police Ombudsman FOR NORTHERN IRELAND

Statutory Report

Public Statement in accordance with Section 62 of the Police (Northern Ireland) Act 1998

RELATING TO THE COMPLAINTS BY A RELATIVE IN RESPECT OF THE RUC INVESTIGATION INTO THE MURDER OF MR ARTHUR JOSEPH RAFFERTY, SHOT ON 15 AUGUST 1974 AND DIED ON 8 SEPTEMBER 1974

Contents

1.0

Executive Summary

1.1 Mr Arthur Rafferty, a married father of eight children, was shot at 10.25pm on Thursday 15 August 1974 in Newington Street, Belfast. Mr Rafferty was seriously injured and subsequently died on 8 September 1974.

1. 2 The Provisional Irish Republican Army (IRA) claimed responsibility for the shooting, in a call to the Irish News, stating that Mr Rafferty had assaulted a seven year old girl on the Tuesday previous to the shooting. A note to this effect was also left at the scene.

1.3 I must make it clear that the IRA killed Mr Rafferty and their stated motive is wholly denied by the Rafferty family. Neither the police nor my investigators have found any evidence to support the IRA allegation. Mr Rafferty was a dock worker. His family allege that paramilitary involvement in the docks was the motive behind the murder.

1.4 The complaints are as follows:

- Police failed to examine the crime scene.
- Police falsely reported or fabricated evidence to make the murder fit a punishment style shooting.
- Police failed to retain key exhibits in the murder investigation.
- Police failed to retain a vital witness statement.
- Police failed to pursue a number of suspects.
- Police failed to investigate a subsequent death threat to Mr Rafferty's sons.

- Police failed to update the Rafferty family about the investigation.
- Police failed to investigate Mr Rafferty's murder in order to save and protect IRA informants.

1.5 The IRA claimed responsibility for the shooting of Mr Rafferty and it is the responsibility of the police to investigate and bring those responsible for the murder to justice. The scope of my investigation was to determine if there was any evidence of police misconduct or criminality by serving or retired police officers in relation to the matters raised.

1.6 My investigation has been wide-ranging. Witnesses have been interviewed and documents, including intelligence material, have been analysed and assessed. A retired police officer, now deceased, who was assigned as the Investigating Officer for the murder investigation, provided information and context.

1.7 My investigation revealed that a suspect was arrested in August 1974 and following new information in 1978, two further arrests were made, though charges were not made in either case. Further to that, it is clear the PSNI received names of further suspects from the family in 2005, which were properly researched and eliminated from enquiries.

1.8 In addition, the family provided my office with the names of two further suspects in 2007. Enquiries revealed both suspects were in custody at the time of the attack on Mr Rafferty.

1.9 My investigation found no evidence to support that the police falsely reported or fabricated evidence. However I have identified failings in the police investigation.

1.10 I found a failure to preserve and examine potentially critical evidence at the scene. There is limited information relating to the forensic considerations of the police investigation and important exhibits were not retained, an issue that has been a recurring theme in historic investigations.

1.11 My investigation found a lack of clarity around witness enquiries in general. There is no information surrounding a photo-fit located within police papers to ascertain the origin or relevance to the investigation.

1.12 I found no evidence of police deliberately failing to pursue persons identified as potential suspects. I have established however there was no meaningful investigation relating to a weapon find at an address on Newington Street which may have assisted in developing suspect enquiries.

1.13 It is clear from my enquiries that there were failings in this murder investigation. My investigation however has found no evidence to support the allegation that the police attempted to protect those who were responsible for the murder from being held to account.

2.0
Introduction

2.1 The Office of the Police Ombudsman for Northern Ireland was established by the Police (Northern Ireland) Act 1998, to independently investigate complaints relating to the conduct of police officers, and other matters which the Police Ombudsman considers to be in the public interest.

2.2 The Royal Ulster Constabulary (Complaints etc) Regulations 2001 empower the Police Ombudsman to investigate historic complaints, which he considers should be investigated because of grave or exceptional circumstances.

2.3 In October 2007 a member of Mr Arthur Rafferty's family made a formal complaint to this office. The complaint outlines the areas of concern the family member has in respect of the RUC murder investigation.

2.4 The Police Ombudsman's investigation of these matters has now concluded and is addressed in this Public Statement.

3.0

The Murder of Mr Arthur Joseph Rafferty

3.1 At the time of his death Mr Rafferty was a married 56 year old father of eight children. He lived in Hillman Street, Belfast and was employed as a dock worker.

3.2 At 10.25pm on Thursday 15 August 1974, the sound of gunfire was heard in the Newington Street area of Belfast. A member of the public and security force personnel found Mr Rafferty seriously injured in Newington Street, near to the junction with Limestone Road.

3.3 Officers from the Royal Ulster Constabulary (RUC) and military attended the scene of the shooting within minutes. Mr Rafferty was taken to the Royal Victoria Hospital (RVH) for emergency treatment.

3.4 Police reported a piece of card attached to a coat hanger was located at the scene.

3.5 On 15 August 1974, the IRA claimed responsibility for the shooting of Mr Rafferty. The claim was made in a phone call to the Irish News and alleged that Mr Rafferty had raped a seven year old girl on the Tuesday previous to the shooting.

3.6 On 8 September 1974, Mr Rafferty who had remained at the RVH, died as a consequence of the injuries he sustained. The cause of death was recorded as peritonitis and bronchopneumonia due to liver failure caused by gunshot wounds to the abdomen.

3.7 The inquest into Mr Rafferty's death was held before the Coroner on 27 May 1975. An *'Open Verdict'* was recorded. To date no person(s) have been brought to justice in respect of Mr Rafferty's murder.

4.0

Complaint to the Police Ombudsman

4.1 A member of Mr Rafferty's family first contacted the Office of the Police Ombudsman for Northern Ireland on 16 October 2007 to raise concerns about the RUC investigation of the murder. The matter was accepted as a public complaint and investigated.

4.2 The family member has made several allegations about the actions of police officers after the murder.

4.3 The initial statement of complaint was recorded on 16 October 2007. Three additional statements have been recorded from the family member outlining further information. The following issues of complaint formed the basis of my investigation.

4.4 **1. Police failed to examine the crime scene.**

4.5 The family member complained that no forensic examination of the scene of the shooting appeared to have been conducted. He said he was told by police that no records of such an examination could be found.

4.6 **2. Police falsely reported or fabricated evidence to make the murder fit a punishment style shooting.**

4.7 The family member claimed police have no record of what happened to the hanger and piece of cardboard (on which a note was written) found close to Mr Rafferty. The family member believes there was no note and claimed it was fabricated in order to disguise Mr Rafferty's death as a

punishment style shooting. The family member reported the motive behind the shooting of Mr Rafferty was not as claimed, stating, *'He was an outspoken man who would not buckle to the demands of the IRA men who controlled the docks in Belfast where he worked.'*

4.8 **3. Police failed to retain key exhibits in the murder investigation.**

4.9 The family member claimed shortly after Mr Rafferty's death that police found the murder weapon in a flat in Newington Street, Belfast. The family member alleged police destroyed the rifle and magazine used in the murder. It is further alleged a number of other key exhibits, also found at the flat, have gone missing including a boiler suit, a balaclava, gloves and a spare magazine for the rifle.

4.10 It is alleged that Mr Rafferty's clothing remained in the mortuary for a number of weeks before being seized by police and that police allowed another family member to take and keep Mr Rafferty's tie without having the tie forensically examined. It is claimed clothing and shoes seized by police cannot now be located. The family member stated Mr Rafferty's ring and watch were not returned to the family and are missing.

4.11 The family member further complained about the destruction and failure by police to retain these key exhibits which means there can be no further forensic examination.

4.12 **4. Police failed to retain and utilise evidence.**

4.13 The family member complained a vital witness statement was missing. It is reported the witness told police that their car was hit by one of the rounds fired at Mr Rafferty. It is claimed police compiled a photo-fit based on the detail within this witness statement. The family member stated when he went to York Road Police Station and requested to see both the piece of card attached to the hanger and the photo-fit, police

refused to show them to him. The family member believes police did not circulate the photo-fit.

4.14 **5. Police failed to pursue a number of suspects.**

4.15 The family member complained no one connected to the items found in Newington Street was ever arrested or questioned, including the occupant of the flat. The family member believes had this been done it may have led to the identity of those responsible for the murder being established.

4.16 The family member also stated at some time between 1978 and 1980 he gave a Detective Constable at York Road Police Station the names of five men whom he believed were suspects in the murder. This report will refer to them as Persons A, B, C, D and E. The family member cannot now remember the name of the police officer.

4.17 The family member reported that he spoke to a Detective Chief Inspector in 2005 and again named Person C and Person D as being involved in the murder. The Detective Chief Inspector was named to this office, and will be referred to as Police Officer 1. The family member claimed on both occasions police advised checks were carried out and the persons named were *'Ok'*. The family member disputes police carried out the checks. He also stated, due to subsequent behaviour by Person C, he believes police informed Person C that he had named him.

4.18 In 2007 the family member reported to my office the names of two more people as having been directly involved in the murder of Mr Rafferty. The two men named will be referred to in this report as Persons F and G. The family member stated these names were provided to him by a senior IRA figure, now deceased. A further person was referred to by the family member, Person H. The family member advised my office the Police

Service of Northern Ireland Historical Enquiries Team had informed him Person H was named by the RUC as a suspect.

4.19 **6. Police failed to investigate a subsequent death threat to Mr Rafferty's sons.**

4.20 The family member claimed after the shooting there were two incidents of confrontation between Mr Rafferty's sons and members of the group whom they believed were responsible for their father's murder. The family member reported that bullets were delivered to the family home after these incidents. On the accompanying envelope was written *'These are for your two sons'*. He stated the envelope and the bullets were taken and the matter reported to York Road Police Station. The family member complained police did not link the incidents and that he did not hear anything further from police regarding the report. The family member stated some time after this was reported to police, he enquired if any fingerprints were found on the bullets and was informed by police the bullets had been mislaid.

4.21 **7. Police failed to update the Rafferty family about the investigation.**

4.22 The family member stated police did not keep in contact or inform the family as to how the murder investigation was progressing.

4.23 **8. Police failed to investigate Mr Rafferty's murder in order to save and protect IRA informants.**

4.24 The family member stated the various failings of police as outlined were carried out to save and protect IRA informants. The family member stated *'The RUC colluded with these IRA touts and in doing so did not carry out a full or comprehensive investigation into my father's murder.'*

5.0

Scope of the Police Ombudsman's Investigation

5.1 The purpose of my investigation was to determine if there is any evidence of police misconduct or police criminality in relation to the matters raised by the member of Mr Rafferty's family.

5.2 My investigation team obtained documentary material, including intelligence from the following sources: family members, the Coroner, Ministry of Defence (MOD), Forensic Science Northern Ireland (FSNI), the Police Service of Northern Ireland (PSNI), the Police Service of Northern Ireland Historical Enquiry Team (HET), press articles and other information publicly available.

5.3 The investigation of historical matters presents unique challenges. We interviewed witnesses who were members of the public and retired police officers. Several people who may have been able to provide witness evidence to this investigation are now deceased, including some former police officers.

5.4 This report examines the available evidence in respect of the concerns raised and details the Police Ombudsman's findings and conclusions.

6.0

The initial RUC response to the shooting

6.1 The police crime file has been located and examined by my Investigators. There are limited case papers available. As this incident occurred over 40 years ago it is possible that the archived documentation is not a complete record of the police investigation into the murder of Mr Rafferty.

6.2 The officer in charge of the investigation, a Detective Inspector, now deceased has been identified and will be referred to in this report as Police Officer 2. The Investigating Officer assigned, a Detective Constable, also deceased, will be referred to as Police Officer 3. Both police officers were based at York Road RUC Police Station at the time of Mr Rafferty's murder.

6.3 Police documentation records that at 10.25pm on 15 August 1974 a nearby military patrol received a report of a shooting in Newington Street, Belfast. Both military and police attended the scene within minutes of the shooting.

6.4 An Army Major detailed in his statement, to the murder enquiry team, that following a report of gunfire he parked his vehicle off the Limestone Road and was immediately approached by a passer-by who stated a wounded man was lying in Newington Street. The Army Major found Mr Rafferty and noted he had a number of bullet wounds to his lower body. He called an ambulance and along with a member of his staff began first aid. They were joined a short time later by a Regimental Medical Officer.

The details of the passer-by are not recorded in the documentation examined by my investigation team.

6.5 There are differing accounts between military and police personnel as to who recovered bullet cartridges at the crime scene. My investigation found no evidence the crime scene was cordoned off by police. Some of the spent cartridges were recovered as far as 81 feet away from where Mr Rafferty was found. As such it was potentially a significant crime scene.

6.6 A statement provided by a military Warrant Officer records that he attended the scene along with the Army Major and detailed his handling of exhibits, namely spent cartridges presented to him by other personnel. The Warrant Officer also noted a group of people had gathered where the victim was found, recording that a woman from that group stood on a spent cartridge before picking it up and handing it to security force personnel.

6.7 In addition to taking possession of the spent cartridges, the Army Major in his statement referred to a spent bullet head having to be dug out of a wall on the north side of the Limestone Road opposite Newington Street. The documentation examined by my investigators revealed that the army major handed 12 spent cartridges and 1 bullet head to a Detective Constable at North Street Police Station.This officer is referred to in this report as Police Officer 4. My investigation was unable to fully identify Police Officer 4 from existing PSNI records.

6.8 The Investigating Officer, Police Officer 3 detailed his attendance at the scene in a report to Police Officer 2, the Detective Inspector in charge. He stated that shortly after the shooting he attended Newington Street where he saw an elderly man gravely injured but still alive and lying against a gable wall. He stated 12 x .223 empty armalite cases were found at the scene by military personnel. In his deposition to the Inquest in 1975 Police Officer 3 stated, *'I collected 12 empty cartridge cases, these were .223 as used in an armalite rifle.'*

6.9 Police documentation examined by my Investigators referred to a piece of card, 15½" x 13" attached to a wire coat hanger, as having been located at the scene and close to the body of Mr Rafferty. The police documentation entitled *'Brief Report of Serious Incident'* details the card was lying close by Mr Rafferty bearing the words, *'This the penalty for assault on a child 7 yrs old in the waterworks.'* The report also recorded a male caller rang the Irish News office stating he was a member of the IRA and that a man had been shot on the Limestone Road for the rape of a 7 year old girl on the previous Tuesday.

6.10 My office has not identified any available evidence that would indicate that Mr Rafferty was suspected by the police of such an offence.

7.0

The RUC investigation

7.1 My Investigators conducted a review of all available RUC documentation relating to the subsequent murder investigation.

7.2 The available case papers do not make a specific reference to the resourcing of this murder investigation, however from the information available it appears that limited resources were assigned to the case. Only finite resources were available to the RUC in 1974, for an unusually large murder caseload.

7.3 Research would indicate the RUC Criminal Investigation Department (CID) resources were under considerable pressure in 1974 given the numbers of murders and other incidents attributed to the troubles in that year.

7.4 The murder investigation appears to have been largely conducted by Police Officer 2 (the Detective Inspector) and Police Officer 3 (the Detective Constable), assisted by Scenes of Crime, photography, military and other RUC officers. It is known that the investigation utilised Forensic Science Services.

7.5 **Scene examination and enquiries in the immediate area.**

7.6 The scene of the shooting was examined the following day, on 16 August 1974. A Scenes of Crime Officer, who will be referred to in this report as Police Officer 5, compiled a report in October 1974 entitled *'Report on Forensic Examination of Scene of Crime.'*

7.7 Police Officer 5 reported two bullets struck 131 Limestone Road, Belfast. One bullet went through the downstairs window and was not recovered. One bullet went through the upstairs window and lodged in plasterwork. There are no photographs of the damage caused by these two bullets within the archived police documentation. My Investigators have identified a police photographer referred to in this report as Police Officer 6 who took four photographs of the scene of the shooting but did not photograph the bullet strikes to 131 Limestone Road.

7.8 My investigation found no evidence that police took a statement from the occupants of 131 Limestone Road, the location where bullet holes were discovered within the structure of the building. Enquiries by my investigation team have established the family who resided at that address at the time of the shooting, subsequently moved in 1975. Attempts by my investigation team to locate the family have been unsuccessful.

7.9 There are no records available of what house to house enquiries were made in the vicinity of the scene. However Police Officer 3 stated in a report to Police Officer 2, that, *'extensive enquiries were carried out in the immediate area of this shooting where no useful information could be obtained, no–one having seen or heard anything suspicious until the shooting actually occurred, then no-one saw anything.*

'The parameters of any house to house enquiries conducted by police are not known to my investigation, nor is it known who conducted them and where or if, the details are recorded.

7.10 My investigation team traced and spoke to a male who was a resident of Newington Street at the time of the murder. This male is referred to as Person I in this report. Person I told my Investigators he was not at home at the time of the murder but confirmed his sister had spoken to police at the time. Person I believes she may have administered first aid to Mr Rafferty. Due to health reasons she was not in a position to speak to my Investigators.

7.11 A sheet of paper with the details of another resident of Newington Street at that time was found contained within the police case papers. This person is referred to as Person J. No corresponding statement has been located. My investigation team have established Person J is now deceased. A brother of Person J however has been traced and spoken to by my Investigators. The brother of Person J relayed police spoke with him whilst at this address on Newington Street and recalls it was related to the shooting.

7.12 **The piece of card reported to be found at the scene.**

7.13 The existence of the card at the scene is detailed by Police Officer 3 in a report to Police Officer 2. The report also referred to a telephone call made by the IRA to the Irish News. I am satisfied that the IRA accepted responsibility for the murder and that they stated the motive was as stated in para 1.2 of this report.

7.14 Included in the police papers are statements from an Army Major, a Warrant Officer and an ambulance personnel member who attended the scene. Although none make any mention of the card, their statements are very specific to their role at the scene.

7.15 There are no available police records to confirm that the reported piece of card and the wire coat hanger was seized or submitted by police for forensic examination.

7.16 Police Officer 3 was interviewed by my investigation team in February 2008. Police Officer 3 told my investigators that the piece of card had been taken to York Road Police Station where it had possibly been photographed. Police Officer 3 commented that Ninhydrin tests, most commonly used to detect fingerprints on documentation, were not available to police at the time of the murder in 1974.

7.17 There are no records to show this item was ever considered or submitted for forensic examination. Enquiries were made by my Investigators with Forensic Science Northern Ireland (FSNI), the successor to the Northern Ireland Forensic Science Laboratory (NIFSL). Enquiries were also made with the PSNI Photography Branch but nothing was located to prove this item was ever photographed.

7.18 The PSNI Fingerprint Bureau has confirmed to my investigation team that they hold no records in relation to this item ever being examined. They have however confirmed that Ninhydrin testing was in fact available to the RUC in 1974 and was used in other police investigations around that time (contrary to what Police Officer 3 told my investigators).

7.19 My investigation has attempted to locate records relating to the card including property registers, the CID's occurrence books and police station record books. Enquiries suggest that none of these documents

are available from 1974 and are presumed to have been destroyed. Similarly my investigation has been unable to trace or locate the card at the PSNI archived exhibits store. There are no further records or mention within the murder case papers as to what happened to this piece of card. The failure to retain the card means that we will never know with any certainty what was actually written on it.

7.20 In his deposition for the Inquest, Police Officer 3 stated he had researched the alleged sexual assault in the Waterworks but found no record of such an attack.

7.21 My investigation team has confirmed there was intelligence which referred to Mr Rafferty being shot for allegedly exposing himself to a girl. My enquiries could not ascertain whether Police Officer 2 or Police Officer 3 were ever made aware of this intelligence.

7.22 The evidence reveals that the RUC did research the alleged sexual motive behind the attack on Mr Rafferty. It is not clear how comprehensively this line of enquiry was pursued.

7.23 **Significant witness statement and photo-fit.**

7.24 My Investigators have examined a witness statement recorded by police the day after the shooting. The statement was recorded from a male, who is referred to in this report as Person K. On the evening of 15 August 1974, Person K reported driving down the Limestone Road towards North Queen Street when he heard a burst of gunfire and a bullet hit his car. Person K was not injured and continued on his journey.

7.25 My investigation has found no evidence that Person K's car was forensically examined by police and it is not known what happened to the bullet that struck his vehicle. Enquiries conducted by my investigation team have established Person K and his wife are now both deceased.

7.26 There is a photo-fit contained within the archived RUC case papers which was produced on 3 May 1975. There is no record, however, as to who provided the description or who was responsible for producing the image. The Rafferty family member suggested that Person K's statement led to the production of the photo-fit but Person K's statement does not refer to seeing any suspect.

7.27 My investigation team conducted enquiries with the PSNI Photography Branch to ascertain how photo-fits were compiled and circulated in the 1970's. In the absence of any force orders or guidance pertaining to that time, it appears the most likely process was that on preparing the photo-fit, hard copies would have been produced and manually passed around local police stations.

7.28 The photo-fit notes referenced Police Officer 3 as the Investigator in charge of the case. Police Officer 3 advised my Investigators that he was unaware of any suspect photo-fit being made. He further stated he did not know of any witness being in a position to make such a photo-fit.

7.29 **Enquiries with Mr and Mrs Rafferty**

7.30 Documentation examined by my investigation team recorded Police Officer 3 spoke to Mrs Rafferty on 19 August 1974 whilst at the Royal Victoria Hospital. Enquiries were made by Police Officer 3 with Mrs Rafferty to establish if she was aware of allegations that Mr Rafferty had been involved in a sexual assault. It is recorded that Mrs Rafferty had

no knowledge of such an allegation. Police Officer 3 also enquired if Mrs Rafferty had been contacted by any *'organisation'*, to which she stated she had not. Mrs Rafferty is now deceased.

7.31 The documentation examined recorded that Police Officer 3 attempted to interview Mr Rafferty on a number of occasions after the shooting. Significantly Police Officer 3 recorded he spoke to Mr Rafferty at 3.30pm on 17 August 1974. The officer recorded that the victim had not seen those responsible and did not know who shot him.

7.32 There are further handwritten notes by Police Officer 3 of an interview conducted with Mr Rafferty in hospital on 23 August 1974. The notes again refer to the victim not being able to identify to police who may have shot him or who had placed the sign. Mr Rafferty did confirm that he had been at the 'Hole in the Wall' bar prior to the shooting. The question and answer interview conducted on this date was not signed by Mr Rafferty, or any third party, as being a true record of the interview which occurred. The notes are documented as being made at York Road Police Station.

7.33 My Investigators have assessed that the accounts provided by Mr and Mrs Rafferty and as detailed by Police Officer 3, did not open any new lines of enquiry for the police with the exception of the reference to the 'Hole in the Wall' bar. My investigation has found no evidence contained within the case papers of any witness being traced at the 'Hole in the Wall' bar or nearby.

7.34 **Mr Rafferty's clothing.**

7.35 My Investigators have established clothing belonging to Mr Rafferty was submitted to the NIFSL on 26 August 1974. The clothing submitted was recorded as a *'white shirt'*, *'coat'*, *'green cardigan'* and *'pair trousers'*. My investigation has found no reference to a pair of shoes in the case papers. There is no audit trail of the shoes being seized by police.

7.36 The forensic examination subsequently identified a bullet entrance and exit hole in the jacket (coat) as well as corresponding holes in the shirt. Numerous holes were also located in the victim's trousers but due to the very heavy blood staining it was impossible to state the cause of this damage. There is no forensic evidence to support that it was a close range shooting.

7.37 A forensic submission form details that after examination on 7 October 1974 the four items were passed to a Detective Sergeant. This Detective has not been identified by my investigation. The name recorded on the form is illegible. What subsequently happened to the items of clothing is unknown.

7.38 My investigation team has examined a statement in respect of the report that police allowed a family member to take Mr Rafferty's tie without forensic examination. In 2007 the family member who took the tie provided a statement to the HET. This family member will be referred to as Person L. In the statement, Person L recalled visiting Mr Rafferty at the hospital on the night he was shot. Person L saw a bag beside Mr Rafferty's bed and observed that it contained his clothes. Person L removed a neck tie belonging to Mr Rafferty, put it into some tissue and placed it in her handbag. Person L stated when she got home she put it in a plastic bag and kept it inside her handbag as a keepsake. Person L stated each time she got a new handbag she placed the tie inside it.

7.39 My investigation has found no evidence that police gave permission for Person L to take possession of this tie or were aware that she had removed it. Mr Rafferty's clothing was not in the mortuary when Person L removed the neck tie from the bag. Subsequently in October 2007 a family member gave the tie to the HET who were reviewing the murder of Mr Rafferty.

7.40 It cannot be known with any certainty when police took possession of Mr Rafferty's clothing except to say it was after the tie was removed by the family member and prior to the items of clothing being submitted to NIFSL on 26 August 1974.

7.41 The victim died on 8 September 1974 and the forensic submission documentation supports the clothing belonging to Mr Rafferty was submitted for forensic examination almost two weeks previous, as does the statement from the Forensic Scientist. Therefore the clothing could not have been situated in the mortuary as reported in the complaint by the family member.

7.42 **The weapon find at the Newington Street Flat.**

7.43 An excerpt of an *'RUC Incident Log'* refers to a report, made by a member of the public on 23 September 1974, that a rifle and ancillary equipment was found underneath a mattress in a ground floor flat on Newington Street, Belfast. The log details that police and army went to the scene and recovered the following items, recorded as;

'1. Armalite Rifle

2. Armalite Magazine

3. 3 rounds of Armalite Ammo

4. Helmet and Denim Outfit

5. 2 ammunition pouches.'

7.44 Police documentation examined by my investigation team records that a Detective Constable based at York Road Police Station, referred to in this report as Police Officer 7, submitted items 1 to 3 to NIFSL and requested that they were forensically examined against the clothing worn by Mr Rafferty at the time of the shooting. Police Officer 7 is now deceased.

7.45 Located within the police papers examined by my investigation team is a copy of an 'Order for Disposal of Firearms/Ammunition Firearms Act (Northern Ireland) 1969' dated 21 October 1977. The 'Order' contains authorisation by a Chief Superintendent for the destruction of items 1 to 3, the armalite rifle, magazine and three rounds of ammunition found at Newington Street.

7.46 There is no documented rationale as to why items 4 and 5 were not examined. There is no audit trail located by my investigation team to show what happened to these items. Enquiries with the PSNI archives for exhibits and the FSNI have not located the items. It is most likely they have been destroyed or misplaced, ruling out any future forensic examination.

7.47 My investigation team has found no evidence to suggest that the member of the public who made the report which brought the RUC and the military to the flat on Newington Street was interviewed by police in any capacity. My investigation has been unable to positively identify the person who made the report. There is no evidence of police conducting house to house enquiries in the area, or the details as to who lived in the flat, either the owner of the flat or the last known occupants.

7.48 It is not known whether the flat at Newington Street, where the firearm and associated paraphernalia was recovered, was subject of a forensic examination. It is known that the RUC Fingerprint Bureau have an entry relating to the identified flat in Newington Street but with the passage of time, my investigation cannot now establish what items were examined or what if any evidence was found.

7.49 My investigation team has found no details of any arrests linked to the report and recovery of the items found at the flat in Newington Street. Further enquiries made by my Investigators have established police held no intelligence regarding the flat in Newington Street either before or after the items were found on 23 September 1974.

7.50 There is no evidence of any additional police enquiries in relation to the arms find at Newington Street, other than the request for forensic examination of the weapon in relation to the murder of Mr Rafferty. The destruction order for the armalite was located within the archived RUC papers relating to the murder of Mr Rafferty which further supports a link between both incidents which police did not exploit.

7.51 The forensic examination of the armalite identified it had been used in the murder of Mr Rafferty and two other incidents in the Belfast area. Security forces recovered spent cartridges from both scenes. It is known these items were examined as they were linked to the armalite find at the flat in Newington Street.

7.52 **Report to police of the death threat to Mr Rafferty's sons.**

7.53 There are a number of inconsistencies in the account provided by the family member to my Investigators in respect of the incidents which he believes resulted in the bullets and death threat being delivered to the family home.

7.54 The family member maintains he reported to police what he believes to be linked incidents to the murder, along with providing police with the bullets and envelope.

7.55 The police murder investigation papers do not make reference to this matter. It is not now possible to determine if either Police Officer 2 or Police Officer 3 were ever made aware of delivery of the two bullets and the handwritten envelope to the family home.

7.56 There are no forensic submission forms within the case papers linked to this potential line of enquiry or any documentation linking the two incidents. There are no property registers, CID occurrence books or police station record books discoverable for the 1974 period. All relevant police journals and notebooks were requested but none were located.

8.0

The Identification of Potential Suspects

8.1 My investigation has established that in 1974, a male referred to in this report as Person M, was named as possibly being involved in the shooting. The RUC had this information on 26 August 1974.

8.2 Person M was arrested at 3.04am on 27 August 1974, under the terms of The (NI) Emergency Provisions Act. My investigation has established Person M was known to police as being linked to the IRA and believed to have been responsible for punishment shootings. No interview notes have been located for Person M and as such my investigation cannot with certainty report Person M was interviewed in relation to the shooting of Mr Rafferty.

8.3 My investigation has established a second set of suspects were identified four years later in 1978. These suspects were identified as a consequence of the Security Forces conducting a search of a social club in Belfast.

8.4 A handwritten document was recovered by police during the search of the social club and attributed to IRA ownership. The document refers to the shooting of Mr Rafferty. The author of the report has not been identified, having provided their initials only, and will be referred to in this report as Person N. The document appeared to be a debrief of the circumstances of the shooting. It refers to the claim against Mr Rafferty of indecently assaulting a child and reports that IRA orders had gone out to *'arrest'* Mr Rafferty. The author referred to an order that Mr Rafferty

was not to be *'dealt with'* until receipt of statements stating the full facts but that there was a *'slip up in communications'*. The document further stated, *'they went to kneecap him. There was a scuffle and he was hit and later died.'* The author wrote in the note that the family had been met and the case explained. Three persons, not fully named, were referred to in the document stating that they would be able to provide further details. These persons are noted in this report as Persons O, P and Q.

8.5 A Superintendent, referred to in this report as Police Officer 8, instructed that every effort should be made to identify those persons detailed in the handwritten document. As a consequence police made a possible identification of Person N and Person Q. Documents record police were unable to identify Person P and there is no documentation to support that Person O was identified by police.

8.6 The two persons who were identified as possibly being Person N and Person Q were arrested in 1979 under the terms of The (NI) Emergency Provisions Act. My investigation has established Person N and Person Q were interviewed by police in respect of Mr Rafferty's murder. Neither person was charged in connection with the murder.

8.7 As already stated the family member advised that he named five persons to police, Persons A – E, sometime between 1978 and 1980. However there is no reference to them within the murder case papers examined by my Investigators. My investigation team have also established there is no reference to Persons A – E within any associated intelligence in this case.

8.8 The police officer, to whom the family member reported as having provided the names, is almost certainly Police Officer 3. Police Officer 3 was still attached to York Road at this time. Police Officer 3 is deceased,

so it is not known if he did receive this information and if so what, if any, actions were subsequently taken by police.

8.9 My investigation team has confirmed that in March 2005, the family member met with Police Officer 1 as described in his account to my office. Police Officer 1, a Detective Chief Inspector from the PSNI Serious Crime Review Team, recalled the family member provided him with details of persons whom he believed to have been involved in the murder of Mr Rafferty. Police Officer 1 however recounted being provided with the details of four persons, not two as recalled by the family member. Both parties referred to Person C being named. Police Officer 1 did not recall being given the name of Person D but recollected the details of two other persons named and are referred to in this report as Person R and Person S. Police Officer 1 also recalled the details of a fourth person reported by the family member as a possible suspect but the family member could not provide a name. Police Officer 1 made a possible identification of this person and is referred to in this report as Person T.

8.10 My investigation has established that the 'intelligence' provided and as reported by Police Officer 1, was researched by a Detective Constable within the PSNI Serious Crime Review Team. The Detective Constable is referred to in this report as Police Officer 9.

8.11 A report compiled by Police Officer 9 was delivered to the PSNI HET in July 2005. A copy of the report compiled by Police Officer 9 has not been located by HET however his findings were transcribed into a separate HET report which has been accessed by my investigation team.

8.12 Police Officer 9 concluded that there was nothing on file to link Person T to the murder. Person R was considered to be one of two possible persons but Police Officer 9 recorded that there was nothing on file to link either person to the murder. Person C was identified and researched with Police Officer 9 again stating there was nothing on file to link this person to the murder. The male believed to be Person S was not identified. Police Officer 9 reported that of the persons identified with that name, none fitted the profile of being from the area reported and in the right age range.

8.13 In light of the enquiries conducted by Police Officer 9, no further police action was carried out in respect of these individuals. My investigation team has viewed correspondence from Police Officer 1 to the family member advising none of the persons he named were found to be connected to the case.

8.14 Police Officer 1 stated the name of Person D was not provided by the family member. Whilst there are no records to support the name was provided to police, my investigation team have established there is no intelligence to link Person D to the murder. My investigation also found no evidence to support police having been informed that Person C was named by the family member as being involved in the murder.

8.15 In October 2007 the family member made a further report to my office suggesting that Person F carried out the shooting whilst accompanied by Person G. Enquiries by my investigation team have confirmed that Person G was in police custody at the time of the shooting. This is evidenced by a custody record which recorded he was arrested at 3.20pm on 15 August 1974 at a location in Belfast and was not released until 18 August 1974. The arrest is corroborated by documentation covering the period of 15 to 16 August 1974 confirming the arrest. My

investigation has therefore established Person G was in police custody at the time of the shooting and could not have been physically present when the victim was shot.

8.16 My investigation team has also established that Person F was imprisoned in November 1972 for three years, with records from the Prison Service confirming he was not released until October 1974. Therefore as Person F was in prison custody he too could not have been physically present at the time of the shooting on 15 August 1974.

8.17 A further person, Person H, was referred to by the family member, in that he stated the HET advised him this individual was named by the RUC as a suspect. My investigation found no reference to Person H in the police investigation papers and has established Person H is not linked by existing police intelligence records to the murder.

8.18 No information has been found that would indicate any person was protected from arrest and/or prosecution by virtue of being a police informant.

9.0

Conclusions

9.1 **In respect of the allegations made by the family I find as follows:**

9.2 **Allegation 1: Police failed to examine the crime scene**

9.3 My investigation has found a failure to preserve and examine potentially critical evidence at the scene.

9.4 Whilst spent cartridges and a bullet head were recovered and secured on the evening of the shooting by the military and RUC, there are differing accounts relating to who actually recovered the cartridge cases at the scene.

9.5 Recovered cartridges and other exhibits were not photographed at the scene, including the card with handwriting which was reported to be found near to the critically injured Mr Rafferty.

9.6 Although the Scenes of Crime Officer and a police photographer attended the scene on 16 August 1974, it will never be known whether any available evidence was lost because of this delay. My investigation has found a failure to preserve and examine potentially critical evidence at the scene.

9.7 In conclusion my investigation has established the crime scene was not properly preserved, managed nor forensically examined.

9.8 **Allegation 2: Police falsely reported or fabricated evidence to make the murder fit a punishment style shooting.**

9.9 My investigation has found no evidence to support police falsely reported or fabricated evidence.

9.10 The card at the scene, as reported, should have been a significant line of enquiry for the RUC investigation to identify possible suspects. This item, if secured and retained by police and with the advances in forensic science techniques since 1974 could have potentially offered meaningful new lines of further investigation.

9.11 **Allegation 3: Police failed to retain key exhibits in the murder investigation.**

9.12 My investigation has found that police failed to retain a number of significant exhibits to the murder investigation. With the exception of the 12 spent cartridges and the bullet head recovered at the scene of the shooting, none of the original exhibits relating to the murder investigation have been located.

9.13 The firearm and associated items recovered by police at the flat on Newington Street are not the same as the items described by the family member in bringing the complaint to my office. However, there is no audit trail to show what happened to a number of these items recovered or to what extent they were considered for forensic examination.

9.14 The destruction of the weapon does not appear to be contrary to RUC policy at the time. Notwithstanding this, cognisance should have been paid to the fact it was an exhibit in a murder investigation.

9.15 A lack of security and/or continuity of the victim's clothing is also evidenced by the fact that a neck tie belonging to Mr Rafferty was removed from a bag of clothing at the hospital on the evening of 15 August 1974. This issue took over 30 years to come to light and consequently possible forensic opportunities were lost.

9.16 **Allegation 4: Police failed to retain a vital witness statement.**

9.17 A statement was recorded from Person K, the witness who reported their car had been struck by a bullet. This statement was recorded by Police Officer 3 on 16 August 1974 and is still contained within the RUC case papers.

9.18 I note however no forensic examination was conducted of Person K's car. The photo-fit was not based on the witness statement of Person K, as believed by the family member. However there is no information which exists within the case papers which explains who provided the description used to compile this photo-fit and its relevance. I find this to be a clear failing of the police investigation.

9.19 I have also found a lack of clarity around the wider witness strategy in the RUC investigation. It is known from military documents that there was at least one, if not two persons at the scene; namely the person who alerted the military to Mr Rafferty and a female who found a spent cartridge in Newington Street. There is no statement from either of these individuals contained within the case papers.

9.20 In relation to House-to-House enquiries Police Officer 3 documented that extensive enquiries were conducted, however due to the absence of any documentation relating to the same it is not known to my investigation if they were 'extensive' or who conducted them.

9.21 **Allegation 5: Police failed to pursue a number of suspects.**

9.22 The family member has reported the names of 8 persons to my investigation team, believing them to be either directly involved or connected to his father's murder, Persons A – H. My investigation has established that other than the work conducted by police in 2005 in response to the reports made by the family member there is no reference to these persons in the limited murder case papers nor within the intelligence of this case.

9.23 It is clear from my investigation that an arrest was made in 1974 and two further arrests made in 1978.

9.24 My investigators also found evidence of further investigative work pursued in 2005 as a result of suspect names being provided to the PSNI by Mr Rafferty's family.

9.25 My investigation has however found no evidence of a meaningful investigation having been conducted by police to a report of items found at the flat on Newington Street on 23 September 1974, which may have assisted in the development of suspect enquiries.

9.26 **Allegation 6 Police failed to investigate a subsequent death threat to Mr Rafferty's sons.**

9.27 My investigation found no evidence of any enquiries conducted, including forensic examination(s), in respect of the two bullets allegedly sent in an envelope to the family address. The envelope and the bullets could have opened forensic lines of enquiry.

9.28 It has not been possible to determine whether Police Officer 2 or Police Officer 3 were ever made aware of the existence of these bullets and the handwritten envelope. The identity of the uniformed officer reported in the

complaint as having received the envelope at York Road Police Station is unknown. Despite the family member's belief that it was Police Officer 3 who told him the bullets were mislaid I have found no corroboration to support this.

9.29 **Allegation 7: Police failed to update the Rafferty family about the investigation.**

9.30 My investigation found no documentary evidence of any sustained contact with any of the Rafferty family. Mr Rafferty's widow is now deceased and as such it is not possible to ascertain what contact she may have had with the RUC post her husband's death. The Officer in Charge, Police Officer 2 and the Investigating Officer, Police Officer 3 are also deceased.

9.31 A lack of updates to the family must be considered within the context in which the police investigation in 1974 was conducted which was before recognised family liaison practices were introduced to policing. Family liaison officers were not routinely appointed in the RUC until approximately the year 2000.

9.32 **Allegation 8: Police failed to investigate Mr Rafferty's murder in order to save and protect IRA informants**

9.33 My investigation has not seen any intelligence that if acted on may have prevented the murder of Mr Rafferty.

9.34 While I have identified failings in the RUC investigation and I am conscious that failures in investigative maintenance are likely to have resulted in the destruction and/or loss of relevant material, I have not identified any evidence that police informants were protected from arrest and/or prosecution.

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