

THE ROSEMARY NELSON INQUIRY

Day 42: 26 June 2008

Witness: Mr Niall Mulvihill, retired Metropolitan Police Commander

Mr Mulvihill's statement was signed on 27th April 2007. On 3rd July 1998 Mr Mulvihill had a meeting with Mr Stevens, the Deputy Commissioner of the Metropolitan Police to discuss a mission to undertake in Northern Ireland regarding complaints. The purpose of the meeting was to give Mr Stevens the opportunity to determine whether there were any reasons Mr Mulvihill should not conduct the investigation or whether there were any prohibiting factors, such as an extensive period of leave necessary to conduct the mission, or any reasons why Mr Mulvihill would not be able to carry out the investigation. As chief inspector in the early 1980s in the Metropolitan police Mr Mulvihill had routinely investigated complaints.

The enquiry Mr Stevens asked Mr Mulvihill to lead was of a kind he had never dealt with in the past nor subsequently; within two years of its conclusion, he had retired. Mr Mulvihill's role in the enquiry was to re-investigate or freshly investigate allegations of misbehaviour by RUC police officers against people who had been under arrest and held in police premises. Rosemary Nelson's name had never been mentioned to him in his discussion with Mr Stevens; Mr Mulvihill had known about the existence of Rosemary Nelson only afterwards. Mr Mulvihill believed he had been chosen to lead the investigation in the hope that he would bring a fresh perspective and an open mind, a willingness to get to the root of the problems and because he would have no fear of chastising people who had transgressed, if that had emerged.

Following this meeting Mr Mulvihill had a brief telephone conversation with Sir Ronnie Flanagan where he had agreed to undertake the enquiry subject to approval by the RUC. The discussion with Sir Ronnie Flanagan had not been about the specifics of the investigation nor on what had happened in the past: it was about the fact that a certificate of dissatisfaction had been issued and Sir Ronnie Flanagan wanted to make sure that the Independent Commission for Police Complaints (ICPC) were satisfied. Mr Mulvihill described Sir Ronnie Flanagan as a nice and straightforward person; they had not known each other in terms of personal friendship but they both considered each other to be able and respected individuals. Mr Mulvihill described the involvement of Sir Ronnie Flanagan in the investigation as being in the nicest possible way "detached".

On 8th July Mr Mulvihill and his colleague Mr Marshall went to collect Geralyn McNally and Jennifer Mitchell of the ICPC from Heathrow airport. The reason for the meeting was to conduct a sort of mini-interview. The ICPC had to be satisfied that Mr Mulvihill would do a good job. Mr Mulvihill said he would be available to conduct the enquiry on a part-time basis as he had been thoroughly enjoying his position at Scotland Yard and had known that there was a finite time to conduct the investigation. Mr Mulvihill was presented with the terms of reference for the investigation, which he agreed and signed. Had

he found anything objectionable or disagreeable he would have reported or questioned it. The RUC and the ICPC presumably had an input into those terms of reference as they had known the background. There were a number of paragraphs in the terms of reference. Number one was the Lawyers Alliance for Justice in Ireland complaint; number 2, Rosemary Nelson and Colin Duffy; Rosemary Nelson and Mr Duffy appeared also as number 3 although in a slightly different subject matter; number 4 was what Mr Sullivan QC called "a new complaint", and number 5 was related to a new complaint involving Mr Donnelly; number 7 stated that should Mr Mulvihill decide that a separate investigation was necessary this was to be allowed, together with recommendations he would feel appropriate; number 8 concerned the report to be provided for consideration; number 9 was related to disciplinary offences; number 10 regarded a report to be produced by Mr Mulvihill had he wished to make any recommendations; finally, number 11 was a catch-all: "Nothing in these terms of reference should be construed as any constraint upon your investigating any matter coming to your attention as a result of your enquiries".

Mr Mulvihill was assigned the job under the supervision of Ms McNally; he confirmed that it was carried out in a professional, friendly and sensitive manner prior, during and after interviews had taken place. On 19th August Mr Mulvihill had a meeting with Ms McNally and Detective Inspector David Marshall; at the meeting Mr Mulvihill was informed about the substantial interest of a number of international bodies as well as the NIO, Secretary of State and others. He was aware that there was much external interest as to how this particular set of enquiries would proceed and what the outcome would be. Mr Mulvihill said that he did not feel under any kind of pressure from international bodies; he would not have been unduly influenced by them but he would have certainly taken their views into consideration in the overall scheme of how the investigation panned out.

Mr Sullivan QC asked Mr Mulvihill to clarify the difference between a review and a reinvestigation: a reinvestigation would mean "going right through everything again". Much of what people had already said about their concerns would have to be reduced to writing and would then be used as the background to questioning; it would mean additional formality and additional time. A review might throw up some thoughts about how a dispute may be overcome in the future. perhaps by the addition of some paperwork to confirm what was agreed as a consequence of that meeting.

In a meeting on 11th September with Ms McNally and Mr Marshall it emerged that Mr Mulvihill had envisaged his final report as being comprised of three distinct areas; . the complaints by the Lawyers Alliance for Justice in Ireland concerning Rosemary Nelson and Colin Duffy; the complaints by Rosemary Nelson; and on the "review" of the original investigation. Mr Mulvihill had never been provided with these minutes but he was not disputing them, adding that he was sure that the complaints being investigated, or reinvestigated, represented a big chunk of the enquiry; the review run alongside it but was separate from it. Mr Mulvihill believed that it was unlikely that there would be further investigations unless something glaring emerged.

There was never an occasion where an argument or a dispute of any sort had taken place. Mr Mulvihill described the time of his work with the members of the Commission as professional, friendly and sensible. From the outset Mr Mulvihill got involved in the higher profile interviews involving Rosemary Nelson and Colin Duffy; he thought this personal and direct involvement was important especially to reassure the individuals who had made complaints that he would take his work and his overall responsibility very seriously, removing any doubt about the fairness and even-handedness of his professional conduct. On the plan of action, Mr Mulvihill had intended to make sure that no stone would be left unturned; it was about ensuring that every effort was going to be made to track down every available witness, to prevail upon those who, for any reason, were reluctant to make themselves available for interview and to convince those making the complaints of the fact that Mr Mulvihill and his team were determined to do a genuine job and to come to a conclusion which met with the satisfaction of the ICPC in particular. Mr Mulvihill wanted to make sure to the best of his abilities and efforts that even those RUC officers who were investigated and might have felt uncomfortable about being interviewed, had the perception that his job was thorough and conducted properly.

Mr Mulvihill believed he had been provided with sufficient background material to conduct his task. When he had come to the task, there was one personality, namely P146, the Complaints and Discipline Officer, who had been heavily involved in the same aspects of work that the Counsel to the Inquiry and Mr Mulvihill were looking at. P146 had not been himself, technically, a subject of the investigation; he was not a suspect officer but a witness. In his statement, Mr Mulvihill had commented on the style of some of P146's interviews under review; he would have perhaps pushed a little bit more when interviewing suspect officers, going slightly beyond just accepting their statements and maybe trying to solicit additional information from what provided in the statement, if available. Mr Mulvihill agreed with the Counsel that, back then, the RUC was a police force uniquely positioned at the time, dealing with paramilitary crimes and activity; all officers were, at least potentially, in considerable personal danger in their working life. The fact that a number of complainants were suspect terrorists had not had any relevance to the way the investigation had been conducted: it was fundamental to guarantee the complainants a fair hearing, that a statement would be taken, that their allegations would be properly investigated and that recommendations would be made at the conclusion on the evidence which emerged. It was very important for Mr Mulvihill to get the complainants to come and give statements themselves; the pre-prepared statements brought by Ed Lynch were often nonsensical and not provable; some alleged events were clearly disprovable but would only get sorted out for good by talking to the complainants themselves. There were cases where the officer under investigation could easily prove he could not have been at the centre of an alleged misconduct because of an error made by the third party taking the statement; there had been, in fact, cases where evidence could be disproved, although the officer could have done what was alleged on a different date; if the real complainant had come forward personally, the Mulvihill's team would have had a chance to verify the facts.

Mr Mulvihill stated that, together with the efforts made by Rosemary Nelson and her staff, he did the best possible job with the available evidence. He did feel that there was a lack of collaboration on some occasions, but it did not colour his work in any way; Mr Mulvihill would just think that it was a shame but it would not affect the credibility of the complainants - it just meant that the evidence had to be weighed in their absence. As for the officers interviewed, only one or two had been less than helpful, while for the majority it was more a question of being resigned to the fact that they had to attend the interviews. On no occasion, however, did Mr Mulvihill find that their behaviour was unreasonable or inexplicable; even those who were mildly hostile never got to the point of being rude or threatening, they were just angry.

From his direct experience and from what had been reported to him by his staff, Mr Mulvihill thought that there was a prevailing perception that some solicitors were extremely sympathetic to some of the suspect terrorists prisoners and that was not well received by some RUC officers, but there was never any suggestion that there were open threats or open hostility displayed towards members of the legal profession. The feeling portrayed back to Mr Mulvihill was that certain lawyers were regularly there on behalf of particular factions and made the complaints on their behalf. Rosemary Nelson appeared only to represent one faction. Mr Mulvihill confirmed that some of the officers interviewed expressed a sort of "theory" that there had been a pre-ordained, orchestrated tactic of complaining and making trouble to discredit the RUC. Mr Mulvihill had not had the feeling that the legal profession was involved in any orchestrated campaign but he could not exclude it as a possibility either; however, neither he nor his team detected any sort of prevailing attitude towards any member of the legal profession.

Mr Mulvihill had a very vivid recollection of his very first meeting with Rosemary Nelson, also because on the same date he had interviewed Colin Duffy. Rosemary Nelson needed to have confidence in Mr Mulvihill's team and the way his work was to be managed. At the same time Mr Mulvihill got across the point that his team would have needed, at times, to be using Rosemary Nelson's good offices in order to ensure that potentially reluctant witnesses actually came forward to give evidence themselves. Mr Mulvihill described Rosemary Nelson as a professional and a very pleasant person; anything beyond that would be speculation. There had been nothing whatsoever of a negative nature in his meetings with her. Rosemary Nelson was described as clinical, in the nicest possible interpretation of that word, and appeared to him as to be faithfully representing the interests of her clients. Mr Mulvihill provided an example of Rosemary Nelson's co-operation to his investigation: he had asked Rosemary Nelson to provide him with the notes she had taken to resolve a dispute over timing at the heart of one of the complaints. Rosemary Nelson's notes helped solving the issue in favour of the police officer's versions of events.

Moving on to Mr Edmund Lynch, in his statement Mr Mulvihill described him as a pseudo legal representative from the US-based Lawyers Alliance for Justice; Mr Lynch did not have the required grasp of what the law required in terms of proving or responding to the allegations which had been made. Mr

Lynch had wanted to be involved in Mr Mulvihill's work from the outset; Mr Mulvihill did not believe Mr Lynch had understood the system, seeing himself as somebody who would be steering the Inquiry whereas Mr Mulvihill already had a supervisor ready to bring him back on track should he go off the rails. Mr Mulvihill had wanted to keep Mr Lynch on board as he believed Mr Lynch had the sway to get reluctant witnesses to come forward, as it had happened on a couple of occasions. However, Mr Lynch had given Mr Mulvihill the impression that he would be leading the proceedings, which of course he was not.

Mr Mulvihill's reports were completed in January 1999; in relation to the complaint by the Lawyers Alliance for Justice he found that by the conclusion of the investigation it was satisfactory; however, there were aspects of the earlier stages that had given rise to serious concerns as to its proper conduct. It followed a page, written by Ms McNally, highlighting the reasons for the unsatisfactory and unacceptable nature of the initial investigation by the Complaints and Discipline Department leading up to Mr Mulvihill's investigation. The report was received with satisfaction by the Chief Inspector and was the result of joint findings of Mr Mulvihill's team and the ICPC. Mr Mulvihill admitted that the nature of the allegations investigated was, to an extent, historical; he had been treading in other people's footsteps. Mr Mulvihill's task had been to balance two opposing accounts, with no medical evidence, no passing witness, and no audio transcript.

There were three possible conclusions to the report: the allegations were supported and provable; the allegations were made up by the complainants; the allegations were made up with the help and assistance of the solicitor representing the suspect. In each instance there was insufficient evidence to prove, conclusively, that the allegations were well founded. It was on this basis that Mr Mulvihill recommended neither prosecution nor disciplinary proceedings to be brought against any of the police officers, although the findings, as the saying goes, did not mean that everyone involved was as pure as the driven snow, but, at the end of the day, the evidence did not support any prosecution. The findings outlined in Mr Mulvihill's report had been forwarded to both the Chief Constable, Mr Flanagan, and to the RUC Complaints and Discipline Department; Sir Ronnie Flanagan expressed satisfaction with the report and asked Mr Mulvihill to confirm that there was no aspect which required separate or independent investigation by Mr Mulvihill or other investigating officer. Mr Mulvihill confirmed this, and subsequently received the certificates of satisfaction. Mr Mulvihill believed that, if there had been a strategy to discredit the RUC, which did not arise in his findings, it was plainly unsuccessful; from a criminal proceedings standpoint, as opposed to a disciplinary angle, the majority of the comments alleged would be unlikely to amount to a strong basis for a charge of attempting to pervert the course of justice. Many of the alleged comments, despite having been made in a very adult environment, had an element of the school ground or adolescent name-calling about them. Asked if he still stood by that statement, Mr Mulvihill answered positively, believing that the comments made about Rosemary Nelson, if they occurred, had been derogatory and childish; they were rude, if they happened. Even with reference to the most unpleasant remarks and to

the alleged threats to Rosemary Nelson's and to C208's lives, Mr Mulvihill's conclusions had been that no corroborating evidence was gathered to confirm that they had been uttered and that all officers that he had interviewed had been entirely co-operative and presented themselves as professional, sensible and honest, answering all questions and refuting all allegations in a comprehensive and believable fashion.

Regarding the Rosemary Nelson and Colin Duffy part of the investigation, while Mr Mulvihill had stated in his report that "there is no substantive evidence in relation to the criminal accounts or the disciplinary process", Mr Savill's arguments led Mr Mulvihill to concede that the wording could have perhaps been better phrased in the following terms: "There is no sufficiently persuasive evidence...". Mr Mulvihill admitted that with video or audio supported evidence the investigation could have turned out to be different. As for C208's account, Mr Mulvihill was satisfied that there was no shred of evidence against the officers complained of.

Moving on to the review that Mr Mulvihill had conducted and authored, its purpose was to come up with some recommendations to avoid any eventual misinterpretations and mistakes and to establish a set of protocols which would prevent this situation from happening again. A letter was used to frame the parameters of Mr Mulvihill's review; it was a letter sent by Mr Donnelly to Sir Ronnie Flanagan, dated 19 June 1998 together with some notes provided by the GERALYN McNALLY. Mr Mulvihill could not remember how the letter had come into his possession, believing it was part of a bundle of documentation which had been delivered to him by the RUC. Mr Mulvihill was only informed at a later stage that Mr Donnelly appeared unhappy to learn that his letter had been used by Mr Mulvihill to inform his investigation. Mr Mulvihill could not recall whether Ms McNALLY knew that this letter had been used to inform the review and could not remember whether he had informed Ms McNALLY about the use of the letter; Mr Mulvihill felt he had been inherently entitled to use it and found that the articulate views of the Chair of the ICPC had been a significant base to start from for his review. The letter stated the background to the refusal of the granting of the certificates of satisfaction. The review was designed to be constructive, allowing for learning and the rebuilding of the relationship between the RUC and the ICPC, rather than having a disciplinary flavour to it. It was Mr Mulvihill's view that "a breakdown of communication coupled with a series of unrelated administrative and organisational problems combined to create an air of concern which was wholly at odds with, and disproportionate to, the actual situation. Whilst acknowledging that the various complaint investigations might not have been conducted in a truly outstanding fashion, they were adequate, although adversely complicated by the various issues outlined."

After initially having enjoyed a very productive and sound liaison with the ICPC, Mr Mulvihill became disappointed by the way things turned out. At the same time, Mr Mulvihill had found "nothing which supported the contention that 'the investigation has been irreparably undermined'". In a letter dated 4th May from Mr Donnelly to Mr Ingram, Mr Donnelly said that his analysis had lent credence to two major allegations in respect to the RUC's response to

Rosemary Nelson that her complaints had not been treated seriously and that her character was associated with those of her clients; Mr Mulvihill said that what he had found was that the allegations were not substantiated.

The report had gone to the RUC and the DPP; the review was for the consumption of the Chief Constable of the RUC. After Rosemary Nelson's death Mr Mulvihill received a telephone call from Sir Ronnie Flanagan who, together with the Chairman of the ICPC, informed him he had the intention of getting into the public domain the thrust of his review. Mr Mulvihill produced a press release; in the penultimate paragraph it read: "The ultimate review would be a reinvestigation. However, it having been agreed that the ICPC were registering concerns rather than complaints, it became clear that an assessment of the process of how the enquiries were conducted was more appropriate". Large chunks of Mr Mulvihill's review were quoted in the press release, more in terms of a synopsis of the whole. The press release was a result of Mr Mulvihill, Mr Donnelly and Mr Flanagan meeting together to produce a document. The press release had gone out from Belfast, not Scotland Yard. It was released from the RUC as a joint statement between the RUC and the ICPC. The only comments made by Mr Flanagan and Mr Donnelly about Mr Mulvihill's review were that the work was satisfactory, in that it covered what was intended. The review had been conducted on behalf of the Chief Constable but there were no negative comments whatsoever made by the ICPC; it was a document that presented a common front.

Mr Mulvihill was then asked about the document leaked to the press and containing critical comments that Mr Donnelly had about his review. Citing a quotation from an article, Mr Savill read: "ICPC slams investigation into threats", together with a date, written in vertically (14 July). Mr Mulvihill stated, in a speculative way, that Mr Donnelly's perception of Mr Mulvihill's work changed since the murder of Rosemary Nelson. In a letter to Mr Flanagan dated 30th April, Mr Donnelly said he had arrived at significantly different conclusions from Mr Mulvihill's; however, he had continued to view Mr Mulvihill's recommendations as "welcome in forming the basis for the way forward in addressing the issues raised by the case in question". Mr Donnelly then asked Mr Flanagan to copy his commentary to the parties who had access to Mr Mulvihill's reports. At no time during the three-way meeting held in Belfast for the drafting of the press release had Mr Donnelly even acknowledged the remote possibility of having some reservation; not a single word of criticism emerged at that meeting. Mr Mulvihill had been slightly surprised to learn that it was not just a press article, but a whole critique that existed; he had come to learn about it after a while but this had not caused him great offence. In a letter dated 7th May 1999 Mr Flanagan attached a commentary on Mr Mulvihill's review report, asking for Mr Mulvihill's feedback. Mr Donnelly, on the other hand, had not presented him with a draft or anything similar.

Regarding the refusal of the RUC to accept as a complaint the correspondence from the Lawyers Alliance for Justice, Mr Mulvihill regarded this as an issue of form rather than substance; the ICPC made it clear that

they did not want to appear as complainants. Mr Donnelly said that had the case not been initially referred through the offices of the ICPC, “we would not have known of its existence and would not have been in a position to challenge the decision to refuse to accept it as a complaint”. Consequently, it would not have been investigated. The fundamental point was that the RUC were initially not inclined to accept a serious allegation as constituting a legitimate complaint; an example of that is that there was an institution, the ICPC, writing a letter saying it was not a complaint but a concern, making it crystal clear that they did not want it investigated as a complaint but later on they became argumentative about whether or not things should have been done in one way or another. This was some years after the event. It was recorded as a complaint; what maybe had not been considered as a complaint was in fact accepted as a complaint. The Chairman of the Inquiry Panel invited Mr Savill and Mr Mulvihill to move on from this issue.

A further criticism put to Mr Mulvihill regarded the view he had taken of the incivility categorisation and about the undermining of the investigation by the actions of the RUC officers; Mr Mulvihill had noted it but had not thought it could make a great deal of difference. If the officers had been provided with the possibility of giving a written statement, and this agreement was part of the system, it could not be criticised afterwards. Whether or not this should have been the system, Mr Mulvihill had made a reference in terms of a review. Mr Mulvihill had also been criticised for having taken the view that P146’s interviews had been thorough; it had been so in the context of the circumstances in which P146 had been operating, Mr Mulvihill pointed out. If officers were allowed to not say a word by keeping referring to what had been written in their statements, Mr Mulvihill’s team clearly tried its best to invite the officers to talk about the issues. Mr Mulvihill had also been criticised for having defined some or most of the officers he had dealt with as “actually reasonable”. It is possible that Mr Donnelly would have liked an expansion of the Terms of Reference for wider and more detailed comments; the outcome of it, however, would have been a reinvestigation, and it would have been up to the RUC to eventually ask him to do more work, with the prior approval of the Met. Mr Mulvihill’s role was complete upon the issuing of the joint statement; he had not gone into retirement until a few years afterwards so if further work was needed, he would have been available. Mr Mulvihill believed his work could have represented a basis from which moving forward and creating an opportunity for people to become slicker in the way they delivered their business. Mr Mulvihill believed he did his best and stood by his review. He had nothing to add to the statement he had given to the Inquiry.