but leaving it to Mr Leach to “add the detailed political case for ministers in view of your involvement in the Portadown negotiations”. Mr Phillips stated that there were divergent drafts of advice to ministers as to how to proceed. The final advice, given to the Secretary of State on 26 October, was that “Mr McKenna [Mac Cionnaith] said that he treats the protection issue as an acid test of the good faith of government... If no movement is made on these concerns, the issue might well prove a significant obstacle in the proximity talks... I would recommend that ministers should exceptionally and outside the scheme agree in principle to a range of physical security measures at the homes of both councillors... implemented only when it becomes clear that the proximity talks are proceeding”.

The Secretary of State replied on 27 October that she was not convinced that this was an appropriate step as she did not want to go against RUC advice. Mr McCusker, the other negotiator, then spoke to the Secretary of State and told her that this decision was “ill-advised”. Ministers then reconsidered and

accepted Mr Leach's suggestion on 2 November. Mr Phillips later showed the inquiry a suggestion by Mr McCusker that Tony Blair had personally intervened to ask the Secretary of State to reconsider.

Mr Leach then apparently met Mr Mac Cionnaith in a bar in Lurgan to discuss security measures for him and Councillor Duffy. According to Mr Leach, Mr Mac Cionnaith then asked him what protection could be put in place for other GRRC members. However, he did not name any of those members or refer to Rosemary Nelson. Mr Phillips then referred to Mr McCusker's statement to the inquiry. According to Mr McCusker, the GRRC stance was that they would not engage in proximity talks about the Drumcree parade until protection was put in place for all GRRC members. As the offer of security measures to the two councillors was already exceptional, this appeared very unlikely. Mr Phillips then referred to internal NIO memoranda which took the view that Mr Mac Cionnaith was using the issue of personal security as a delaying tactic to avoid engaging in talks and having to make concessions.

Mr McCusker investigated the possibility that personal protection measures for the GRRC members might be paid for by the Joseph Rowntree Trust. Mr Pittam of the Trust wrote a memo to his colleagues on 16 November in which he said that Mr McCusker had approached the Trust to see if resources might be made available. Rosemary Nelson's name was among those who might obtain some financial support for security measures from the Trust if this went ahead.

There was a meeting between Mr McCusker, the Rowntree Trust and Mr Mac Cionnaith on 20 November. Rosemary Nelson was not present. At this meeting, Mr Mac Cionnaith stated that there would be 12 people who would need some protection and that this would "include Rosemary Nelson, the solicitor who acts on their behalf". According to Mr Pittam's notes, it was stated that "she would like security protection but could not accept to be part of the government scheme". The meeting then discussed a broader "package of aid" for this part of Northern Ireland.

At this meeting, Mr Pittam asked about threats that had allegedly been received by members of the GRRC and what action the RUC had taken. The GRRC members said that the threats were all "wide". Mr Mac Cionnaith stated that Rosemary Nelson "has been subject to constant harassment from the RUC". He stated that she "wanted a request" but that she was "not willing to go through the process alone".

After this meeting, in Mr Phillips's words, "the ball was in the GRRC's court" to set out a proposal for the Trust's consideration as to how they intended to proceed with negotiations and for broader regeneration of the area. Mr Mac Cionnaith provided a proposal, but the amounts (which were redacted from the published evidence) were far too high for the Trust to consider. Mr Pittam invited him to revise the proposal, but the GRRC did not do so.

Mr Phillips paused to note that there was, at this stage, no question of Rosemary Nelson being considered for KPPS and that she was instead being

considered for lesser security measures under this hypothetical scheme involving the Rowntree Trust. He suggested that this evidence would have to be weighed against the suggestion “in the BIRW report that there was this specific application and it was constantly put up and put forward and refused for her admission to the KPPS scheme”.

Mr Phillips then turned to Mr McCusker’s statement to the Inquiry. Mr McCusker stated that “if you were to have asked the average person on the street at the time, they would have said that people like Breandan Mac Cionnaith and Rosemary Nelson, as a well-known adviser to the GRRC, were both under threat. Further, common sense would have dictated that... they were at risk”.

Talks did in fact resume on 16 December. Mr Mac Cionnaith was present despite the issue of security protection for GRRC members remaining unresolved. Tensions remained high in Portadown over the Christmas period. The Prime Minister met GRRC representatives on 18 January 1999. A great deal of briefing papers was generated for this meeting. In the papers prepared for Tony Blair, there was no mention of Rosemary Nelson’s personal security as being an issue. Rosemary Nelson was present at this meeting. There was no record of her security being mentioned at the meeting.

Mr Phillips referred to a letter from 10 Downing Street to the NIO on 11 March 1999. David Trimble, leader of the Ulster Unionist Party, had told the Prime Minister that the Drumcree initiative would not work and that “extremists from the Red Hand Defenders were increasing the level of violence and one day someone would get killed”.

Mr Phillips then referred to a meeting between GRRC representatives and the Prime Minister on 30 March 1999, shortly after Rosemary Nelson’s murder. Briefing papers for the Prime Minister stated that “we have no record of Rosemary Nelson’s security being raised directly with Jonathan Powell... [at any of their meetings]”. Mr Phillips reminded the inquiry that Mr Mac Cionnaith had not yet provided a statement and observed that his evidence could be of great interest to the inquiry.

Mr Phillips summed up the day’s proceedings by noting that there had been some flexibility shown in the operation of KPPS and in seeking other ways to provide protection to individuals. He noted that Rosemary Nelson appeared to have been acting as the “legal adviser rather than a leading light of the Coalition itself”. He stated that she did not appear on that day’s evidence to have taken a major role in the meetings, but observed that the same was true of Councillor Duffy, who was considered for protection measures. He recalled, however, that many people on the street would have considered Rosemary Nelson to be under threat. He suggested that the matter of protection may well have come down to politics around Drumcree.

Mr Phillips then turned to a Special Branch operation, Operation Fagotto, which took place in the vicinity of Rosemary Nelson’s house over the weekend immediately preceding her murder. He stated that for the inquiry to

be interested in this operation, there would have to be some connection between that police activity and the placing of a bomb under Rosemary Nelson's car. He suggested that the high level of police activity could indicate a smokescreen to allow the bomb to be planted, but it could equally well be seen as a factor making it all the more difficult for terrorists to operate. The Inquiry would also have to consider if it was likely that the bomb was placed under the car prior to the weekend (when Rosemary Nelson was on holiday and took her car) or that it was placed the night before it exploded.

Mr Phillips stated that the inquiry would be focusing on security force activity on the night of Sunday 14 March rather than looking at security force activity in Lurgan the previous night when Rosemary Nelson was away. He stated that there were four particular matters to be explored relating to security force activity: a vehicle checkpoint on the Castor Bay Road; a man in a balaclava apparently climbing into a police Land Rover; the activities of two helicopters; some further unexplained security force activity alleged by witnesses who provided statements to the Pat Finucane Centre (an NGO).