

ROSEMARY NELSON PUBLIC INQUIRY

Day 56: 1st October 2008

Witness: Mr Paul Donnelly, former Chairman of the Independent Commission for Police Complaints (ICPC)

Mr Donnelly applied to be a member of the ICPC while Chair of the School of Social Work at Kingston University; he was invited to become Chairman and noted the paucity of guidance about what the role involved. This was shortly prior to the ICPC transfer to the Police Ombudsman's office, and Northern Ireland Office (NIO) officials encouraged him to develop strong links with Irish government officials in the Anglo-Irish Secretariat. There was pressure to produce results given the limited confidence in the organisation at the time he took over, especially given the publication of the Hayes report (which recommended replacing the ICPC with the Police Ombudsman) just before he began. The role included keeping the NIO apprised of matters given their political sensitivity, as well as liaising with the Chief Constable up to a dozen times during his term. Mr Donnelly felt that there was a poor relationship between the ICPC and the Police Authority due to institutional rivalry, although there was no overt conflict. Mr Donnelly's involvement with investigations concerning Rosemary Nelson was an exception; other members of the ICPC operated autonomously and, as Mr Donnelly felt, to differing degrees of consistency of quality.

Focus moved onto the position of defence lawyers in Northern Ireland. When Mr Donnelly began his role he had a 'dull awareness' of what he perceived as prejudice in some police quarters against defence lawyers, which developed over time based on transcripts of interviews with accused officers such as those conducted by the Mulvihill team. He met Rosemary Nelson briefly and she expressed the opinion that she was under no illusions that action would be taken against an RUC officer.

Responding to what he perceived as failures in the attitude of ICPC members, Mr Donnelly attempted to empower staff to take a more proactive and influential role. Regarding what his statement described as a 'disturbing level of collusiveness with investigating police officers', Mr Donnelly thought that Geralyn McNally's experience in supervising the complaints made on Rosemary Nelson's behalf was not unusual but that what was unusual was for a member of the ICPC to complain about it. This inertia on the part of most ICPC members led to the ICPC not using its powers to full effect and 'cosiness' between some senior officers of both organisations.

Mr Donnelly speculated in his statement that, in the case of the Colin Duffy/Rosemary Nelson complaint, things might have turned out differently if the investigating officer P146 had not been transferred away from Complaints and Discipline into the uniformed branch of the RUC, though he had not realised that P146 had previously worked in the relevant branch, and admitted this was speculative. He said that Geralyn McNally's attitude was more proactive than most other members, but that this was particularly notable in

relation to the Rosemary Nelson case, as were the examples cited of rudeness she had encountered.

Mr Donnelly saw his appointment, and GERALYN McNALLY's, in part as an attempt to widen ICPC membership in terms of members' backgrounds. While this was a reasonable step, it was done too late in the development of the organisation to be credible.

Questioning returned to the Lawyers Alliance for Justice in Ireland's (LAJI) complaint. Mr Donnelly first heard at an ICPC meeting in October 1997 of the difficulties Miss McNALLY was experiencing and through subsequent informal conversations, although he could not recall the latter accurately, but had reconstructed them for his statements from documents provided by the inquiry. At the time he would have got most of his information through informal updates from Commission staff, and only infrequently from Miss McNALLY. Minutes of a meeting on 20 March 1998 show Miss McNALLY making her concerns a formal issue, and Mr Donnelly agreed that it was at this point that matters took on a greater importance both internally and externally. Senior officials had begun to think that this may have been the first time in the organisation's history that Article 17/2 – which requires matters of concern to be flagged to the Secretary of State – would have been invoked, and Mr Donnelly began to alert officials to the possible failure to certify the investigation. This point was made by Mr Donnelly in a document of May 1998 requesting a meeting with Irish officials, and he maintained that the Irish side had not been given a steer in advance of the UK authorities but it had been made clear in advance of the public meeting of the Commission. By this point Mr Donnelly was aware that Miss McNALLY was planning to sign a certificate of dissatisfaction. The note stated that dissatisfaction arose in part 'because there had been threats to lives and there were also UN-related aspects'. Mr Donnelly agreed that in fact the UN-related aspect was related but separate rather than causal; also that the plural 'threats to lives' was inaccurate.

It was noted at the meeting with the Irish civil servants that GERALYN McNALLY was an Irish speaker from DUNGANNON – Mr Donnelly said this was mentioned because of the potential perceptions of those involved in the process, and felt that it was fairly prophetic in the event. Returning to the meeting on 22 May 1998, the note to the Secretary of State was an alternative proposed to Miss McNALLY's decision to withhold satisfaction. However, minutes from June suggest that the letter to the Secretary of State and the dissatisfaction notice were being prepared at the same time. Mr Donnelly thought that it would inevitably become public knowledge, probably through COLIN DUFFY seeking political mileage, so took the decision to publicly release the notification.

At the ICPC meeting on 22 June 1998, the decision was taken not to forward a report to the Secretary of State, because there was little to be gained in doing so at that point. Identical letters were sent to the RUC and the NIO on 19 June, which contained an inaccuracy (about threats to COLIN DUFFY's life) about the nature of the case. The Chief Constable expressed surprise on receiving this information, although from Mr Donnelly's point of view the RUC had been kept informed throughout the process via the Assistant Chief

Constable. He also complained that there was no mention of the intention to issue statements to the complainants, but Mr Donnelly said this should not have needed pointing out as it was an inherent part of the process. The Chief Constable created breathing space by pointing out that the file had not yet been formally handed to the Commissioner, welcomed by Mr Donnelly and the Chief Executive who managed to persuade Miss McNally that Bringing in Commander Mulvihill was a positive way forward.

Moving to the release of the Mulvihill report in the immediate aftermath of Rosemary Nelson's death, there was increasing pressure both on Miss McNally, who it was said had not handled the case well, and Mr Donnelly and the Chief Executive, who could have done more to support her; Mr Donnelly said this would have been inappropriate given the level of autonomy of the members. He said categorically that the Chief Constable had not said that Rosemary Nelson and Colin Duffy were having an affair, as Miss McNally had reported. The initial dissatisfaction was set out as an appendix to the eventual report of satisfaction for transparency and thoroughness. Giving the investigating officer the opportunity to respond was not allowed for by protocol, and any advance sight would have been down to his line managers in the RUC.

At a meeting with Irish officials on 23 March 1999, Mr Donnelly summarised the attitude of the police involved as being that 'they regarded Rosemary Nelson as no better than those she was defending', based on comments made by officers under investigation and parts of the investigation file which suggest the complaints were an effort to undermine the RUC. The personality clash between Miss McNally and the investigating officer was raised by the Chief Constable at a private meeting between him and Mr Donnelly, which the latter felt trivialised the issue. Later media interest in Geralyn McNally was very negative, and Mr Donnelly was made aware by a journalist concerned for her safety that this emanated from the Police Authority seeking to undermine the case, but also that it seemed orchestrated as it came from several sources. This view was shared by Ken Lindsay, the Head of the Police Division, who took action to dampen the negative briefings.

The last part of the day concerned the Inquiry's proposals concerning closed hearings. While it was committed to holding hearings in public as much as possible, witnesses whose testimony referred to passages in their statements which had been redacted or whom questioning may have entailed sensitive issues were proposed to be examined in closed session. Mr Phillips QC, Counsel to the Inquiry, raised the question of whether those Full Participants excluded from the closed hearings would still be able to participate effectively. All representatives agreed in principle with closed hearings, although some caveats were offered: that procedure should be flexible, and that legal representatives could be given a general outline of the evidence that it is anticipated will be given, although the potential difficulty in giving an outline in advance was also noted; some urged that where the evidence could impact on their clients that the relevant client's legal representative should attend the closed session, though caution was urged that this should be carefully monitored, which the advocate for the security services supported, also

pointing out that for the representative alone to attend could lead to a conflict in their duties to their client. The panel agreed to consider the submissions, particularly bearing in mind the idea of flexibility.