



## OPERATION KENOVA – SUMMARY OF FURTHER DECISIONS NOT TO PROSECUTE

### SECTION A – INTRODUCTION

1. This Public Statement provides a summary of further 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 Statement dated 6 December 2023](#) (“the December Public Statement”) which provided information about the background to Operation Kenova and the approach to decision-making. It 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. This Public Statement relates to six files and decisions in relation to the remaining six files are expected to issue at the end of February 2024.
3. The six files in relation to which decisions have now issued related to a number of incidents in the early 1980s. The incidents were:
  - (i) Incident 1 – the abduction and murder of **Victim A** in 1981.
  - (ii) Incident 2 – the abduction in 1981 of **Victim B**, who was rescued.

- (iii) Incidents 3–7 – the conspiracy to abduct **Victim C** and the abduction of **Victim D** (who escaped), and **Victims E, F, and G** (who were shot and wounded) in 1981.
  - (iv) Incident 8 – the abduction and murder of **Victim H** in 1981.
  - (v) Incident 9 – the abduction and murder of **Victim I** in 1982.
  - (vi) Incident 10 – the abduction of **Victims J and K** in 1984, one of whom was released and one of whom was murdered.
4. The persons reported for decisions as to prosecution were:
- (i) Two retired soldiers – **Suspect 1** and **Suspect 2** – who worked within the Force Research Unit (FRU) as agent handlers.
  - (ii) Two civilians - **Suspect 3** and **Suspect 4** – alleged to have been members of the Provisional IRA (PIRA) at the time of these incidents.
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. As explained at paragraph 1.5 of that Statement, the fact that that 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 10.
6. The retired soldiers handled an agent (hereafter referred to as “the Source”) within PIRA’s Internal Security Unit (ISU) during the period over which these incidents occurred. Suspect 1 was alleged to have been a handler of the Source during the period between 1981 and 1984. Suspect 2 was alleged to have been a handler during the period between 1982 and 1984<sup>1</sup> .

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<sup>1</sup> Suspect 2 later returned to FRU and worked as a handler between 1986 and 1990. Any alleged criminality on the part of Suspect 2 during that period is being considered on files in respect of which decisions as to prosecution remain outstanding.

7. The main allegations against the handlers 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 the handlers failed to mitigate the obvious risks associated with this.
  - (ii) The priority of the handlers was the welfare of the Source, to the detriment of the safety of others; and they failed to take appropriate preventative action in the cases above.
  - (iii) The Source participated in activity beyond that which was permitted in the relevant guidance on agent handling and the handlers failed to take appropriate action.
  
8. In order to understand the nature and strength of the available evidence as against the FRU handlers it is necessary to provide some detail as to the available evidence in relation to:
  - (i) The structure and operating protocols within FRU;
  - (ii) The relationship between FRU, on the one hand, and the RUC Special Branch (RUC SB) and the Security Service (MI5) on the other;
  - (iii) The relevant law and guidance that applied in relation to the handling of 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.
  
9. Each of these matters is addressed in **Section B** below. An outline of each of the relevant incidents is provided in **Section C** and details of the decisions in respect of each suspect are provided at **Section D**.

## **SECTION B – RELEVANT FACTUAL AND LEGAL CONTEXT**

### **A. The Structure and Operating Protocols of the FRU**

10. The FRU was set up in early 1982. Its predecessor was the Army Research Organisation in Northern Ireland. Any reference hereafter to the FRU includes a reference to its predecessor. The formation of the FRU was intended to enable more centralised control and tasking of Army agents across Northern Ireland and a more consistent application of standard operating procedures. It inherited a large number of agents. Its headquarters were based in Lisburn ('HQNI').
11. There were a number of Army Directives and Instructions relating to the structure and governance of the FRU. The FRU operated to complement existing intelligence gathering agencies within Northern Ireland by acquiring from human sources intelligence related to terrorist activities. The primary aim of FRU operations was the penetration of terrorist groups. Upon the formation of the FRU, a detachment within HQNI was set up to handle the Source exclusively.
12. The detachment responsible for running the Source comprised handlers and an Operations Officer (Ops Offr) and was overseen by the Commanding Officer FRU (CO FRU). Other FRU detachments had a Detachment Commander (DC), but this detachment did not, and the responsibilities of the DC were covered by the Ops Offr. The Directives and Instructions set out the responsibilities of the different posts within the FRU. The information contained in the Directives and Instructions was supplemented by evidence that Operation Kenova obtained from a number of individuals who worked within the FRU during the relevant period; and also the late 1980s and early 1990s. In summary, the key responsibilities for present purposes of each were, according to the available evidence, as follows.

- (i) **The handler** – the main role of the handler was to meet and receive information from an agent. On occasion, the Ops Offr would also be in attendance. Where the Ops Offr was not in attendance, they would be briefed by the handlers after the meeting. Handlers could speak to their senior officer on a secure radio channel if important information had to be passed quickly. The meeting would be recorded and the handlers would prepare a transcript and complete a contact form<sup>2</sup>.
  
- (ii) **The Operations Officer (Ops Offr)** - The Ops Offr was a senior officer who acted as a deputy to the Commanding Officer. Their responsibilities included maintaining a continuous review of Army source operations casework; advising on the credibility of source information and the action that could be taken without compromising a source; and liaison with other source handling agencies. Contact forms were provided to the Ops Offr who had an important role in deciding what information was transposed into the document that was used to share intelligence with other agencies – known as a Military Intelligence Source Report (MISR). The Ops Offr was involved in the tasking of the source.
  
- (iii) **The Detachment Commander<sup>3</sup> (DC)** – the DC was responsible for control of handlers in relation to their sources and the tasking of sources as required. They had control of all source records and reports within the office and were responsible for the administration of the office. They were responsible for the co-ordination of all matters concerning handling, controlling and recruiting of sources and for liaison with Regional Heads of RUC SB.

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<sup>2</sup> Contact forms would include a significant level of detail about a meeting between a handler and an agent. In relation to the relevant period, none of the tapes or contact forms were available. There were records described as “extracts” which purported to represent portions of relevant meetings in respect of Incidents 4 and 9 only.

<sup>3</sup> As noted above, in the current case the Operations Officer covered these responsibilities.

- (iv) **The Commanding Officer (CO)** – CO FRU was responsible to the Commander of Land Forces (CLF), through the Assistant Chief of Staff (ACOS G2) for the command, control and coordination of all research operations ‘Province-wide’. CO FRU was to be consulted where the exploitation of source intelligence might lead to the compromise of a source. Approach plans for recruitment of potential sources were to be submitted to CO FRU who was also responsible for the physical security of handlers. CO FRU had a directing role in relation to executive action in connection with handlers, their sources and the information that they received. CO FRU would receive daily briefings from the Ops Offr and would in turn brief his superiors (ACOS G2 and, less frequently, CLF).
13. There was evidence from two witnesses who were ACOS G2 in the 1980s that indicated that they were aware of the Source. The witness who was ACOS G2 in the early 1980s stated that he spoke to CO FRU at morning meetings and was told about intelligence that came from the Source. There was also evidence from a CLF in the early 1990s that explicitly confirmed knowledge of the Source and their role within PIRA’s ISU.
14. Suspects 1 and 2 who were reported for decisions as to prosecution were handlers. As is explained further below, an important consideration in this case was the limited role which they had within the FRU and wider army intelligence hierarchy. 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 cancel a source, would be taken at a more senior level. Those who acted as Ops Offr during the period that was relevant to these files were no longer alive. Those who acted as CO FRU during this period were treated by Operation Kenova as witnesses, not suspects. There was one further handler during the relevant period who was also treated as a witness.

## **B. Agents and Handling Guidelines**

15. In May 1969, the Home Office issued 'Guidelines' in the form of Home Office Circular 97/1969 entitled, 'Informants who take part in crime'. A 1992 Review of Agent Handling conducted by Sir John Blelloch suggested that these guidelines were viewed by the Army as applicable to military agent handling in Northern Ireland.
16. However, the RUC did not apply this circular in Northern Ireland as they regarded the guidelines as inadequate for dealing with terrorist-related crime as the restrictions contained within them were unrealistic if police were to continue paramilitary penetration and source protection. This view was taken by others, including by a member of Her Majesty's Inspectorate of Constabulary who reported on the matter in the context of Stalker / Sampson in 1987.
17. The Home Office guidelines provided that:
  - (i) No member of a police force, and no police informant, should counsel, incite or procure the commission of a crime.
  - (ii) Where an informant gives the police information about the intention of others to commit a crime in which they intend that he shall play a part, his participation should be allowed to continue only where:
    - (a) He does not actively engage in planning and committing the crime;
    - (b) He is intended to play only a minor role; and
    - (c) His participation is essential to enable the police to frustrate the principal criminals and to arrest them (albeit for lesser offences such as attempt or conspiracy to commit the crime, or carrying offensive weapons) before injury is done to any person or serious damage to property.
    - (d) The informant should always be instructed that he must on no account act as agent provocateur, whether by suggesting to others that they should commit offences or encouraging them to

do so, and that if he is found to have done so he will himself be liable to prosecution.

- (e) The need to protect an informant does not justify granting him immunity from arrest or prosecution for the crime if he fully participates in it with the requisite intent.

18. Directives and Instructions were also issued by the Army in 1977, 1981 and 1982 and these were broadly consistent in imposing the following requirements:

- (i) All FRU operations were to be conducted within the law;
- (ii) Military agent handlers remained subject to military and civil law at all times;
- (iii) Where there was any prospect of a source becoming involved in criminality, senior officers were to be informed so that preventative measures could be taken;
- (iv) Senior officers were to be kept informed of intelligence resulting from source handling by the military. From 1982, the guidance provided that “where operational necessity demands, such information is to be passed verbally by fastest security means”.

19. The 1982 Instructions specified the procedures for information handling under a heading, “Chain of Command and Control”. Those procedures specified:

“the Command of the FRU is vested in the CO FRU based in HQNI. CO FRU is responsible to CLF through ACOS G2 for the command, control and coordination of all Research operations Province-wide ...

Source handling operations are to be conducted with due regard to the security of both source and handler. Where the exploitation of the source intelligence might lead to the compromise of a source, CO FRU is to be consulted.”

20. The development of guidelines for agent handling in Northern Ireland was considered in depth by Sir Desmond De Silva QC in Chapter 4 of the Report



of the Patrick Finucane Review. Expert evidence provided to the Review indicated that “*a reliance on intelligence gathering and ... the penetration of terrorist organisations with agents and informers is established practice in effective counter-terrorism across the world.*”<sup>4</sup> The findings of the Review including the following:

- (i) The most valuable agents during the Troubles were undoubtedly those positioned deep within the terrorist groups themselves.
- (ii) The penetration of an agent into the very heart of a terrorist group inevitably involved the agent concerned becoming involved in criminal activity to some degree. Indeed, the very act of joining a proscribed organisation was a criminal offence.
- (iii) No agent could choose to opt out of discussions about planned terrorist acts without drawing immediate suspicion and thereby exposing themselves to potential interrogation and execution.
- (iv) Advice and guidance on the legal implications of specific agent-running operations did not appear to have been available to the FRU in the 1980s; and FRU handlers received no training on legal issues prior to being sent to Northern Ireland.
- (v) The application of the criminal law to agents who participated in crime with the object of frustrating that particular incident was complex and unclear. There was legal authority for the proposition that such persons were not themselves a party to the criminal conspiracy. The position in relation to an informant who participated with the intention of maintaining his cover, in order to help the security forces generally or to permit them to prevent a subsequent crime, was also unclear.

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<sup>4</sup> Paragraph 4.2 of the Report.

- (vi) The implementation of the inherently difficult task of penetrating terrorist groups with agents required the development of a detailed legal and policy framework. The FRU Directives and Instructions were manifestly unsatisfactory.
  - (vii) It was manifestly not the case that agent handlers were seeking to conceal the general nature of their activities from those in authority; on the contrary, they wanted the political leadership to provide a clear framework and direction.
  - (viii) The UK Government had a duty to provide an effective statutory framework and clear policy direction and there was a wilful and abject failure by the UK Government to put in place adequate guidance and regulation for the running of agents.
21. We have not seen any evidence that would contradict the findings referred to above and indeed they are in many respects supported by the evidence and information that has been submitted within the Operation Kenova files.

### **C. The Relationship between the FRU, the RUC SB and MI5**

22. An important feature of the context in which the FRU operated during the relevant period was its relationship with the RUC SB and with MI5. This was raised by a number of FRU suspects and witnesses who were interviewed by Operation Kenova. In general, the FRU officers suggested that: (i) the role of the FRU was to collect intelligence and share it with the RUC, which they did; (ii) it was for the RUC to take decisions in relation to the exploitation of intelligence; and (iii) the RUC and MI5 were aware that the FRU was running a Source within PIRA ISU and never raised any concern.
23. In general, the evidence submitted to the PPS supported each of these propositions. In relation to the role of the FRU, there was evidence on the file that indicated that, in most cases, both pre- and post-incident reporting by the

Source was passed to RUC SB. Generally, this would be done by means of a written message (a MISR), but if it was urgent intelligence requiring immediate action, it would be shared orally by means of a secure telephone or in person. There was evidence that the subsequent written record might contain less detail than had been previously communicated by phone, and that this would be for source protection reasons. The absence of any contact forms from the relevant period meant that it was impossible to prove the full extent of information passed by the Source to their handlers. Further, the practices in place at the time which provided for the sharing of intelligence verbally by phone or in person meant that it was impossible also to prove the full extent what was, or was not, shared by the FRU with RUC SB in the context of any individual case.

24. In relation to the exploitation of intelligence, the available evidence confirmed that such decisions would have been taken by the Tasking and Coordinating Group (TCG) which was a unit under the command of RUC SB. It received intelligence from police, army and MI5 sources, as well as a variety of technical sources and brought together the operational resources of the RUC and Army to mount operations. There was evidence that because TCG decision-making was fast moving and complex, limited records were made or kept at the time. No contemporaneous records of TCG decision-making were retained by the RUC and it is not known precisely what information they had available to them, or the factors determinative of their decision-making in any given case.
25. In relation to the position of other agencies, the available evidence supported the proposition that both the RUC SB and MI5 were aware that the FRU were running an agent within PIRA ISU.

#### **D. The Offence of Misconduct in Public Office**

26. This offence can only be committed by a public officer (a term which includes an officer of the armed forces). The offence is committed where:

- a) A public officer acting as such;
- b) wilfully neglects to perform his duty and/or wilfully misconducts himself;
- c) to such a degree as to amount to an abuse of the public's trust in the office holder;
- d) without reasonable excuse or justification.

27. This offence is concerned with neglect to perform a duty, which is deliberate, as opposed to accidental, and which must be accompanied by an awareness of a duty to act or a subjective recklessness as to the existence of the duty. Where misconduct, as opposed to wilful neglect, is alleged, this refers to deliberate or reckless conduct which goes beyond mere neglect of duty and is often akin to corruption. The threshold for such an offence is a high one and a mistake, even a serious one, will not be sufficient to meet this threshold. It is necessary to show that the officer acted in a bad faith, for example by having no honest belief that they were acting lawfully.

28. The conduct, or neglect of duty, must always be considered in the circumstances in which it occurs. This is relevant to the assessment of whether any alleged misconduct or neglect is of such seriousness that it amounts to an abuse of the public's trust in the office holder. In the present case consideration has to be given to factors such as the context in which FRU handlers were operating at the time; the extent to which there was any clear guidance as to the duties, obligations and restrictions relevant to their role; the structures and hierarchy within FRU and their place within it; and their understanding of the role of others in the assessment and use of information received by them in the course of their duties.

### **SECTION C – THE INCIDENTS**

29. This Section provides a brief description of the 10 incidents that were covered by this series of files. It includes a summary of the relevant intelligence as this is relevant to what Suspects 1 and 2 are alleged to have known about the

activities of the Source. We have taken a similar approach to that taken in the December Public Statement 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 and murder of **Victim A**

30. **Victim A** disappeared after leaving the home of a family member in Belfast on a date in 1981. His body was found two days later by members of the public. An inquest subsequently received evidence that his death had been due to gunshot wounds to the head.
31. About 15 minutes prior to the discovery of Victim A's body, Suspect 3 was stopped by a police patrol in an area close to where the body was subsequently found. Suspect 3 had blood on his trousers. He gave the police officer who stopped him an explanation for the blood and was permitted to leave the scene. Suspect 3 was arrested the following day and a number of premises associated with him were searched by police. However, the trousers which he was wearing at the time of his arrest were not the same as those which he had been wearing when stopped by police. Clothing recovered from police searches was tested for blood with negative results.
32. Suspect 3 was interviewed under caution by the RUC in relation to the murder but the relevant tapes and transcripts have not been located. No individual has ever been charged in relation to the murder of Victim A.
33. In relation to Incident 1, there was no evidence to indicate that there was any intelligence available to the FRU in advance of the murder that Victim A was in danger. The Source reported after the event in relation to those involved, but the available material suggested that this was on the basis of information

that the Source obtained from others. The weight of the available material strongly suggested that the Source had no direct involvement in the abduction or murder of Victim A.

34. An additional aspect of this case was that, in a document described as an extract from a debriefing document, there was an entry which indicated that the Source was in possession of a .22 pistol that they were holding for PIRA. The allegation was that the Source may have been in possession of the murder weapon and that the handlers failed to take appropriate action.

### Incident 2 – the abduction of **Victim B**

35. On a date in 1981 **Victim B**, who is now deceased, was abducted and detained by members of the PIRA ISU. He was subsequently rescued by police who arrived at an address at which he was being detained.
36. The available materials presented an unclear picture as to whether the Source had been directly involved in the interrogation. There was, however, information which strongly suggested that the Source had provided the information which led to the police rescue of Victim B.
37. In 1981, Victim B made two statements to police in which he named Suspect 3 and other persons as having been involved in his detention and interrogation. However, this evidence was later retracted in circumstances which indicated that pressure had been brought to bear upon him.
38. Victim B made a further statement to Operation Kenova in 2018 in which he provided a further account of his detention and again named Suspect 3, among others, as being involved in his false imprisonment by PIRA. When asked to co-operate further with Operation Kenova by making a recorded ABE video interview he refused to do so.

Incidents 3 -7 - the attempted abduction of **Victim C** and the abductions of **Victims D, E, F, and G** in 1981.

39. In 1981, the Source was reporting to their handlers that the PIRA ISU was focusing attention on a number of individuals, including **Victim C**. Victim C was arrested by police at a time when he was travelling to a location where he was, according to the available information, to be abducted by the PIRA ISU and interrogated as a suspected informant. It was unclear from the available information whether the Source had provided the information which led to the rescue of Victim C.
40. Victim C made a witness statement to Operation Kenova but was not prepared to attend any legal proceedings in the UK or Ireland.
41. In this case the allegation that Suspect 3 was involved in a conspiracy to falsely imprison Victim 3 was based purely upon intelligence material.
42. **Victim D**, who is deceased, was abducted, falsely imprisoned and interrogated by the PIRA ISU in 1981. He did not make a statement to police at any time in relation to this matter. The available information indicated that Victim D escaped from his captors before the ISU had decided what action to take.
43. Intelligence material suggested that the Source was involved in the detention and interrogation of Victim D and that the Source reported details of the interrogation to their handlers including the address at which Victim D was being held and the identities of other PIRA personnel involved in the interrogation. The Source also reported the presence of Victim E at the same location. The intelligence material recorded the view of the Source that Victim D's alleged participation in a robbery was more likely to result in a "kneecapping", rather than him being killed. The Source continued to report on the matter and reported that Victim D had managed to escape.

44. In this case there was a record which indicated that the Ops Offr (deceased) joined a conversation with the Source and advised them that they were more important than the victim and that they (the Source) should worry about themselves, and not the victim. The record indicated that the Ops Offr effectively advised the Source that he (i.e. the FRU) did not intend to intervene because of the need to protect the Source's position and that the Source must try to avoid being involved in any shooting. Suspect 1 did not participate in this exchange but the record indicated that, later in the conversation (and recorded on a different tape), he confirmed that the "main interest" was the Source. There was a further exchange in which the Ops Offr and Suspect 1 provided advice to the Source as to how they might avoid further involvement in the questioning of Victim D.
45. Operation Kenova located no record of any rescue operation being considered.
46. **Victim E**, who is also deceased, was abducted by the PIRA ISU in 1981 and subsequently shot in the knee and elbow. He made a statement to police in 1983 in which he alleged that Suspect 3 and a number of other named individuals had been involved in his false imprisonment and interrogation. He also told Operation Kenova that two other men were shot and injured in a similar manner by PIRA at the same time and location and that he subsequently became aware that these were **Victims F and G**.
47. Contemporaneous RUC documentation indicated that Suspect 3 and four other individuals were arrested as a result of the statement made by Victim E. The transcripts of these interviews were not available but other contemporaneous records indicated that each of the arrested individuals made "no comment" replies when questioned by police.
48. **Victims F and G** declined to engage with Operation Kenova. There were no records which suggested that the Source was involved in the detention of Victims F or G.



#### Incident 8 – the abduction and murder of **Victim H**

49. **Victim H** was last seen on a date in 1981. Two days later his body was discovered. A post-mortem report found that the cause of death was gunshot wounds to the head. PIRA issued a statement claiming responsibility for the killing.
50. The available information suggested that the Source had been involved in a previous interrogation of Victim H, following which he had been released. There was nothing, however, to indicate that the Source was involved in the false imprisonment and interrogation of Victim H during the period between the last sighting of him and the recovery of his body. The intelligence material suggested that the Source became aware that PIRA were intending to murder Victim H and, on receiving information concerning the general location in which Victim H was being held, the Source made attempts to identify where Victim H was being held. The Source then arranged a meeting with their handlers and provided information which was passed to police who made attempts to disrupt any planned execution. These attempts were unsuccessful, and Victim H was shot dead.
51. There was multiple hearsay evidence from a family member of someone having been told that Victim H had been burned with cigarettes during their interrogation. However, that allegation was not supported by the autopsy report which contained no record of any marks consistent with this having occurred.

#### Incident 9 – the abduction and murder of **Victim I**

52. In 1982 **Victim I's** body was discovered close to the border. The cause of death was a gunshot wound to the head. PIRA claimed responsibility. Before

his murder, Victim I had been arrested by the RUC. Available records indicated that when released from police custody he was debriefed by PIRA in the Republic of Ireland.

53. The records indicated that detailed reporting was provided by the Source in relation to the decision by PIRA to interrogate Victim I in the Republic of Ireland. The Source reported that they were to be involved. PIRA had claimed that there was an amnesty in place at the time and this had been the subject of media reporting.
54. The records further indicated that Victim I was interrogated before being moved to another location in the Republic of Ireland for a “court martial”. The Source returned with others to Belfast the next day and the Source reported that same evening their involvement and what they knew to their handlers. The records indicated that the FRU briefed RUC SB the next day on Victim I’s situation and that the RUC believed, on the basis of information available to them, that the PIRA Army Council would reprieve the victim and allow him to return north. They also indicated that there might be a continuing threat after Victim I returned north and the RUC was considering an operation that would involve arresting Victim I, seemingly for his own protection. There was no record recovered of any contact with An Garda Síochána (AGS) in relation to a potential rescue attempt whilst Victim I was being detained in the Republic of Ireland. Victim I’s body was discovered the following day.
55. In this case there was a typed record of a discussion in which the Source advised their handlers, in advance, that masks and a gun were to be brought to the safe house where they would be with others to conduct the interrogation of Victim I; and, further, that if the victim tried to escape he would be shot in the presence of the Source. Suspect 1 told the Source that they should try and avoid such a situation, but when the Source repeated their concern that the matter was outside their control, Suspect 1 remarked, “Just don’t tell us.”

Incident 10 – the abduction and murder of **Victim J** and the abduction of **Victim K**

56. In 1984 **Victim J's** body was discovered five days after he had been last seen by family members. The cause of death was gunshot wounds to the head. PIRA claimed responsibility. It was concluded that Victim J's remains had been moved to this location after he had been shot. His car was subsequently recovered in the Republic of Ireland. There was witness evidence that Victim J had arranged to meet an unknown acquaintance in the Republic of Ireland on the day he was reported missing to police.
57. The available records indicated that the Source had, a few months earlier, reported the PIRA suspicions in relation to Victim J and plans for an abduction at that time which did not proceed.
58. On the day that Victim J was reported missing, the Source reported to their handlers that PIRA had lured Victim J to the Republic of Ireland and had interrogated and court-martialed him at a named location. The record ascribed roles to several named individuals, one of whom was **Suspect 4**. At that time the Source also reported that **Victim K** had been detained at the same location and at the same time as Victim J but had been released. Suspect 4's alleged role appeared from the contemporaneous FRU record to have been performed subsequent to the release of Victim K. The detail contained in the information provided by the Source created a strong inference as to their presence at the address in the Republic of Ireland at which the victims were detained and interrogated. The Source was, however, not named in the contemporaneous intelligence record and no inference as to any particular role could be drawn from the information provided.
59. The records indicated that the detailed intelligence provided by the Source was shared with the RUC and thereafter with AGS that same day. The AGS was advised of the PIRA intention to kill the victim that night. The contemporaneous AGS record ascribed a different role to Suspect 4 from that recorded in the FRU record. AGS launched a rescue operation, but Victim J

was not saved, most likely because PIRA had already moved him to another location.

60. Victim K provided an account naming two of his interrogators, both of whom are deceased.
61. There was no other evidence or intelligence relating to the alleged role of Suspect 4.

## **SECTION D – SUMMARY OF REASONS FOR DECISIONS**

### **Suspect 1**

62. As explained above, **Suspect 1** was a handler of the Source during the period between 1981 and 1984.
63. Suspect 1 answered all questions put to him when interviewed after caution by Operation Kenova. He stated that the purpose of running the Source was to save persons whom the PIRA ISU abducted, where that was possible. He did not have an operational role and all of the information provided by the Source would have been passed on to senior FRU officers and the RUC SB. Whether or not to take executive action was a police decision, but rescues were not always possible because PIRA moved their abductees around and it was not always possible for police action to be taken in the Republic of Ireland. He stated that the RUC and MI5 were aware that the FRU was running a Source within PIRA ISU and what the Source was reporting on. He stated that nothing was hidden; everything was taped and transcribed.
64. In relation to the particular comments in the transcripts available in respect of Incidents 4 and 9, he stated that he had no recollection of either case. In

respect of **Incident 4** (Victim D), he stated that his interpretation of the transcript was that the FRU had been trying to reassure the Source and to prevent them from taking risks that could cause them to be exposed as an informant. Providing reassurance was consistent with the training that they had received, which had emphasised the need to reassure a Source and tell them how important they were. Suspect 1 claimed that the involvement of the Ops Offr in that particular conversation arose from the fact that issues had arisen which required decision-making at a more senior level. He also claimed that the address at which Victim D was being held would have been passed on to police and this would have been the responsibility of the Ops Offr.

65. Suspect 1 also claimed that the exchange in relation to **Incident 9** appeared to have occurred in the context of a challenging situation where options were limited and events were developing quickly. He couldn't recall the specific circumstances or what was going through his mind at the time. He stated that the records shown to him by Kenova highlighted this case as a prime example of threat intelligence being passed on to RUC SB. When asked about the remark, "Just don't tell us", referred to at paragraph 55 above, he explained it as a throwaway comment that represented 'black humour' between the Source and their handlers. He further relied upon the fact that the discussion had been taped and transcribed and denied any suggestion that the Source's potential involvement in such an incident was being in any way condoned. He stated that the handler's main aim was to receive information and for the FRU to pass it on to the police in the hope that they can do something about it. He stated that it was not the role of the handler to make policy decisions.
66. In relation to **Incident 10**, Suspect 1 identified the fact that, on the date the Source provided the relevant information, he was not working and therefore could not have been present. This was confirmed by enquiries conducted by Operation Kenova.
67. Consideration was given to whether there was a reasonable prospect of conviction of Suspect 1 for the offence of misconduct in public office. Much of the case that was put to Suspect 1 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's general conduct regarding the running of the Source it was considered that there was no reasonable prospect of conviction for the following reasons.

68. **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 which are 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, save for a very small number of documents, it was not possible to prove beyond reasonable doubt which of the handlers were present for particular debriefs.
69. **Second**, there was significant legal uncertainty as to whether the Source was himself a party to any conspiracy to murder, if his 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 his PIRA associates.
70. **Third**, whether or not the Source was, as a matter of law, party to the conspiracy to murder of his PIRA associates by virtue of his participation in interrogation, the legal position was sufficiently unclear that the handlers, who were not lawyers and had received no legal training or advice, could not be criticised for believing that the participation of the Source in interrogations in such circumstances could be permitted.
71. **Fourth**, as explained in Section B above, 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, "manifestly unsatisfactory".

72. **Fifth**, there was a body of evidence capable of supporting Suspect 1's claim that the intelligence that he and his co-handlers received was passed on to senior Army officers and to RUC SB. Importantly, the role of the handlers was to gather 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.
73. **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 was capable of supporting the case advanced by Suspect 1 that a level of awareness amongst agencies, other than the FRU, supported his belief that there was nothing potentially unlawful arising from the fact that FRU were running such an agent.
74. **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.
75. In addition to the general responsibilities and conduct of Suspect 1 during the relevant period, consideration was given to certain specific allegations arising in the context of Incidents 1, 4 and 9.
76. In relation to **Incident 1** and the allegation that the handlers failed to address an admission by the Source that he was holding a firearm that was connected with the murder of **Victim A**, there were a number of difficulties. The case was wholly based upon a hearsay record which was unlikely to be admissible as evidence. The available evidence was incapable of establishing to the criminal standard which handlers had been present at the debrief and which, of those not present, were otherwise aware of the content of the relevant record. There were different interpretations of what was recorded within the debrief and a lack of clarity as to whether the Source was referring to a .22 pistol that he believed had been in the murder of Victim 1. The possibility that he was referring to a different weapon was supported by evidence of the weapon later found and linked to the murder being described as a *rifle*. Other reporting by

the Source suggested that the weapon used had been a sub-machine gun. Furthermore, there was no evidence in relation to any other discussions that may have been relevant to the issue of the weapon, both between handlers and the Source, and between the handlers and their senior officers. In all the circumstances the available evidence did not provide any reasonable prospect of conviction for any offence connected with this incident.

77. In relation to **Incident 4**, the conversation in the case of **Victim D** was recorded in a document described as “extracts” of a debrief. The original tapes were not available and the accuracy of the typed extracts could not therefore be checked. The identity of the author of the document was unknown. The transcript contained extracts from several different tapes with reference numbers that were not sequential. This meant that it was impossible to establish whether the extracts were in fact consecutive, or if information had been omitted (and, if so, where). It was apparent that the document, described as “extracts”, did not contain a full record of what was on the tapes. This created doubt about what may have been said in passages that were not transcribed. The other participants in the recorded conversation were now deceased and the overall documentary record was incomplete. The record related to a conversation over 40 years ago in respect of a matter of which Suspect 1 asserted that he had no recollection. All of the above issues, coupled with the fact that it comprised the sole evidence in relation to this particular allegation, made it highly unlikely that it would be admitted as evidence against Suspect 1.
  
78. Even if the document were admitted as evidence, there was no reasonable prospect of conviction of Suspect 1. Relevant to this conclusion was the nature of the role of a handler in contrast to the Ops Offr, who was in attendance at the relevant discussion precisely because the issues which had arisen required decision-making by a superior officer. There was also no evidence capable of disproving Suspect 1’s assertion that he believed that, regardless of what might have been said by way of reassurance to the Source, the information would have been passed to the RUC for consideration as to how it might be exploited.



79. In relation to the conversation in the case of **Incident 9**, similar challenges (with the exception of the issue of tape references) in relation to admissibility outlined above in relation to Incident 4 were present in this case also. As a result, it was concluded that the relevant document was unlikely to be admitted as evidence against Suspect 1.
80. Even if it were admitted, it was considered that the offence of misconduct in public office would not have been made out on the basis of an isolated comment. Whilst the suggestion that a Source should not report fully to their handler was a wholly inappropriate remark, the available evidence was consistent with a remark made under pressure, and possibly by way of “dark humour”, in the context of the repeated seeking of assurances by the Source. It was noted that Suspect 1 had encouraged the Source to try to avoid the situation with which the Source was concerned. Furthermore, the limitations of the documentary record more generally, together with the passage of time, further compromised any more detailed contextual analysis of the remark. It was noted that the exchange was recorded and transcribed and would have been available to more senior officers within FRU who would have been responsible for decisions relating to the overall management of the Source and the situation that had presented itself. In such circumstances, there was no reasonable prospect of conviction for misconduct in public office and the Test for Prosecution was not met.

## **Suspect 2**

81. The evidence indicated that Suspect 2’s appointment as a handler of the Source only took place two months prior to Incident 9. When interviewed by Operation Kenova Suspect 2 made no comment.

82. In relation to **Incident 9**, there was no evidence capable of proving that Suspect 2 was present at the key meeting (see paragraph 54 above) at which the Source was debriefed. There was some evidence that he had been present at earlier reporting by the Source in this case but made no relevant contribution other than to seek to ascertain details of the address to which Victim J might be taken.
83. There was no direct evidence that Suspect 2 was involved in the relevant debrief (see paragraph 58 above) in respect of Incident 10. Whilst not recorded, his presence was likely, as there was evidence that Suspect 1 was not working on that date. However, as noted above, there was an attempt to rescue Victim J and no conduct on the part of Suspect 2 that could potentially have amounted to any criminal offence.
84. As regards any more general allegations as against Suspect 2 as a handler of a Source who was a member of PIRA ISU, the same considerations as outlined above in respect of Suspect 1 applied. In such circumstances there was no reasonable prospect of conviction for misconduct in public office and the Test for Prosecution was not met.

### **Suspect 3**

85. In relation to **Victim A**, the case against Suspect 3 relied upon evidence which was available to the RUC in 1981. This consisted of evidence that he was stopped by police in the same locality where Victim A's body was found approximately 15 minutes later. At that time, he was observed by police to have blood on his clothing. He gave an explanation to police for the presence of blood on his trousers and was permitted to leave the scene. He was subsequently arrested but searches of premises associated with Suspect 1 did not yield any forensic opportunities. Suspect 3 was interviewed by police contemporaneously and more recently by Operation Kenova, but did not answer any questions.

86. There was intelligence material which alleged that Suspect 3 had played a role in Victim A's murder, but there was no further admissible evidence in this case.
87. In relation to **Victim B**, the case against Suspect 3 was comprised entirely of hearsay evidence. Victim B, who is deceased, identified Suspect 3 in 1981 as having been involved in his unlawful imprisonment. He made a further statement in 2018 in which he again alleged that Suspect 3 had been involved in falsely imprisoning him in 1981.
88. In relation to this case, the hearsay evidence of Victim B would have been the sole or decisive evidence against Suspect 3 in any criminal trial in relation to this case. It was considered that the hearsay account of Victim B was unlikely to be admissible in any trial of Suspect 3. The reasons for this included the fact that Victim B gave initial accounts of his detention to police in 1981 which he later admitted were untrue, including accounts that he had not seen the men involved in detaining him, that he had seen them but did not recognise them, and a denial that he knew Suspect 3 or the other individuals involved. Victim B had also given differing accounts at different times as to the individuals who were involved in his unlawful imprisonment. He included additional details and allegations in his 2018 statement which were not included in his 1981 statement and were in some respects inconsistent with contemporaneous police documentation.
89. There was some relevant intelligence material but no further admissible evidence in relation to Suspect 3 relating to the false imprisonment of Victim B.
90. In relation to **Victim C**, there was some relevant intelligence material, but no admissible evidence that Suspect 3 played any role in a conspiracy to abduct him.
91. In relation to the false imprisonment of **Victims D, E, F and G**, the evidence against Suspect 3 again consisted entirely of hearsay. The primary evidence comprised a statement made by Victim E in 1983. Victim E is deceased and it

was considered highly unlikely that his hearsay account would be admissible in any trial of Suspect 3. There were significant reliability issues in relation to the evidence. Victim E indicated that he did not know Suspect 3 at the time of his interrogation but subsequently became aware of his identity. However, the statement provided no detail on *how* he subsequently became aware of the identity of Suspect 3 and did not identify any person who purportedly confirmed to him that Suspect 3 was the person whom he later recognised from the time of his abduction. This raised the possibility that the evidence of Victim E's identification of Suspect 3 was based on multiple hearsay emanating from an anonymous source.

92. There was inadmissible intelligence material that indicated that Suspect 3 had a role in the interrogation of Victims D and E, but no admissible evidence.
93. In relation to the murder of Victim H, there was some relevant intelligence material but, again, no admissible evidence relevant to Suspect 3.
94. In all the circumstances it was considered that the available admissible evidence was insufficient to prove to the criminal standard that Suspect 3 played any role in any of the incidents outlined above. In such circumstances, there was no reasonable prospect of conviction, and the Test for Prosecution was not met.

#### **Suspect 4**

95. The allegation against Suspect 4 related specifically to Incident 10. Suspect 4 made no comment at interview but provided a prepared statement denying any involvement in, or knowledge of, Victim J's murder.

96. The only material capable of proving Suspect 4 had a role in PIRA's detention and interrogation of Victim J were two contemporaneous records. The first was a record of information provided by the Source to the FRU; and the second was a further record, created the same day by AGS, when it received intelligence from the RUC SB.
97. The record of information provided by the Source was multiple hearsay. It was not clear from the document whether the Source purported to identify Suspect 4 and his role from his own direct observations, or from what he was told by someone else. The AGS document was not independent of this first document, as it purported to record what the AGS had been told by the RUC, based upon the Source's information. The potential unreliability of both documents was underscored by the fact that the role ascribed to Suspect 4 in the AGS document differed from that in the record of the Source's reporting. Any attempt to rely upon the documents as evidence was highly unlikely to succeed in light of the difficulties relating to multiple (anonymous) hearsay that were outlined in the December Public Statement.
98. There was no admissible evidence against Suspect 4. In such circumstances there was no reasonable prospect of conviction, and the Test for Prosecution was not met.