

ROSEMARY NELSON INQUIRY

Day 59: Monday 6 October 2008

Witness: Simon Rogers, Police Division of the Northern Ireland Office

The witness worked at the Northern Ireland Office (NIO) between 1995 and 1999 as Head of Police Complaints Division, reporting to the Head of Police Division. When he joined there were concerns about the effectiveness of the complaints system, which led to a review which the witness was involved in producing. One concern was that the system involved the police investigating the police; another was the issue of the relevant standard of proof required in the case of disciplinary matters, which was the criminal standard; there was also concern that the Secretary of State or the Chief Constable could call in the Independent Commission for Police Complaints (ICPC), but that it could not call itself in. Further, many people were reluctant to use the system due to a lack of confidence in it, and even that it was being used/abused as a tactic in relation to other proceedings; finally, there was a low substantiation rate of complaints. The report's principal recommendation was the establishment of the Ombudsman's office, which was accepted by the incoming Labour Government in May 1997, although it did not begin work until 2000. From mid-1997 to the time of Rosemary Nelson's murder in March 1999 was therefore a transitional period, both in relation to complaints and policing more broadly.

The Police Division at the NIO dealt with a number of these issues. Its approach to complaints was that it supported the existing system and encouraged people to continue using it while problems were addressed, reinforced by a letter from the Secretary of State from July 1998. A number of smaller changes were implemented in the meantime, such as silent video in holding centres and audio recording.

Mr Rogers' contact with the police service would mainly have been through the Chief Superintendent (cipher P157) and the Superintendent (P136) as well as Superintendent Maxwell and others with varying frequency; contact with the ICPC was of a similar nature. For the Rosemary Nelson complaints the main contacts were primarily through his junior colleagues, although at a higher level in some cases. The two organisations communicated well.

Prior to the letter from Mr Lynch in September 1997, Mr Rogers had also seen a letter from April that year from Senator Torricelli, detailing the increase in threats to Rosemary Nelson causing her to fear for her safety. This was the first time he encountered the suggestion that she was under threat or that a death threat had been made by a police officer. Anne Colville drafted a brief response to the RUC, then wrote another on 22 May. The former focused on the complaint issue, but the latter picked up on the more serious threat issue. The witness accepted that the response to her, of 6 June, made no explicit reference to the 22 May memorandum, relying rather on quotations from the Senator's letter. He agreed that it was possible that it was not responding to the 22 May letter, but disagreed with that interpretation. The witness was not aware of the complaint initiated by the Lawyers' Alliance for Justice (LAJ) in

Ireland at this stage. The police gave very minimal answers, which the witness took to mean there was no substantiated evidence of a threat to Mrs Nelson.

There was further correspondence following the arrest of Colin Duffy in June 1997, as a letter from Anne Colville notes in relation to complaints arising out of his detention and the ICPC's involvement. Notes from Christine Collins in the margin suggested the case be followed up because it was recent and well documented, and asks if Security Policy and Operations Division (SPOD), the ICPC or the RUC were doing so. This was not something the witness discussed with her at the time. The volume of this correspondence, including from NGOs, increased in the summer of 1997, with Rosemary Nelson's involvement in the confrontation at Drumcree in July adding to the pressure. It fell to the witness to reply to a letter from Jack Straw to note that the NIO had written to the RUC and the ICPC to confirm the allegations were being investigated. It also noted that Mrs Nelson's complaint was likely to be rejected because of her failure to co-operate; despite a meeting having been arranged between Rosemary Nelson and the ICPC on 9 September (which Mr Rogers was aware of before his letter to Mr Lynch), this was not removed from the letter since she had failed to attend meetings in the past.

Questioning turned to the high-profile visit of the United Nations' Special Rapporteur, for whom the witness' office was responsible for putting together the briefing. Correspondence focused on the distinction between 'allegations' and 'evidence', with some sense on the part of the police that the allegations were unfounded and part of a campaign to undermine the RUC. Conversely, the witness said that lawyers were generally reticent in coming forward as they did not expect it to yield a result. The NIO was caught in between these attitudes while the office of the Police Ombudsman was put in place.

In November 1997 the Irish side of the Anglo-Irish Secretariat raised the concern with the British side of a possible pattern of harassment by the police against Mr Duffy, and in Lurgan and Portadown more generally; further correspondence had been requested by the Secretary of State. The witness and Mrs Collins had attended a meeting the following February called by Mr Lynch of the Lawyers' Alliance for Justice (LAJ), organised by him but supported by local NGOs. At the meeting Mr Lynch had requested that Mr Rogers explain what the NIO was doing about the threats against Rosemary Nelson, and Mr Rogers recalled leaving the meeting with the impression that his explanation he gave was not acceptable. This may have been because the NIO had taken the decision not to raise the issue of someone's safety with a third party. The meeting had become heated due to this, and Christine Collins left as a result. After the meeting Mr Rogers wrote to the police telling them of LAJ's concern for Rosemary Nelson's safety, partly to put the concerns on record and also to ensure that it was looked into. He made reference to Christine Collins to demonstrate that the concerns were echoed at a higher level to ensure the letter was taken as seriously as possible. He said that there was no deliberate decision to omit reference to earlier events since he did not think it necessary and also since the letter was being sent out promptly following the meeting. The letter requested that the police inform

Mr Rogers what they were doing about the case, and was written with the expectation that a threat assessment be carried out if it had not been done already. Whether or not advice would have been given to Rosemary Nelson would have depended on the outcome of the assessment rather than being a necessary logical consequence of it.

Christine Collins was leading on the draft report from the Rapporteur. Two immediate issues that arose from the report were the alleged statement by the Chief Constable and the naming of individual defence lawyers including Rosemary Nelson. The witness recalled Christine Collins raising the issue with the Chief Superintendent with a view to the Foreign and Commonwealth Office addressing them with the Rapporteur, and he had exchanges himself with the police at the end of March. Reference was made to the similarity with an earlier case in which the minister Douglas Hogg had made comments in Parliament about defence lawyers and their links to paramilitaries. Mr Rogers was not aware of any direct contact between the police and Mr Cumaraswamy in February 1998. Mr Cumaraswamy agreed to make some amendments to the text; this became known to British Irish Rights Watch who wrote to the Secretary of State raising the comment at issue. The police's erroneous press release detailing the original comments caused concern in particular due to the potential danger of naming someone.

Mr Rogers had not discussed the question of the police speaking to officers about intimidation of defence lawyers, although a letter was written by Anne Colville on 1 September. The police's reply said in effect that, if they did do so, it would imply an assumption that officers were guilty of intimidation. While the use of silent rather than audio recording made it difficult to substantiate the claims with evidence, it may have been possible, hence Commander Mulvihill watched the video for demeanour as well as conducted interviews and looked at phone records. However, the witness acknowledged that a mere instruction on its own would not be effective in stopping such behaviour if it was systemic, but suggested that the other changes such as the independent ombudsman would also be necessary.

A letter from Paul Mageean of the Committee on the Administration of Justice on 5 March raised concerns about threats, giving as an example allegations about what had been said to a particular client, Mr Marshall, during his detention in February 1998. While Mr Rogers could not remember whether the police had seen the letter or not, the Marshall complaint was being investigated by them; a memo from Lesley Foster did suggest that it had been sent to the RUC and ICPC. There was a delay in replying to the letter which the witness put down to other priorities leading to its being overlooked.

Mr Rogers received a short letter from Command Secretariat on 1 April in response to the letter of 23 February, stating that police had no evidence of threats against Rosemary Nelson, which Mr Rogers took to mean 'specific' threats that would have prompted action. He reiterated the differing interpretations of the word 'threat': a police view that would instigate close protection, or a literal view, which were not always the same thing. Whilst the reply was minimal (as was usual from the police), Mr Rogers felt that it gave

sufficient information to confirm that no assessment had been carried out and the police felt there to be no threat.

Mr Rogers had no recollection of having heard that the ICPC was planning not to issue a certificate of satisfaction despite Mr Donnelly having assumed that there would be signalling between ICPC officials and the Police Division; he was surprised not to have received warning and if he had he would have acted on it.

It was the witness' role to update senior officials on events, outlining options under the existing disciplinary structure. This also took into account the wider ramifications. A concern at that point was that the ICPC intended to inform the complainants of its dissatisfaction with the investigation, and the Chief Constable intervened to stop this happening until he had met the Chairman. This was partly to avoid it going public and partly to give ongoing discussion the space to move in alternative directions without concluding the investigation. The ICPC agreed. The outcome was the Mulvihill investigation, but there was also the possibility that this would include an independent element since the ICPC were themselves, in a sense, complainants. This was not done; however, the witness pointed out that this was not the ICPC were not technically complainants. It was agreed by the Secretary of State that the ICPC would submit to review without external supervision, although that was open to change at some point in the future.

In 1999 the ICPC expressed satisfaction with Mulvihill's report. During this time the witness was aware of a whispering campaign in relation to Geralyn McNally, but did not remember being involved in a meeting about it. A note was shown from a meeting in June at which Geralyn McNally, the Secretary of State, the Permanent Secretary Mr Watkins, Mr Lindsay and the witness were present. There was a discussion in which the Secretary of State said that there was a culture of dependency and blame and a willingness to resort to devious tactics that needed to be addressed by the RUC, but that was also a wider issue. The witness was aware of her view that cultural change was needed.

Attention turned to the "Man Without a Future" pamphlet, which depicted Rosemary Nelson as a 'former bomber' along with a number of former members of the Provisional IRA. It was made clear by the Irish Government to the witness that it had prompted Rosemary Nelson to express concerns about her personal security. The matter was raised with the police but not the Command Secretariat as it was clear that concerns had been raised; nothing in the leaflet was explicitly highlighted but it was left to the police to read for themselves. Mr Rogers' approach took into account the previous history of threats against Mrs Nelson, and tried to ensure that the police conducted a threat assessment and took further action if appropriate, pointing out the availability of the KPPS (Key Persons Protection Scheme).

A copy of a threat note had arrived with Mr Mageean's letter of 10 August 1998. There was a delay in addressing it due to annual leave (as a fax from

Lesley Foster showed). While it was not dealt with within the NIO for nearly a month, the RUC were in a position to assess it immediately.