

Statutory Report

Public statement by the Police Ombudsman in accordance with Section 62 of the Police (Northern Ireland) Act 1988.

Relating to a referral from the Chief Constable of the PSNI concerning:

**THE CIRCUMSTANCES OF THE DEATHS
OF PATRICK ROONEY, HUGH McCABE,
SAMUEL McLARNON AND MICHAEL
LYNCH IN BELFAST ON 15 AUGUST 1969**

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EXECUTIVE SUMMARY

On 13 August 1969, significant public disorder erupted in the Divis and Ardoyne areas of Belfast. This disorder followed allegations of police brutality against civilians and members of the Northern Ireland Civil Rights Association in Derry/Londonderry.

There is evidence of violent clashes between members of the closely situated Catholic and Protestant communities of west Belfast and attacks on RUC stations on the Springfield Road and Hastings Street.

On 14 August there was further rioting. Police deployed various armoured vehicles including Shorland vehicles mounted with Browning machine guns and officers armed with Sterling submachine guns, to the Divis and Ardoyne areas. The stated intention of police was to attempt to quell disorder and prevent loss of life.

During the disorder, four people, Patrick Rooney (9 years old), Hugh McCabe (20), Samuel McLarnon (27) and Michael Lynch (28) were killed in circumstances which indicated that they were the result of gunfire from police officers.

Shorland vehicles were developed specifically for use in rural areas and not the densely-populated areas of Belfast. The Browning machine gun did not fire precise individual bullets but bursts of bullets in a pattern. Forensic evidence indicates that the greater distance from the target, the less accurate the shot. The nature of the Browning machine gun and the ammunition it discharged was such that it had considerable destructive power.

The Historical Enquiries Team (HET), referred for investigation by my office the actions of police relating to the circumstances of the deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch. My office considered the referral and commenced preliminary enquiries including contacting the families of the deceased. Preliminary enquiries found that there were sufficient issues of concern to warrant a formal investigation into the circumstances of the deaths and police actions following the deaths.

My investigators secured access to public and closed documents relating to the Scarman Tribunal which examined the circumstances of the deaths in their immediate aftermath. My office also commissioned independent forensic examinations, interviewed civilian witnesses who had not previously provided evidence relating to these deaths and sought information from a number of retired RUC officers.

A number of the police officers with whom my investigators would have wished to make enquiries were deceased, were unable to assist for medical reasons or declined to assist. However, a number of witnesses co-operated with my investigation and provided useful commentary. I would also like to acknowledge the engagement of two officers who my investigation sought to interview. I thank those who took the time to assist with my investigation.

The Death of Patrick Rooney

Patrick Rooney was 9 years old at the time of his death. On 14 August 1969 Patrick's parents, Mr and Mrs Rooney, observing violent disorder near their home in St. Brendan's Path, Divis, and fearing for the safety of their family, gathered their children in a back bedroom of their home. Patrick sustained a gunshot wound to the head which caused his death. He was the first child to die during the period known as The Troubles.

My investigation commissioned independent forensic examinations of a bullet fragment and ballistic material recovered from the Rooney home at the time. This examination along with a contemporary analysis of the bullet trajectory, confirmed the Scarman Tribunal's finding that the fatal bullet had been fired from a Browning machine gun mounted on an RUC Shorland vehicle.

Police officers said they had been told to fire the vehicles' weapons over the heads of rioters on Divis Street to disperse the crowds, and to "fire for effect" (to kill or wound) if fired upon. A number of witnesses said gunfire directed from the vehicles towards the Divis Flats had been "indiscriminate".

Evidence indicates that some officers were not trained or were insufficiently trained in the use of the Browning-mounted Shorland vehicles.

Neither the Scarman Tribunal nor my investigation was able to identify which of the three Shorland gunners was responsible for discharging the bullet which killed Patrick.

The Death of Hugh McCabe

Married father of two, Hugh McCabe (20) was a trooper in the British Army who was home on leave when he was fatally wounded at the Whitehall Block of maisonettes within the Divis Flats complex.

Following evidence obtained from new witnesses and an independent forensic examination, I concur with the findings of the Scarman Tribunal that Hugh was killed by a shot fired by one of two police marksmen on the roof of Hastings Street Police Station.

In evidence to the Scarman Tribunal, police officers stated that shots were fired at a gunman whom they had identified on Whitehall Block, shooting into Divis Street and at Hastings Street Police Station.

Witnesses at the Whitehall Block denied that anyone in their group was in possession of a firearm.

The Death of Samuel McLarnon

Samuel McLarnon (27), a married father of two, was killed by a single gunshot wound to the head sustained while he stood by the sitting room window of his home at Herbert Street in Ardoyne.

Forensic enquiries undertaken during my investigation found that a bullet recovered during Mr McLarnon's post mortem, and retained by PRONI, was consistent with those fired by a 9mm Sterling submachine gun of the type used by RUC officers.

My investigation has established that the police officer most likely to have fired the fatal shot is now deceased.

The Death of Michael Lynch

Michael Lynch (28) was shot in the Butler Street area of Ardoyne in the early hours of 15 August 1969 and died later in the Royal Victoria Hospital.

A post mortem examination established that a single gunshot had damaged an artery of his heart and was consistent with "wounding from behind by a bullet of medium or high velocity fired at more than short range".

One police officer had stated that he returned fire after seeing gun flashes at the corner of Butler Street and Elmfield Street. He was the only police officer to state that he had fired shots into Butler Street. He is now deceased.

A forensic analysis conducted during the Police Ombudsman's investigation concurred with the Scarman Tribunal, which found that Mr Lynch had been shot by a police officer who discharged a Sterling submachine gun into Butler Street.

Conclusion

Having investigated the circumstances of these four deaths, I am of the view that family members of those killed have complaints and concerns about police actions which are legitimate and justified.

Further, I am of the view that there was no effective police investigation into these deaths at the time.

It is possible that if the Inspector General had taken proactive steps on 15 August 1969 to examine the deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch that evidence may have been recovered capable of determining responsibility for each of the deaths. Unfortunately, responsibility cannot be determined over 51 years later, given the passage of time and the fact that many witnesses and former police officers who may have been able to assist my investigation are now deceased or are unwell.

I have considered whether it is appropriate to make any policy recommendations to the PSNI arising from the issues raised in this Public Statement. Due to the passage of time, significant advances in policing and the relevant standards today I am satisfied that no policy recommendations are required.

1.0

INTRODUCTION

- 1.1. In 2006 the Historical Enquiries Team (HET) of the Police Service of Northern Ireland (PSNI) referred a number of deaths to the then Police Ombudsman, Nuala O’Loan, that occurred during a period of significant public disorder on 14 and 15 August 1969. These matters were referred by the PSNI on the basis that ‘the conduct of a member of the police force may have resulted in the death of some other person’¹. These deaths were also examined during the Scarman Tribunal of Inquiry which began in 1969. They are as follows:

The Death of Patrick Rooney

- 1.2. Patrick Rooney was 9 years old when he was shot and fatally wounded in the early hours of 15 August 1969. Patrick, was standing in a bedroom of his home at 5 St Brendan’s Path, a ground floor maisonette, where he lived with his parents and five siblings. St Brendan’s Path formed part of the Divis Flats complex. It was suspected that Patrick was killed by a bullet discharged from a Browning machine gun which was mounted on a police Shorland vehicle. Patrick’s father provided a statement of complaint in which he described his concerns about the death of his son. Mr Rooney died in 2013. The public complaint is being progressed by Patrick Rooney’s mother and siblings.

The Death of Trooper Hugh McCabe

- 1.3. Mr Hugh McCabe, 20 years old, was shot and fatally wounded around the same time as Patrick Rooney on 15 August 1969. He was in the Whitehall Block, Divis Flats, when it is believed he was struck by a bullet discharged

¹ Police (Northern Ireland) Act 1998, Section 55(2)

by a police marksman positioned on the roof of Hastings Street Police Station. Mr McCabe was married with two young children. He was a Trooper in the British Army attached to the Queen's Royal Irish Hussars stationed in England. At the time of his death he was home on a period of leave. Mr McCabe's brother provided two statements in which he described his concerns in relation to the fatal shooting of his brother. Mr McCabe's brother died in 2015. The complaint is now progressed by Mr McCabe's children.

The Death of Samuel McLarnon

- 1.4. Mr Samuel (Sammy) McLarnon was 27 years old when he was shot and fatally wounded at approximately 1:00am on 15 August 1969, while in the sitting room of his home in Herbert Street, in the Ardoyne area of Belfast. It was suspected that Mr McLarnon was killed by a bullet discharged by a police officer in Herbert Street. At the time of his death his wife was pregnant with their third child. My investigators spoke to Mr McLarnon's wife who provided a statement of complaint in which she described her concerns in relation to the fatal shooting of her husband. The complaint is now being progressed by Mr McLarnon's son.

The Death of Michael Lynch

- 1.5. Michael Lynch was 28 years old when he was shot in the early hours of Friday 15 August 1969. After being shot, he was given first aid in a house in Elmfield Street at 12:30am and was then taken by car to the Royal Victoria Hospital where he died later that day at 6pm. Following the referral, my investigators met with Mr Lynch's sister. While she wished to know the circumstances which led to her brother's death, she did not make a formal complaint but did raise a number of concerns.

The Scarman Tribunal

- 1.6. There were limited police enquiries into these deaths and a number of statements indicate that the RUC believed they could not have conducted enquiries safely in the aftermath of the riot.
- 1.7. On 27 August 1969, following the public disorder in mid-August, the Honourable Mr Justice Scarman was appointed to Chair a Tribunal of Inquiry. The Inquiry examined the circumstances of the disorder, including the deaths, but was not an investigation of potential criminal conduct on the part of police.
- 1.8. The Tribunal heard evidence from 5 September 1969 to June 1971 and was established in accordance with the Tribunals of Inquiry (Evidence) Act 1921. It heard evidence under oath and had the power to compel witnesses to attend and give evidence.
- 1.9. Witnesses were granted immunity so that any evidence given before the Tribunal, any statement furnished or any document produced to the Tribunal, could not be used against them in any subsequent criminal proceedings (except in Criminal Proceedings in relation to giving false evidence at the Tribunal). The material generated by the Tribunal was deposited with a number of public institutions , including the Public Record Office of Northern Ireland (PRONI). These papers are currently closed to the public.
- 1.10. The families have requested that their loved ones be referred to by their forenames throughout this public statement and where appropriate I will do so.

2.0

BACKGROUND

- 2.1. During 1969 in Northern Ireland there were significant periods of public disorder. In August 1969, the RUC dealt with public disorder in a number of towns and cities across the country, including Belfast. On 14 August there was serious disorder in the Crumlin Road and Falls Road areas of the city. During this public disorder, property was set on fire and residents from a number of areas were forced from their homes. By 15 August 1969, the army had been deployed to the Falls Road area and on 16 August it was deployed to the Crumlin Road area. During the period of public disorder on 14 and 15 August 1969 Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch were killed.
- 2.2. The Divis Flats complex was a prominent feature on Divis Street, Belfast, in 1969, consisting of a 20-storey high-rise tower which was surrounded by a number of maisonette blocks and other flats. Two of these were St Brendan's Block and Whitehall Block. The majority of these properties no longer exist having long since been demolished. The only remaining residential feature today is Divis Tower.
- 2.3. In August 1969, the Divis Flats Complex, Divis Street and Falls Road housed mostly Catholic residents. The area was bordered by Dover Street and Percy Street in which both Catholic and Protestant residents lived. Bordering these streets was the predominantly Protestant Shankill Road. The local police station in the area was Hastings Street Police Station.
- 2.4. The police stated that they came under fire during disorder on 13 August. They had been in receipt of information indicating a likely increase in the level of violence in the area on 14 August. Police Officer 1, District Inspector in charge of Hastings Street Police Station, stated to the Scarman Tribunal

that a decision had initially been taken to refrain from deploying police to the Falls Road area in an effort to avoid provoking further disorder. However, on 14 August the public order situation had deteriorated and police were deployed to the area for public safety.

Police Vehicles

2.5. Police operating in the area on 14 and 15 August 1969 were supported by a number of armoured vehicles including three Shorland vehicles armed with Browning machine guns. The other armoured vehicles in use that night were Humber and Commer vehicles.

2.6. Developed by the RUC, the Shorland was an armour-plated vehicle which was built on a Land Rover chassis. Evidence provided at the Tribunal indicated that the Shorland was designed for patrolling rural areas and was not designed for use in urban settings. The RUC had taken delivery of ten of these vehicles by 1969. The Shorland vehicle was intended for use with a search light or spotlight at night. The practice was to operate the Shorland vehicles either in pairs or with a Humber vehicle.

2.7.



Figure 1: Shorland vehicle with Browning machine gun fitted (Source: PSNI museum)

2.8. The Shorland vehicles could be fitted with a .30 calibre Browning machine gun. These were high velocity weapons which had a rate of fire of 500/600 rounds per minute and an effective firing range of 800 metres². The Scarman Tribunal established that it was very difficult for this weapon to fire single rounds if fed from an ammunition belt. It was established that the Browning machine gun does not repeatedly fire at the same spot; rather, being designed to fire a pattern of shots. In order to be sure of hitting a target using a Browning machine gun, it is necessary to fire a sustained burst. During the Scarman Tribunal it was confirmed that every fifth bullet in the ammunition belt was a tracer bullet which produced a red flash along its trajectory when discharged.

2.9. A number of witness accounts discussed in this Public Statement refer to the RUC use of 'Whippet' vehicles on the 14/15 August 1969. It should be noted that the Whippet armoured car was a light armoured vehicle developed during World War I. In 1922 several were acquired by the Irish government and used during the Irish Civil War and in what was termed the emergency which was World War II. The last one was withdrawn from service with the Irish Army in 1944. The RUC acquired six Whippets using them until 1948. In 1969 the RUC had no Whippets in service. The nature of the accounts in this public statement and given to the Scarman Tribunal strongly indicate that when witnesses referred to 'Whippets' they were actually referring to 'Shorland' vehicles. Therefore, throughout this public statement the term 'Whippet' should be taken to refer to the Shorland vehicle.

2.10. The deployment of Browning machine guns and the discharge of these firearms from the Shorland vehicles, are of particular significance to circumstances surrounding the death of Patrick Rooney.

² Effective firing ranges are those quoted in service manuals at which personnel are taught their weapons will be effective.

2.11. In 1969 the basic rank structure of the RUC, in ascending order was as follows:

- Constable
- Sergeant
- Head Constable
- District Inspector
- County Inspector

The force was headed by the Inspector General assisted by the Deputy Inspector General. The Belfast force was controlled by the Commissioner for Belfast and a Deputy Commissioner.

2.12. In 1969, the overall strength of the RUC was approximately 3,200 officers. This included a Reserve Force of eight platoons which were available for riot control. Each of these platoons had approximately 30 members. The RUC was reinforced by 8,500 members of the Ulster Special Constabulary (USC), also known as the 'B Specials'.

2.13. The USC was established under the Special Constables (Ireland) Acts of 1832 and 1914. Initially there had been A Specials who were full time, B Specials who were part time and C Specials who were only to be used in emergencies. By 1969 only the B Specials were in existence and they were almost wholly recruited from the Protestant community.

3.0

THE PUBLIC COMPLAINT AND THE SCOPE OF THE POLICE OMBUDSMAN INVESTIGATION

3.1. The families of Patrick Rooney, Mr McCabe, Mr McLarnon and Mr Lynch have each raised a number of concerns and queries regarding the actions of police on 14/15 August 1969. These are set out in full later in this public statement but in summary they include:

- I. The family of Patrick Rooney have raised a number of concerns about the tactics employed by police on 14/15 August 1969, including who gave the order to open fire; why were police firing for effect; and why the police officer responsible for Patrick's death was not prosecuted. They wished to know why some police officers were given anonymity at the Scarman Tribunal and identified only by a letter. They are also concerned about the lack of a police investigation and why they were never contacted by police and updated.
- II. The family of Mr McCabe have raised a number of concerns that primarily relate to the police tactics used on 14/15 August 1969, including why police were using guns. They believe the presence of police escalated the riots, and they wish to know the reason for Hugh being shot, and how many times he was shot. They seek confirmation of the extent of the forensic examination following Hugh's death including what tests were carried out on his body.
- III. The family of Mr McLarnon raised concerns around the failure of police to investigate Sammy's death and the nature of the bullet that killed him. The family were informed that this was a ricochet bullet. However, they query this finding and do not accept the bullet

that killed Sammy was in fact a ricochet bullet. Mrs McLarnon believes that police were responsible for her husband's murder and should be prosecuted. They also reference the fact that the police have not apologised for his death.

- IV. The family of Michael Lynch are concerned that there was no police investigation into his death. They state that police have never been in contact with the family at any stage since the death; and that it was a local parish priest who informed the family of his death. The family believe that Michael was killed by a 'B' Special and not by a police officer.

3.2. In order to address the concerns of these families and to have a complete narrative of the events of 14/15 August 1969 the following Terms of Reference were set for this investigation:

- I. To gather all available evidence relevant to the circumstances of the deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch to identify if any criminal offence may have been committed by a member of the RUC in these deaths.
- II. Where reasonable suspicion of the commission of a criminal offence is established, to ensure that any former member of the RUC who is identified as a suspect, is the subject of a criminal interview and, where appropriate, a report to the PPS.
- III. Specifically, though not exclusively, evidential opportunities from the following sources should be fully exploited:
 - I. Public records (PRONI including Scarman Tribunal and Inquest papers as well as National Archives material);
 - II. Witnesses, including consideration of the viability of house-to-house enquiries;
 - III. Ballistic, post mortem examinations and other forensic records and exhibits, including consideration of additional examinations;

- IV. Police records;
- V. Intelligence records.

3.3. The record of events set out in this public statement was informed by documentation from the following:

- I. RUC reports and logs;
- II. Army Special Investigation Branch (SIB) reports;
- III. Witness accounts – primarily those given to the Scarman Tribunal;
- IV. Accounts of the circumstances of the deaths from the families of the deceased;
- V. Forensic documents obtained and forensic reviews conducted by my investigation;
- VI. Additional witness statements and a police account obtained during my investigation.

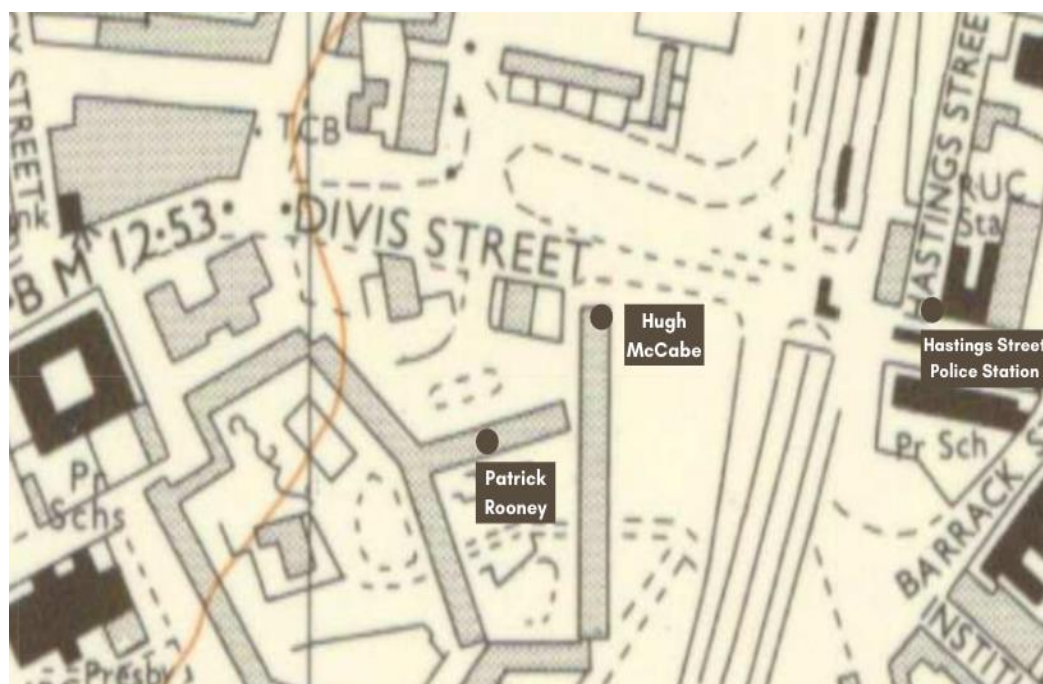
3.4. I wish to thank the Northern Ireland Office and PRONI respectively for facilitating access to archived information and material from the Scarman Tribunal and Inquests.

4.0

THE RUC ENQUIRIES, THE SCARMAN TRIBUNAL AND INQUEST – PATRICK ROONEY

- 4.1. The RUC made initial enquiries into the fatal shooting incidents and submitted material to the Scarman Tribunal. This was confirmed by Patrick's father who told my investigators that he was asked to attend Hastings Street Police Station where he made a statement.
- 4.2. My investigation has reviewed material collated by Police Officer 2 and Police Officer 3 which was submitted to the Scarman Tribunal titled '*Fatal shooting of Patrick Rooney at Belfast on 15 August 1969*' which set out the circumstances of the disorder, the resulting deaths and the results of a forensic examination at the scene.

Map 1



(Source: PRONI website)

Post Mortem Examination

- 4.3. On 15 August 1969, a post mortem examination established that Patrick Rooney died as a result of a single gunshot wound to the head. The wound sustained was consistent with being caused by a high velocity bullet.

Witnesses

- 4.4. There were many witnesses to the events that occurred on 14 and 15 August 1969 and it is not appropriate to rehearse all of their accounts in full in this public statement. The following accounts and statements are of relevance to my investigation.

Mr Rooney

- 4.5. Mr Rooney provided statements to the RUC and the Scarman Tribunal. He stated that on the night of Saturday 14 August 1969 there was large scale public disorder in the vicinity of Divis Flats. He described escalating violence and hearing gunfire at 11:30pm. He witnessed at least three or four whippet cars discharging rapid gunfire into the crowds as they drove along Divis Street.
- 4.6. The gunfire awoke Mr Rooney's children and he assembled the whole family in the back bedroom of his home, which he considered a safe place for them to take shelter. Shortly after midnight while in the bedroom, Mr Rooney stated that he felt a bullet graze his left temple, his wife was also burned and grazed by a bullet. At the same time, he became aware of his eldest son, Patrick, slumping to the ground. Both Mr Rooney and his wife initially thought that Patrick had fainted due to the sight of blood. However, when Mr Rooney lifted Patrick and laid him on a bed, he noticed a wound to the back of Patrick's head, which was bleeding, and realised that his son had been shot. Mrs Rooney ran outside and he heard her shouting '*my son has been shot*'.

4.7. Mr Rooney stated that a number of men who he did not know at the time came to his home after Patrick was shot. Witness A stated he attended the Rooney home having heard of the shooting. He then approached police in Dover Street, to request an ambulance. Mr Rooney, assisted by others including Witness C, carried Patrick to an ambulance in Dover Street. A Red Cross ambulance conveyed Patrick to hospital accompanied by Witness C. On arrival at Belfast City Hospital, Patrick was unconscious and clearly very seriously injured. Efforts were made to transfer him immediately to the Neurosurgical Unit at the Royal Victoria Hospital. Sadly, Patrick died a short time later.

4.8. There is some disparity between witnesses regarding the time Patrick was shot. Mr Rooney states it was shortly after midnight. The RUC control room logs, reviewed by my investigators, indicated that Police Officer 2 requested an ambulance for Patrick Rooney at 1:19am. The British Red Cross logs indicate that an ambulance was requested at 12:40am. The log notes *'5 patients to City Hosp. One, a male child, with severe head injury was transferred to the R.V. Hosp. for special treatment, he subsequently died, his name was Patrick Rooney'*. The depositions of the ambulance crew indicated that they attended Dover Street and that, after about 10 minutes, they were approached by Witness C, who was carrying Patrick Rooney. They then took him to hospital.

Witness A

4.9. Witness A described the situation in Divis Street on 14 August as being as *'near to anarchy as you are ever going to get'*. He witnessed police armoured cars attempting to disperse the crowd, baton charges by police in Divis Street, and B Specials armed with rifles. He observed police firing revolvers and Sterling submachine guns. He described seeing a group of 15-20 youths standing behind police in Dover Street armed with dust bin lids and petrol bombs. He believed that it was around midnight when he went to the junction of Divis Street and Dover Street. He reported that police

were at this stage tending to two officers in Dover Street, who had been wounded by gunfire.

- 4.10. Witness A became aware that a young boy had been shot and, after going to the Rooney home where he saw Patrick, he spoke with police to arrange an ambulance.
- 4.11. When in Divis Street, Witness A reported seeing men with petrol bombs on the upper balconies of the flats. He thought that he had earlier observed '*muzzle flashes*' from the Whitehall Block. However, Witness A stated that some days later he visited the flats and concluded that there had been no gunfire coming from that area. When giving his testimony to the Tribunal, Witness A described almost continual gunfire from Shorland vehicles in Divis Street, which was directed towards the flats³. However, he confirmed he heard this gunfire rather than observed it and he confirmed that he did not observe more than one Shorland firing at any one time that night. Witness A approached police at the time who stated they had been fired at from Divis Flats.

Witness E

- 4.12. Witness E stated he saw a Shorland vehicle driving along Divis Street '*firing its gun along his side of the road and around the buildings*'. He sought refuge behind a wall and heard bullets striking the wall and noticed the upstairs windows of his house had been broken. Witness E also referred to seeing '*B Specials*' on the footpath in Divis Street firing towards the flats. Witness E phoned for an ambulance when Mr Rooney told him that Patrick had been shot. Witness E denied that any firearms were being used in the flats.

³ Believed to be the maisonettes in the general area of where the Rooney family lived.

Witness F, a priest

- 4.13. Witness F, a priest, was visiting the Divis area on 14 August 1969. He described the atmosphere in the area as *'quite tense'*. Witness F saw a small crowd of people lighting a bonfire in Divis Street at around 10:00pm. He stated the bonfire was *'traditional for Catholics to do on the Eve of the Assumption'*. He stated that he saw stones being thrown at the police station by the crowd and saw police chasing the crowd along Divis Street in the direction of the Falls Road. Witness F described how the situation escalated and at one stage petrol bombs were thrown at police by the crowd.
- 4.14. He described walking along the balconies in the flats in order to deter the throwing of missiles at police, and he was sure that nothing was thrown from the building at that time.
- 4.15. Witness F described the arrival of at least two armoured vehicles, which he referred to as *'whippets'*, and the use of these vehicles to force the crowd back. He heard gunfire and although he was unsure of where it came from, he was certain that no gunfire was discharged from the flats where he was located. He offered evidence of how the situation in the area rapidly deteriorated, as petrol bombs were thrown from St Comgall's School opposite Dover Street and buildings were set on fire.
- 4.16. Witness F described a *'few'* Shorlands firing indiscriminately along Divis Street. He stated that it was his belief it was only after this gunfire that petrol bombs were thrown from the *'top gallery at the Divis Street end'*. Although the Scarman Tribunal accepted that Witness F believed that there was no shooting from the flats; it concluded that his evidence did not rule out the possibility that there could have been gunfire from the roof of the Whitehall Block.

Witness G

- 4.17. Witness G watched events unfold from his house in Divis Street. He stated the first shots he heard were single shots that came from the direction of Dover Street. He stated between 12:00am and 12:30am on 15 August he saw a Shorland vehicle driving up and down past the flats four or five times and firing rapidly towards St Brendan's Path Block and possibly the Tower. He believed that police on the ground were in fear for their safety, as they appeared to be taking refuge from the Shorland's gunfire. Witness G was of the opinion that the Shorlands were out of control and he did not witness any gunfire coming from the flats. However, the Scarman report concluded that Witness G did not have an unobstructed view of the Whitehall Block. The Scarman Tribunal '*does not rule out the possibility of some shots fired earlier from the roof of Whitehall Block*'.

Witnesses H, I and J

- 4.18. Witness H described the disorder in Divis Street on 14 August and stated that he observed '*armoured*' vehicles driving up and down the road past Divis Tower and firing into the flats which he believed was completely unjustified. He stated that no firearms were in the area and no shots had been fired from there that night. He also referred to seeing gunfire from an armed and uniformed man positioned at the corner of Boundary Street.
- 4.19. Witness I was in Divis Street on 14 August and stated she saw a '*whippet*' vehicle between 11:00pm and 11:30pm. A short time later the gunner in this Shorland vehicle fired rapidly at the crowds on the street and in the direction of Guildford Street. She described this action as clearing the Catholic crowds from Divis Street.
- 4.20. Witness J, was a cameraman working for RTE. He described hearing the occasional sound of gunfire around the flats that night. He saw three '*armoured*' vehicles move up Divis Street, which ran parallel to the street where he was standing. The vehicles were driving from his left to right and

had their guns pointed towards the side of the street where the flats were located. Witness J saw '*flames*' coming from the barrels of the guns. He filmed the vehicles as they went by and described how his camera jammed. As he made his way to Hastings Street Police Station, he saw an '*armoured*' vehicle being hit by a petrol bomb. He attended the Rooney home, and another property the next day with Witness K and filmed damage sustained to both.

Witnesses K & L

- 4.21. Witness K described men in uniform directing gunfire towards youths at the entrance of Divis Tower. He also saw three armoured cars firing their '*heavy guns*' at the flats. While giving evidence to the Scarman Tribunal he believed it was 'two' armoured vehicles that had opened fire. He stated he could '*see flashes from the gun-barrels as they passed*'. He believed that the vehicles were firing from an angle which would have hit Divis Tower. Witness K returned the following day and having examined the damage to the flats believed that this must have been caused by the weapons on top of the armoured vehicles. He confirmed that there was no gunfire discharged from the direction of St Brendan's Block. The Scarman Tribunal concluded that his evidence did not exclude the possibility that there had been gunfire from the roof of the Whitehall Block. A colleague of Witness K, Witness L, gave similar evidence stating '*there were three armoured cars shooting*'. He stated that there was a lot of shooting in the area at that time. He described the vehicles turning at the bottom of Castle Street to drive back towards Divis Street. Witness L stated that they were firing all of the time.

Witness M

- 4.22. Witness M, described interactions between the '*B Specials*', a Protestant crowd, a Catholic crowd and the fatal shooting of a member of the public in Dover Street. He stated that gunfire was directed from the Divis Tower area and that a Shorland vehicle arrived after this person had been shot.

Witness M stated that a police officer got out of this vehicle and asked him the direction of the gunfire. He stated that the police officer next got back into the vehicle and the weapon on the Shorland opened fire. Witness M described this gunfire striking the flats and observed tracer fire hit the top of the flats.

Witness N

4.23. Witness N described being in his flat on the top floor of Divis Tower on 14 August 1969. He saw a bonfire in Divis Street being lit and young people attacking Hastings Street Police Station with stones. He witnessed two crowds of people throwing petrol bombs and he saw shops set on fire. He stated he saw three or four armoured cars driving along Divis Street firing their weapons and described the turrets rotating so that they fired at both sides of the street. He stated that the tracer fire allowed him to see that the line of fire was level with the flats, rising from ground level to near the top floor of the flats. He thought these events occurred before 11pm.

4.24. Witness N telephoned Hastings Street Police Station for assistance but was told by police that someone was shooting from the top of the flats. Witness N disputed this, however, as he stated that the access to the roof was beside his flat and it was locked. It should be noted that this access to the roof is not where Hugh McCabe was shot at the Whitehall Block.

Witness O

4.25. Witness O, a resident of Divis Tower, observed gunfire from three armoured vehicles on Divis Street. He stated that due to the tracer fire from the weapons on these vehicles he could see the line of fire. He stated that the gunfire was aimed towards ground level before the gun swung upwards towards the higher buildings.

4.26. Witness O accompanied Witness N, when he made the telephone call to Hastings Street Police Station to complain about indiscriminate gunfire by

police. Witness O stated the person on the telephone alleged that there was a sniper on the roof of the flats. Witness O refuted this as the exit to the roof was locked.

Witness P

- 4.27. Witness P a resident of Divis Tower described two armoured vehicles opening fire in Divis Street towards the flats. In relation to the line of gunfire he stated '*they seemed to be firing at ground level and then up towards the top of the buildings*'. He stated that one of the vehicles took up position in Dover Street.

Police Witnesses

- 4.28. Numerous police officers were involved in responding to the violence and disorder over this period. Police Officer 4 described police in Dover Street being fired upon and the arrival of the three Shorland vehicles to provide assistance. He observed the vehicles return fire on the Divis Tower and St Comgall's School, from where police were being fired upon.
- 4.29. Police Officer 5, deceased, reported two Shorland vehicles on Divis Street between 12:00am and 1:00am on 15 August. He heard the sound of Browning machine gun fire and saw red tracer bullets in the air. He observed some tracer bullets going towards Stranmillis and one other tracer bullet going in the direction of the City Hall. He described this as '*very, very high in the air*'. He did not witness the Shorlands fire into Divis Flats.
- 4.30. The actions of the Shorland vehicles in Divis Street were also witnessed by a group of persons located on the fourth floor balcony of the Whitehall Block. The account of these witnesses will be considered when detailing the circumstances of the death of Hugh McCabe.

- 4.31. The Shorland vehicles deployed in Divis Street on the night of 14 August and early hours of 15 August were each crewed by a commander, a driver and a gunner. The Scarman Tribunal, based on information provided by the RUC, attempted to establish which Shorland crews were deployed in the area at that time.
- 4.32. Witness and police accounts make it clear that three Shorland vehicles were deployed in the Divis area at the relevant time. The identities of these crews are known to my investigation team.
- 4.33. The Scarman Tribunal called six Shorland officers to give evidence. These officers were the three commanders and the three gunners. However, my investigation has not been able to ascertain the reason why, of the six officers called, only four gave evidence, including one gunner. There is no evidence that statements or accounts were obtained from the drivers of the Shorland vehicles.

Shorland Red 7

Police Officer 6 – Commander of Red 7

- 4.34. Police Officer 6 was the commander in Shorland, call sign Red 7. The gunner in his vehicle was Police Officer 7 and the driver was Police Officer 8. Police Officer 6 was the first to report gunfire from their Shorland at 12:41am in response to being fired upon. This is noted in the Hastings Street Police Station log for that date.
- 4.35. Following instructions from Control at around 1:00am, Red 7 joined two other Shorlands at the junction of Divis Street and Dover Street and the three vehicles moved off on patrol in the direction of Belfast City Centre. They were met by a large number of rioters. Red 7 was third in line. Police Officer 6 stated that the first Shorland vehicle (Red 6) was attacked with missiles and petrol bombs. He heard a burst of gunfire coming from the

direction of St Comgall's School, which appeared to be aimed at the armoured vehicles.

- 4.36. He stated that as they travelled back along Divis Street and passed Divis Flats all three Shorlands were attacked with petrol bombs and his Shorland was also fired upon by automatic gunfire coming from 'low in the flats'. He also described how a grenade was thrown from the flats which exploded below his vehicle causing it to lift off the ground. Before the explosion occurred, Police Officer 6 alerted his crew to the man who had thrown the object. As soon as the object exploded, Police Officer 6 ordered Police Officer 7 to shoot at the identified man. The Shorland gunner fired a short burst aimed at the man. Police Officer 6 accepted that some of the gunfire could have struck the shops at Divis Flats.
- 4.37. Police Officer 6 also described a second man who was shooting at his Shorland vehicle. He stated that this occurred at the same time as the first man threw the object which subsequently exploded. Although he advised his gunner about the presence of the second man, he gave no order to shoot back at him before this individual passed out of view. When giving his evidence, Police Officer 6 accepted that he did not have a view of the barrel of the Browning machine gun on his vehicle. He therefore accepted that he could not say if his gunner had fired sideways at the second man.
- 4.38. Red 7 was driven to Dover Street, where Police Officer 6 met with Police Officer 2. His Shorland discharged its Browning machine gun towards St Comgall's later that night in response to further gunfire from that area.
- 4.39. In total 76 rounds were discharged from this weapon on the night of 14/15 August 1969. The commander of Red 7 (Police Officer 6) denied any indiscriminate gunfire. He also denied that any of the shots fired by Police Officer 7 could have hit St Brendan's Block.
- 4.40. Evidence to the Scarman Tribunal from Police Officer 6 was that he had not been trained in the use of the Browning machine gun and had never

seen this type of weapon prior to the night in question. He had not used a Shorland vehicle prior to this night and did not know his other crew members.

Police Officer 7 – Gunner in Red 7

- 4.41. The account provided by Police Officer 7 confirmed the discharge of 76 rounds of ammunition during this duty. When giving evidence to the Scarman Tribunal, Police Officer 7 confirmed that he had received a one week training course in 1966 on the use of the Browning machine gun. He also stated that he had completed training in the Shorland in May 1969, when he had fired a '*few rounds by way of demonstration*'. He confirmed that he was very well experienced in the Browning gun from a Shorland. He stated that he had never before fired a Browning machine gun at night prior to the night of 14/15 August 1969 and had never before that night been in a Shorland armed with a weapon during a riot. In evidence to the Tribunal, Police Officer 7 confirmed that the Shorlands were each fitted with a spotlight on the top of the turret. He stated that the spotlight on his vehicle had been broken during this duty. He denied that this deprived him of any degree of visibility.
- 4.42. Police Officer 7 confirmed to the Scarman Tribunal that officers were briefed that if they were to return fire that they must have a proper target and to be sure of the target. He stated that safety was greatly emphasised and they were told they would be operating in a built up area and the danger to civilians was very strongly emphasised. He also confirmed in evidence that he was in possession of two gun belts with 250 rounds in each and every fifth round was a tracer round.
- 4.43. Police Officer 7 stated he heard incoming gunfire and described the attack on his Shorland by a man on Divis Street throwing a grenade. Upon the instruction of his Commander, Police Officer 7 returned fire in the direction of this man. He stated he fired two short bursts just as the man was rounding the corner of Divis Tower but did not strike the man. No further

shots were discharged. Police Officer 7 estimated that the shots travelled in the direction of '104' (likely 104 Divis Street). He accepted it was possible that some shots may also have struck the front of Divis Tower.

- 4.44. As the Shorland vehicles proceeded up Divis Street Police Officer 7 heard heavy bursts of machine gun fire, single shots and what he thought could have been an explosion, although not near his vehicle. He assumed that the gunfire came from Divis Flats and not from the other Shorland vehicles.
- 4.45. Police Officer 7's Shorland then returned to Dover Street. He described discharging further bursts of fire from his Browning machine gun, in the vicinity of St Comgall's School, later that night. In total, he described firing a maximum of seven rounds from the Browning machine gun in Conway Street, two short bursts at the man in Divis Street, and several sustained bursts later at St Comgall's School.
- 4.46. Police Officer 7 denied that any gunfire discharged by him that night could have struck St Brendan's Block, or caused damage to the maisonettes or the electricity house.
- 4.47. During his evidence, he indicated that he returned home on 15 August at about 10:00am and that he had not slept for two days before that, describing his sleep as *'just coming in bits and pieces'*.

Shorland Red 5

Police Officer 9 – Commander in Red 5

- 4.48. Police Officer 9 was the Commander of Red 5 from 10:00pm on 14 August 1969. His only experience of a Browning machine gun was during training. The gunner was Police Officer 10 and the driver was Police Officer 11. He

was instructed by Police Officer 12 to *'fire only when it was deemed really necessary and if fired on we were to fire for effect'*.⁴

- 4.49. At 1:00am on 15 August, while on Divis Street, Red 5 came under heavy attack with petrol bombs and stones. Police Officer 9 stated that he saw 'flashes' in the windows of St Comgall's School and heard gunfire from that location. Upon his instruction, Police Officer 10 returned fire towards the school with two short bursts of gunfire. Police Officer 9 stated that his Shorland also fired at a sniper at the top of Andrews Mill at 3:00am on 15 August. The Browning was not fired at any other time that night while Police Officer 9 was in charge. His Browning discharged 35 rounds on that duty. Police Officer 9 denied firing into the air that night and denied that any gunfire from his vehicle had been directed towards the flats.

Police Officer 10 – Gunner in 'Red 5'

- 4.50. In reporting to his authorities, Police Officer 10 mostly corroborated his Commander's account in relation to the return of gunfire towards the school. However, he also referred to another incident when his vehicle was directed to Conway Street at around 11:00pm on 14 August 1969. At the Falls Road end of Conway Street, they returned fire after being fired upon by automatic weapons. Police Officer 10 confirmed that he expended 35 rounds during that duty. He did not give evidence at the Scarman Tribunal and this report is the only account from this officer.

Shorland Red 6

Police Officer 12 – Commander in Red 6

- 4.51. Police Officer 12 was the Commander of Shorland 'Red 6'. The gunner was Police Officer 13 and the driver was Police Officer 14. Police Officer 12 stated that the gunners were told that the greatest care should be taken in

⁴ The Scarman Report defined *'Fire for effect'* as a euphemism for firing to injure or kill people.

the use of the Browning machine guns and that they were only to fire the weapon under the instructions of the person in charge of the vehicle. He stated that they were instructed that the Brownings were not to be used if women and children were in the vicinity of a riot zone and if possible only warning shots were to be fired. Instructions were also given to officers to conserve ammunition, as it was in limited supply and that if fired at, fire was to be returned for effect.

4.52. He convened with the other two Shorlands shortly after 1:00am on 15 August in Dover Street. He was instructed by Police Officer 2, *'only to fire if it was necessary and then only over the heads of the rioters'*. He also stated *'If fired upon I was to return the fire with effect'*. He relayed these instructions to the other Shorlands.

4.53. Upon moving out of Dover Street, the vehicles were met with rioters and were attacked with petrol bombs. Hearing the sound of gunfire and realising they were being attacked from the direction of St Comgall's School, Police Officer 12 ordered his gunner to return fire. On the return journey Police Officer 12 reported heavy gunfire which he believed was coming from the direction of the flats. He ordered Police Officer 13 not to return fire unless he could positively identify a target. At the same time, his vehicle was petrol bombed and caught fire on its nearside. Police Officer 12 described a further discharge of the Browning from his vehicle at 2:00am. The discharge of the Browning at 2:00am in the direction of St Comgall's School would not have accounted for the injuries to Patrick Rooney. Patrick was pronounced dead in hospital at 2:10am.

4.54. While in the vicinity of the flats Police Officer 12 heard a muffled explosion coming from behind his vehicle. He later learned that something had exploded under Police Officer 6's vehicle, Red 7.

4.55. Upon examination of his vehicle Police Officer 12 noted damage suggestive of gunfire from heavy automatic weapons. He confirmed that his gunner had expended 87 rounds from the Browning machine gun during

this duty. However, he denied that any shots fired from his vehicle's weapon, were fired at Divis Flats. However, he accepted it was possible that weapons mounted on the other vehicles could have been fired at this time.

- 4.56. Police Officer 12 confirmed that he had received no training in the use of the Browning machine gun and that his first duty in a Shorland vehicle was on 14 August. He had not observed a Browning machine gun used prior to that night. He also had no knowledge of the rate of fire of these weapons.

Police Officer 13 – Gunner Red 6

- 4.57. Police Officer 13 confirmed that his crew were on riot duty in the Hastings Street area. He stated that at 10:00pm on 14 August 1969 he was involved in dispersing a crowd of 500 rioters in the area of Hastings Street Police Station, and he discharged his weapon at this time. At 1:00am on 15 August 1969 it was reported that there was gunfire at the junction of Dover Street and Divis Street. On arrival at this location he was instructed by Police Officer 12 only to fire when he was instructed to do so. Police Officer 13 stated that as soon as his vehicle moved onto Divis Street they were attacked by rioters. He stated heavy automatic gunfire broke out from St Comgall's School. He was then instructed to return fire and discharged three short bursts at the school causing both the rioters to disperse and the firing from the school to stop. Police Officer 13 also stated that at 2:00am on 15 August 1969, at the same location, he was instructed to discharge bursts of gunfire above the heads of rioters. At 3:30am he again discharged his weapon towards the school and later in the area of Andrews Mill.

Police Officer 15 – Deputy Commissioner of Police for Belfast

- 4.58. Police Officer 15 was the Deputy Commissioner of Police for Belfast City. He was on duty at Hastings Street Police Station on the night of 14/15 August 1969. At the Scarman Tribunal, in respect of Patrick Rooney's death, he was asked if it had ever crossed his mind that Patrick Rooney's

death was due to *'foul play'*. He stated that he had often wondered about the circumstances of the death of Patrick Rooney and he stated that he *'was very sorry about it'*.

Forensic Evidence

Witnesses Q and Witness R

- 4.59. The Divis area was examined by Witness R, an Experimental Officer and Head of Ballistics with the Department of Home Office Forensic Science Laboratory in July and August 1969 on behalf of the RUC. The area was also examined by Witness Q, a scientist with the Department of Industrial and Forensic Science in September 1969, on behalf of the Scarman Tribunal.
- 4.60. These examinations confirmed that four bullets had penetrated 5 St Brendan's Path, the home address of Patrick Rooney. Having examined the damage, both experts were in agreement that the penetration of the bullets, and the subsequent fragmentation, suggested that the gunfire was high velocity.
- 4.61. One bullet entered through the ground floor window (bedroom 5), passing through plasterboard partition walls from front to rear. The bullet passed through the cloakroom, toilet, bathroom and kitchen leaving the premises through the rear kitchen window. A second bullet entered the property through a fanlight window above the front door, it passed through the bathroom and kitchen leaving the property through the rear kitchen wall. A third bullet entered the window of an upstairs bedroom (bedroom 3). It passed through the built in wardrobe, toilet, and into the doorframe of the built in wardrobe in bedroom 2. The fourth bullet entered through the window of the upstairs bedroom, passed through the bedroom and hall and entered bedroom 2 through the wall behind the door. Other properties were also similarly damaged with high velocity ammunition entering the front of the property and exiting through a rear wall without fragmenting.

- 4.62. However, the fragments of bullets recovered from both 5 St Brendan's Path and Patrick Rooney's post mortem, were not sufficient to identify the calibre of bullet or the type of weapon used in 1969.
- 4.63. A trajectory analysis was completed at the time. This indicated that the shots that struck the Rooney home were discharged from a point on Divis Street at the right hand corner of Boundary Street, and from a height which was consistent with a discharge from a weapon mounted on a vehicle. Witness Q and Witness R estimated that the weapon was probably 6-8 foot above ground level. In this case, the only weapons mounted on Police vehicles that night, were the Browning machine guns which were fitted to the Shorland vehicles.
- 4.64. There is no evidence that the Browning machine guns used on 14/15 August 1969 were forensically examined by police in an attempt to link them to the deaths of Patrick Rooney or Hugh McCabe.

Scarman Conclusion – Death of Patrick Rooney

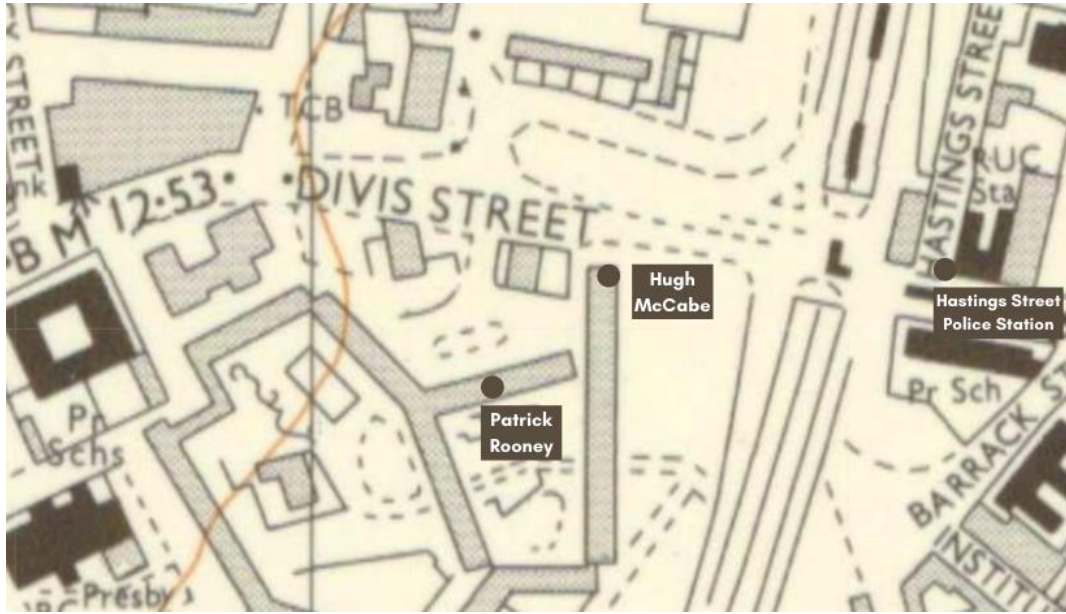
- 4.65. The Scarman Tribunal concluded that the fatal bullet that killed Patrick Rooney was discharged from a police Browning machine gun mounted on a Shorland vehicle. The Scarman report states '*...we are unable to justify the shooting from the Browning machine gun which we find was directed towards the flats and was responsible for the death of Patrick Rooney*'.

5.0

THE RUC ENQUIRIES, THE SCARMAN TRIBUNAL AND INQUEST – HUGH McCABE

- 5.1. The RUC conducted initial enquiries into the death of Hugh McCabe. The timeline of these enquiries is unclear although Police Officer 3 recorded a statement from an ambulance driver on 3 September 1969. Police Officer 3 referred to the circumstances of the death of Mr McCabe within his report.
- 5.2. Police Officer 3 identified two possible occurrences in his report. The first was that Mr McCabe had been shot by police returning fire from the roof of Hastings Street Police Station. The second was that Mr McCabe had been accidentally shot by a member of the public. Police Officer 3 stated, *'The reason for these theories is the position of the entry wound and exit wound which caused death, there being only one bullet wound in the body. The entry wound was on the right cheek and the exit wound below the left shoulder blade. This indicates that McCabe was either bent or in a prone position when shot from a near equal height or that he was standing when shot from above'*. However, the post mortem concluded that the fatal wound was consistent with a bullet fired from a high velocity rifle. This evidence supported the conclusion that an RUC officer fired the fatal shot rather than a member of the public.
- 5.3. Police Officer 3 stated *'locals in the Falls have decided not to receive the police or assist them in any way. However, with the assistance of the Special Investigation Branch of the military the facts have been explored as far as possible'*. Police Officer 3 also stated that *'there is no concrete evidence as to how McCabe sustained his injuries'*.

Map 2



(Source: PRONI website)

Post Mortem Examination

- 5.4. On 15 August 1969, a post mortem examination established that Hugh McCabe died as a result of injuries sustained from a single gunshot. The wounds sustained were consistent with the bullet having been discharged *'from a high velocity rifle fired at a range sufficient for the bullet to have settled into steady flight'*.

The Investigation conducted by Special Investigation Branch

- 5.5. On the 12 September 1969, the Army were notified of Hugh McCabe's death as he was a serving soldier at the time and it was requested that they assist in conducting an investigation. That is because the circumstances at the time made it difficult for the RUC to enter the area. The case was allocated to Witness D, a member of staff of the Army's Special Investigation Branch (SIB). Witness D attended the scene of the shooting and he met with the family's solicitor who provided him with statements

recorded from Mr McCabe's parents. These statements were consistent with the depositions presented at the Inquest. Witness D recorded further witness statements and compiled a report, all of which are noted as submitted to the RUC.

Witnesses

Mr John McCabe

- 5.6. Mr John McCabe had been at his son's home on the fourth floor of Whitehall Block on 14 August. On becoming aware of the disorder in the area, sometime after 10:30pm, he and his son, Hugh, left the flat and he observed a Shorland vehicle discharging its firearm as it travelled up Divis Street. He watched as his son pushed two women to safety, and he, John McCabe went to assist these two women. The last time he saw his son alive was as he walked around the corner of the balcony to tend to another injured person (believed to be Witness T). At this point John McCabe heard a burst of machine gun fire. He stated that he saw B Specials at the corner of Boundary Street some of whom were carrying rifles and submachine guns, and whom he said were firing indiscriminately into the residential area. Mr John McCabe also stated that he later saw two other Shorlands firing into the flats.
- 5.7. It was sometime in the early hours of the morning of 15 August that Hugh McCabe's family were informed of his death. In his account, Mr John McCabe stated that he was informed that his son had been shot at around 12:10am, and his body found on the fourth floor, just around the corner from his own flat. It is clear that Mr John McCabe believed that his son was killed shortly after they parted company. My investigation sought to establish both the movements of Hugh McCabe after he left his father and his location at the time of his death.

5.8. From witness evidence gathered in the course of the SIB investigation and for the Scarman Tribunal, it is clear that sometime after Hugh McCabe left his home on 14 August 1969, he was in the company of a number of individuals. These individuals were allegedly involved in launching attacks on police in Divis Street from the Whitehall Block. Witness evidence indicated that these individuals were located near to Flats 1 and 3 of Whitehall Row.

5.9. The report of Witness D described the layout of this area as follows: *'Tpr McCabe's home is on the top floor and initial information indicated that he had been shot in the area of flats 1 – 3, Whitehall Row, at the opposite end to where his home is situated'*. He then added: *'A flight of steps leads from this part of Whitehall Row to the lower levels of Divis Court end, at the head of these steps, a skylight offers access to the roof. To the left of the head of stairs there is an opening in the wall, partly secured with wooden laths, from which Divis St and Bath Place can be seen.'* Evidence was that the roof of the block was around 10 feet higher than the stairwell roof.



Figure 2: Photograph of Whitehall Block (Source: Scarman Tribunal papers, Deputy Keeper of the Records, PRONI)

Witness B

- 5.10. Witness B lived on the fourth floor of the Whitehall Block and stated that on 14 August, at around 11:00pm, he heard voices outside his home. When he went out, he saw six or seven men gathered there and noticed petrol bombs constructed from milk bottles on the ground. He did not see any of the men with firearms. These men then went to the area of the stairwell.
- 5.11. At around 1:00am, Witness B stated he heard shouts of '*he's shot, he's dead*'. He then went outside and saw Hugh McCabe being lowered down onto the stairwell from an access point above. Mr McCabe was taken into Witness B's flat where first aid was attempted. Witness F attended and administered the Last Rites to Mr McCabe.

Witness F, a priest

- 5.12. He estimated that he was about 30 yards away from Hugh McCabe's position when he was told that Hugh McCabe had been shot. He stated that the roof hatch was open when he came upon Hugh McCabe, who was located directly below the access to the roof. He stated '*I believe apparently he had been on the roof. I certainly did not see him on the roof though*'. He stated, '*the attack on those buildings was unnecessary and uncalled for, and in the end it was innocent people who fell victim in a situation which they had in no way engineered*'.

Witness S

- 5.13. Witness S was on the fourth floor of the Whitehall Block where petrol bombs were being thrown at the Shorland vehicles. Witness S described the Shorlands as directing indiscriminate machine gun fire at the flats.

Sometime after midnight, Witness S saw Mr Hugh McCabe tending to Witness T who had been injured by the machine gun fire. Witness S also stated that while she was on the fourth floor balcony there was further shooting from Divis Street and Mr McCabe pushed her to the ground for her safety. She stated that Mr McCabe then fell on top of her and she realised he had been shot and was bleeding heavily from a wound in his neck.

Witness T

- 5.14. Witness T was among the group of men on the fourth floor of the Whitehall Block. He described indiscriminate firing from police armoured vehicles towards the flats. Witness T stated that Mr McCabe and others were throwing petrol bombs at police. He described during this attack with petrol bombs there was a burst of machine gun fire which struck him and Mr McCabe, whereupon they both fell to the ground. Both Witness S and Witness T stated that Hugh McCabe fell on top of them when he was shot. Witness T stated that the group were only involved in throwing petrol bombs and that 'no firearms were used at all'.

Witness U

- 5.15. Witness U was also with a group on the fourth floor balcony and roof. He identified Mr McCabe as being present in this group and also describes him as being on the roof of the stairwell. He stated that the group were throwing missiles at police causing them to retreat for a short period. Shortly thereafter he saw '*whippet*' vehicles driving up and down in front of the flats and firing indiscriminately. Witness U assisted in taking Mr McCabe from the stairwell roof to Witness B's flat after he had been shot. He stated that Mr McCabe had not been on the roof of the Whitehall Block and stated no-one had a gun.

- 5.16. There were a significant number of other witnesses who all gave similar accounts of being present on the night of 14/15 August 1969 and throwing objects at police on the ground from the fourth floor balcony or roof. They denied that there was any gunfire from them or the group on the fourth floor balcony or roof. They saw or heard gunfire from the police vehicles and were aware that Mr McCabe had been shot.

Police Witnesses

- 5.17. A decision was made by police on the night of 14/15 August 1969 to deploy police marksmen to the roof of Hastings Street Police Station. This was to provide some protection to the officers on the ground and to the station. It is believed that the shot that fatally wounded Mr McCabe was fired from the roof of Hastings Street Police Station.

Police Officer 16

- 5.18. Police Officer 16 produced a report for the Scarman Tribunal. In this report he confirmed his belief that Hastings Street Police Station was attacked by automatic gunfire from Divis Towers and the maisonettes at 1:00am. The gunfire was returned by officers posted on the roof of the station. During his evidence to the Tribunal, Police Officer 16 stated that he believed he would have been consulted before the marksmen were put on the roof.
- 5.19. Police Officer 16 was aware of gunfire. He heard machine gun fire which he believed came from a Shorland vehicle. He stated that officers reported being fired upon from the flats. In addition to hearing gunfire the officer also stated that he saw petrol bombs being thrown from the roof of the maisonettes (believed to be referring to the Whitehall Block). He also saw flashes and heard shots, which he believed could have been related to two persons firing weapons, or one person shifting position as he fired.

- 5.20. Police Officer 16 was involved in training others in the use of Browning machine guns between 1964 and the beginning of December 1968. He stated that the training was focused on safety. In his evidence, he stated that he assumed that the Browning machine gun fire was being directed towards gunmen at the top of the maisonettes (again believed to be referring to the Whitehall Block) and he felt that this would be justified.
- 5.21. Police Officer 16 also confirmed that he would *'be apprehensive'* about firing a Browning machine gun from a moving Shorland vehicle stating: *'I would not agree with the guns being fired with the vehicle moving – not unless you were under ambush conditions.'* He stated that the minimum number of shots which could be discharged accurately from a Browning machine gun was *'two to three'*.

Police Officer 15 – Deputy Commissioner of Police

- 5.22. Police Officer 15, the Deputy Commissioner of Police for Belfast, stated that following significant violence the USC had been armed on 13 August and were directed to patrol the Shankill Road but not to enter the Falls Road⁵. On 14 August, while at Hastings Street Police Station, he described leaving the station after hearing automatic gunfire and observing *'flashes coming from the roof of the maisonettes'* which he believed to have been discharged by someone on the roof of the Whitehall Block. He stated the gunfire which he described as *'bursts'* lasted for 20 minutes. Although he did not directly give the order to return fire, he believed that fire was returned by one police officer using a rifle. Police Officer 15 stated that he believed the firing from the roof of the maisonettes was being directed towards Hastings Street Police Station, and at police on duty in Divis Street.
- 5.23. Police Officer 15 heard *'heavy gunfire'* which he stated sounded like that from a Browning machine gun on a Shorland vehicle.

⁵ The Scarman Tribunal recorded at 3.13: 'On 13 August the Prime Minister indicated in a broadcast that USC would not be used for riot control but on the 14th an *instruction was issued to the effect that they could be so used, but equipped 'where possible' with batons. It was not until the 15th that USC was expressly instructed to report for duty with firearms'*.

5.24. When providing his statement to the Scarman Tribunal, Police Officer 15's attention was drawn to an entry in the control room log book from the Commissioner's Headquarters. This message, which came from him and was made at 1:42am on 15 August 1969, stated:

'Firing at Hastings Street Station – Believed to be a Shorland – Lights are flickering at Hastings Street'.

Police Officer 15 believed that this entry referred to the first burst of automatic fire which he believed had come from the Whitehall Block in Divis Street. He denied giving any orders or directions regarding the return of fire by police that night. He was also unaware of any similar orders being given by other senior officers.

5.25. He confirmed that there was no investigation or inquiry regarding the firing of the Browning machine guns from the Shorlands on that date, due to the Army moving in and creating a 'no-go area'. Police Officer 15 stated that he was not directed to initiate a formal investigation. A number of detectives together with the military police, made a number of preliminary enquiries. However, a full investigation did not take place. He stated, *'It is sad it has been a pattern throughout the rioting that the innocent always suffer'.*

5.26. The Deputy Commissioner (Police Officer 15) was questioned regarding his knowledge of Browning machine guns and the damage caused to the flats. He accepted that the greatest care should be taken when using these weapons.

5.27. During his evidence to the Scarman Tribunal he was referred to the RUC service regulations regarding the use of firearms and ammunition. He stated, *'that if, in such circumstances, the police themselves come under fire from persons in the riotous assembly, the fire may immediately be returned notwithstanding the provisions of the Regulations in question.'* He

believed that this scenario applied to conditions on the Falls Road on 14 August 1969.

- 5.28. The Deputy Commissioner also provided evidence to the Scarman Tribunal regarding intelligence available on 14 August 1969. He gave evidence to the Tribunal that police had intelligence that the IRA were moving across the border. In response, on the morning of 14 August, Shorlands were fitted with Browning machine guns. He confirmed that this would have been a policy decision negotiated between the Commissioner and Headquarters. This decision making will be discussed later in this public statement.

The marksmen on the roof of Hastings Street Police Station

Police Officer 17

- 5.29. Police Officer 17 was one of two police marksmen who took up position on the roof of Hastings Street Police Station at 9:00pm on 14 August 1969. At this time, he was accompanied by another marksman, Police Officer 18 and also Police Officer 19, who was acting as a spotter⁶. In a report dated 26 August 1969, Police Officer 17 outlined attacks on the police station by a large number of youths armed with petrol bombs, stones and other missiles.
- 5.30. He described observing a group of people positioned on the flat roof, at the top of the stairway, at the end of the Whitehall Block. This group were throwing petrol bombs and other missiles at police officers and vehicles in Divis Street. At approximately 12:30am Police Officer 17 saw people climbing on to the roof of the stairwell, sometime later he heard gunfire and saw what he described as '*muzzle flashes*' coming from the roof immediately above the stairwell. He described seeing a man with what appeared to be an automatic rifle who was shooting down at police in Divis Street. Police Officer 17 heard '*the noise of bullets whistling past the station*

⁶ A spotter would assist the marksman by observing and identifying targets and establishing if a target had been missed or hit.

roof'. He estimated that this noise was close to where he and the other officers were positioned. Certain that the man was firing, Police Officer 17 returned fire with his .303 rifle. It was confirmed that Police Officer 17 discharged nine rounds of ammunition on the 14/15 August 1969. He did not give evidence before the Scarman Tribunal.

Police Officer 18

- 5.31. Police Officer 18, deceased, witnessed three separate attacks on Hastings Street Police Station on 14 August, following his deployment to the roof of the station at 9:00pm. He also witnessed police officers on foot in Divis Street come under attack from those at the top of the stairwell of the Whitehall Block. In his report, Police Officer 18 stated that at 1:00am he *'saw the muzzle flash of an automatic weapon being fired by some person in the group on top of the maisonettes. This fire was directed towards police at the junction of Divis St/Durham St and in Divis Street just above and below the junction'*. Police Officer 18 used his *'pocketphone'* to notify Control that automatic fire was being directed from the maisonettes towards Hastings Street Police Station.
- 5.32. Following instructions, Police Officer 18 discharged his 7.62 rifle in the direction of the gunman. A second burst of gunfire, coming from the automatic weapon on the roof of the maisonettes, gave rise to what he referred to as a *'return of fire from his party'*. He stated that the activity on the roof of the maisonettes then stopped. During this period, he discharged 12 rounds from his rifle. Although Police Officer 18 provided a report detailing this, he did not give evidence to the Scarman Tribunal.
- 5.33. My investigation was not able to establish the instructions given to Police Officer 18. An independently instructed forensic examination commissioned by my office concluded that the bullet wound sustained by Hugh McCabe was likely caused by a 7.62mm bullet. However, the .303 rifle could not be eliminated as having discharged the fatal shot. In my view

it is more likely that Police Officer 18 was responsible for the shot which killed Hugh McCabe. However, the shots discharged by Police Officer 17 cannot be discounted as being responsible for the death of Mr McCabe.

Police Officer 19

5.34. Police Officer 19, deceased, was the spotter on the roof of Hastings Street Police Station on 14 August and was armed with a police issue .38 revolver. He had been observing the situation from the roof and at 9:00pm was joined by Police Officer 17 and Police Officer 18. This officer stated that the police station was attacked a number of times and estimated 100 people to be involved at one stage. He witnessed police in Divis Street being attacked with petrol bombs and missiles thrown from the maisonettes. Police Officer 19 observed red tracer fire coming from Divis Street and travelling in the direction of Donegall Pass⁷ and described seeing '*muzzle flashes*' from the roof of the Block but not the stairwell roof. Police Officer 19 stated that one of the marksmen contacted Control and confirmed that he had witnessed muzzle flashes and that he intended to return fire. Shortly after there were further muzzle flashes and Police Officer 17 and Police Officer 18 opened fire. Police Officer 19 described the gunfire directed from the maisonettes as lasting about five minutes. He stated "*Gunfire appeared to be everywhere....at that stage, I have great difficulty in remembering whether it was prior or after that that there were muzzle flashes or an automatic weapon from the top of the maisonettes*".

5.35. Police Officer 19 confirmed, in evidence to the Tribunal, that he considered the risk of injury to innocent people should police weapons be discharged by police marksmen. While giving his evidence he was made aware that the forensic examination of the flats indicated evidence of ballistic damage. He accepted that even if the marksmen were skilled, firing from the station roof at persons on the roof of the maisonettes would have risked the health and safety of the residents in the flats below. Police Officer 19, when asked

⁷ The Scarman Tribunal established that the only RUC weapons which was loaded with Tracer bullets (in this instance they produced visible red trails when discharged) on 14 August were the Browning machine guns which were mounted on the Shorland vehicles.

the question, confirmed that he did not consider that the lighting of petrol bombs could have been mistaken for muzzle flashes.

- 5.36. When questioned by the Scarman Tribunal, Police Officer 19 stated that he did not believe that Hastings Street Police Station had been fired upon that night. However, he had no doubt that his colleagues were under the impression that the station was under fire.

Police Officer 20

- 5.37. Police Officer 20, deceased, gave evidence to the Scarman Tribunal. He was positioned on the roof of Millfield Technical College on the night of 14 August and the early morning of 15 August 1969.

At the time this officer was positioned on the roof of the College with four Constables. From this position, he observed 12 individuals on the roof of Whitehall Block and on the stairwell roof. He identified petrol bombs being thrown from these locations. Although he did not observe any gunfire, he heard gunfire, which he described as both single shot and automatic. He described these as coming from the direction of Whitehall Block. This officer denied that police had discharged firearms from the College that night. He also denied that he and the officers accompanying him were in possession of rifles. The Scarman Tribunal accepted the evidence of Police Officer 20 unreservedly in respect of the issue as to whether there was gunfire from the College. The Tribunal found there was no gunfire from the College.

- 5.38. Other police officers reported hearing and/or observing gunfire coming from the area of Divis Flats.

Forensic Evidence

- 5.39. Between August and September 1969 marks and damage caused to the Divis Flats complex were examined by two ballistic experts, Witnesses Q and R. The results of these examinations concluded that the weapons which caused the damage to the flats were a .30 Browning machine gun, a Lee Enfield .303 rifle and a 7.62 SLR.
- 5.40. There is no evidence that the bullet that struck Mr McCabe was recovered at the time. Therefore his death could not have been conclusively linked to a particular weapon. However, the Scarman Tribunal concluded that damage to the east face of the Whitehall Block (Divis Street end, where Mr McCabe was believed present when killed) was caused by high velocity gunfire. The Scarman Tribunal stated: *'The two ballistics experts could not agree whether or not the five bullet holes found indicated high velocity fire. In the absence of evidence of any other type of fire at this building, the Tribunal finds it was high velocity'*.

Scarman Tribunal Conclusion – The Death of Hugh McCabe

- 5.41. The Scarman Tribunal concluded that Hugh McCabe was killed by a bullet fired by a police marksman located on the roof of Hastings Street Police Station. Those officers on the station roof reported gunfire coming from the roof of the Whitehall Block and stated that gunfire was returned.

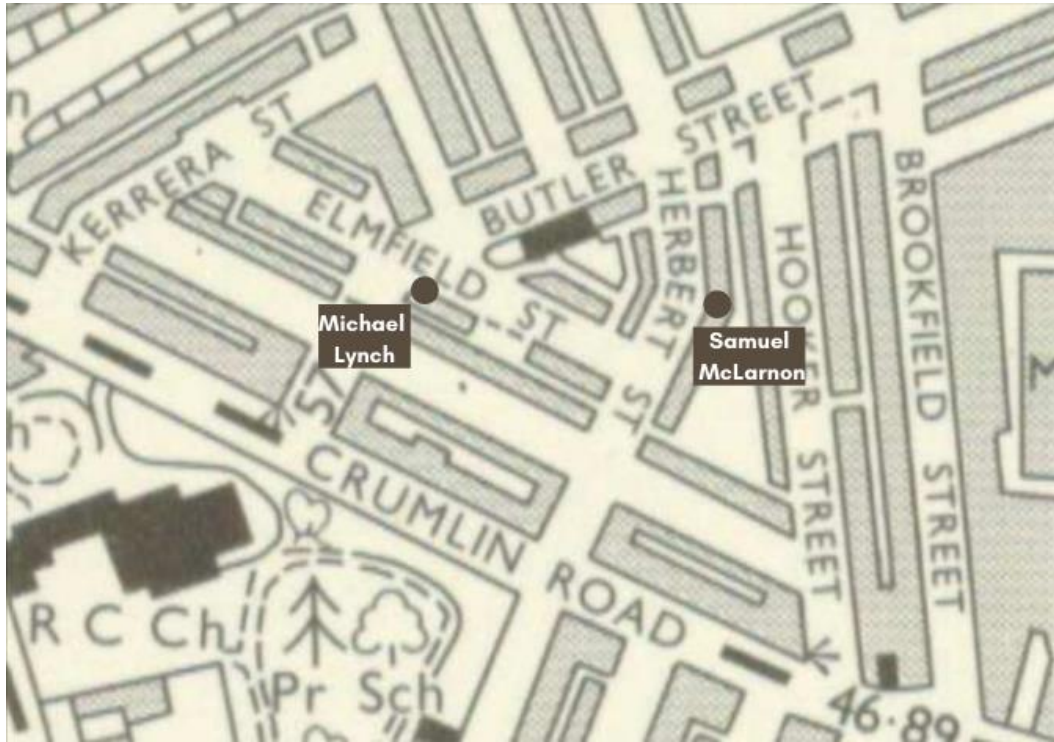
6.0

THE RUC ENQUIRIES, THE SCARMAN TRIBUNAL AND INQUEST – SAMUEL McLARNON

- 6.1. My investigation has been unable to recover original documentation relating to investigations conducted by the RUC in 1969 in relation to Samuel McLarnon's death. A file is held by Public Records Office for Northern Ireland (PRONI) titled '*File relating to disturbances in Belfast C District during August 1969*'. Section 5 of this file relates to the death of Samuel McLarnon. Within this file is a lengthy statement prepared by Police Officer 21. The officer stated that '*enquiries in this case, as in the case of Michael Lynch could not be fully carried out as again relations are reluctant to make statements to the police and the areas in which possible witnesses reside is inaccessible to police*'. The material examined by my investigators is archived at PRONI and is currently closed to the public. This includes transcripts of witness evidence, exhibits available to the Scarman Tribunal and police officer duty statements.
- 6.2. There were numerous witnesses who provided evidence that police officers were discharging weapons in Herbert Street at the time of Mr McLarnon's death. However, there are no witnesses who describe any police officer directing gunfire towards the McLarnon home at that time.

The following map illustrates the location of Mr McLarnon's home.

Map 3



(Source: PRONI website)

Post Mortem Examination

- 6.3. On 15 August 1969 a post mortem examination established that Samuel McLarnon died as a result of a single gunshot wound to the head. This was later identified to have been discharged from a 9mm weapon.

Witnesses

Mrs Ann McLarnon

- 6.4. Mrs Ann McLarnon provided an account to her solicitor in October 1969. She stated that following disorder in the previous days in Belfast, her husband, Sammy, had fixed a metal grille to his ground floor sitting room window. Mrs McLarnon and her husband were aware of large scale public disorder that was taking place in Herbert Street and the surrounding area.

Mr McLarnon remained indoors for most of the evening with his wife and children. During the latter part of the evening, as the scale of the disorder intensified, both Mr McLarnon and his wife heard gunfire and observed the rioting from their window. They were aware of a fire further up the street in a local shop. Mr McLarnon went to help others fight the fire at the shop before returning home shortly before 12:30am. Mrs McLarnon described her home being struck by gunfire and the window of their living room being broken. She stated her husband was standing by the window when she heard further gunfire and he fell to the ground. At first she thought he was taking cover from the gunfire but, when he did not answer her calls, she realised he had been shot.

Witnesses V, W, and X

- 6.5. Witness V was standing by Mr McLarnon's house when shots were fired from the direction of the Crumlin Road. He witnessed another man standing nearby who sustained a gunshot wound to his ear. He entered the McLarnon home. A short time later Witness V heard that Mr McLarnon was dead. This witness stated that police were shooting, and that this continued after Mr McLarnon had been shot.
- 6.6. Witness W was present in Herbert Street on the 14/15 August 1969. He described travelling to the McLarnon home and having to throw himself to the ground because of gunfire coming from the direction of Crumlin Road.
- 6.7. Witness X lived on Herbert Street and stated that she heard rapid gunfire in the area. She saw neighbours entering the McLarnon home in an attempt to remove Mr McLarnon's body and states that these men were being shot at from the direction of the Crumlin Road. Witness X stated that he saw two police officers discharging firearms in Herbert Street. However, this was after Mr McLarnon had been shot.

Witness Y

- 6.8. Witness Y stated that when on Butler Street, he saw an armoured police vehicle discharge a machine gun at a crowd of men at the bottom of Butler Street, he took shelter in an alleyway opposite Mr McLarnon's house. He noted that the shooting lasted for about 30 seconds. Afterwards he saw Mrs McLarnon come out from her house and say that someone had been shot. As the armoured car reversed away, this witness entered the McLarnon home, where he saw Mr McLarnon on the floor. He was clearly seriously injured or dead. Witness Y then took Mrs McLarnon to a next door neighbour.

Witness Z

- 6.9. Witness Z, a resident of Herbert Street, stated that, about 10:00pm on 14 August, a "*crowd of Protestant civilians invaded Herbert Street*" and set fire to a local shop. Witness Z stated that these individuals then joined with police officers to force the Catholic crowd to retreat. Witness Z, Samuel McLarnon and others tended to the fire to extinguish it after which they returned to their respective homes. Sometime later, Witness Z looked out of his window and saw an armoured car advancing up the street. He went upstairs and, as he did so, he heard the sound of gunfire and the ricochet of bullets. He then heard Mrs McLarnon screaming. He went into the McLarnon home and saw that Samuel McLarnon was dead. He heard shouting from outside, to the effect that, '*there will be a lot more of you fenian bastards dead*'. Another witness also detailed hearing similar words spoken by police at the top of the street.

Witness AA

- 6.10. Witness AA saw a crowd of about 60 '*extremists*' come into Herbert Street from Crumlin Road who began to set fire to Catholic houses in Crumlin

Road and Herbert Street. He stated that he also saw a number of 'B' Specials enter the street. When the civilians and 'B' Specials eventually left the street, the witness saw Mr McLarnon, with others, attempting to extinguish fires. Thereafter, he heard shots being fired into Herbert Street from the direction of Crumlin Road, with some of these shots striking houses. Witness AA then saw Mr McLarnon run up the street shouting "*they are shooting*". Mr McLarnon ran into his house and shut the door.

- 6.11. Witness AA went into his house and remained in his kitchen for about 10 minutes, during which time he heard rapid gunfire, which he thought was from a machine gun. He then heard a scream and went to his front door and learned that Mr McLarnon had been shot. He went into the McLarnon house and saw Samuel McLarnon, who appeared to be deceased.

Police Witnesses

Police Officer 22 - District Inspector

- 6.12. The District Inspector, Police Officer 22, stated that he was responsible for policing on the ground on the night of 14/15 August 1969 and had deployed the 'USC' in a crowd containment role on the Disraeli Street side of Crumlin Road, Ardoyne. This area consisted of predominantly Protestant residents. He stated that none of the USC crossed over onto the Herbert Street side. Police Officer 22 confirmed that there were four Sterling submachine guns issued at this time. These were allocated to vehicles and not individual officers. He stated that at 1:00am they came under fire from Herbert Street which forced him to take cover behind a burning vehicle. Police Officer 22 stated that he saw two police officers returning fire into Herbert Street from a kneeling position. He denied that police were the only persons discharging weapons on the night.
- 6.13. When Police Officer 22 was asked if he knew the source of the shot that killed Mr McLarnon he could not answer this question because there was

so much gunfire at the time in the area. He accepted that there had been no attempt to compare the bullet recovered at Mr McLarnon's post mortem examination to police weapons. His rationale for the decision not to compare the weapons was the result would have been inconclusive on the basis that others may have had Sterling submachine guns. He stated a resident of Chatham Street could have fired the shot that struck Mr McLarnon and he was not satisfied that the source was a police weapon.

Police Officers who discharged Sterling submachine guns

- 6.14. My investigation has established that seven officers discharged Sterling 9mm submachine guns in the Ardoyne area, and specifically in the Herbert Street, Hooker Street and Butler Street areas on 14 and 15 August 1969. These submachine guns were not issued to individual officers. The weapons were allocated to vehicles. The accounts from the police officers who discharged the Sterling submachine guns are set out below in this public statement.

Police Officer 23

- 6.15. Police Officer 23 fired eight shots from a Sterling submachine gun, initially on the instructions of his Head Constable. The officer fired over the heads of the crowd in Butler Street. However, at 11:00pm on 14 August, as the crowd continued to attack with guns and petrol bombs, Police Officer 23 was instructed to *'fire for effect'*. There was no evidence that this officer further discharged his weapon in the early hours of 15 August when Mr McLarnon was shot.

Police Officer 24

- 6.16. Police Officer 24 also discharged his weapon on the instruction of the Head Constable. At 11:30pm on 14 August 1969 he fired five shots from a Sterling submachine gun in the Hooker Street area. My investigation has

found no evidence that this officer further discharged his weapon at the time of Mr McLarnon's death.

Police Officer 25 – Head Constable

6.17. Head Constable, Police Officer 25, discharged three shots at bus tyres at the Ardoyne bus depot to avoid buses being hijacked and used as barriers. He also stated that at approximately 11:00pm on 14 August he discharged a further eight shots in the Hooker Street/Crumlin Road area. He stated that at this time his vehicle was attacked by automatic gunfire coming from the direction of Hooker Street. The vehicle was hit several times and he sustained an injury to his ear from a bullet. My investigation has found no evidence that this officer further discharged his weapon at the time of Mr McLarnon's death.

6.18. Police Officer 25 also stated that he saw police officers firing into Herbert Street. He stated that he saw two lines of fire, one from the corner of Chatham Street and the other from railings in Chief Street. Police Officer 25 stated that the shooting was controlled at a target. When challenged during his evidence to the Tribunal, he denied that the police gunfire was indiscriminate.

Police Officer 26

6.19. Police Officer 26 outlined two serious rioting events. The first in Butler Street/Hooker Street was when officers were attacked by a crowd of 100 to 150 people. He and others were instructed to fire over the heads of the crowd, which they did and the attack from the crowd stopped briefly. However, the crowd attacked the officers again and on this occasion, the Head Constable ordered the officers to fire for effect (when under attack).

- 6.20. Police Officer 26 fired four shots from his .38 police issued weapon towards where he saw flashes of gunfire. The time of this event would have been approximately 11:00pm/11:30pm, on 14 August 1969.
- 6.21. Police Officer 26 also discharged a Sterling submachine gun at approximately 1:10am on 15 August when he discharged a short burst of gunfire over the heads of an advancing crowd in Herbert Street. He stated officers came under attack from gunfire and petrol bombs at this time. This is partially corroborated by Police Officer 27 (outlined below). Police Officer 26 also stated that he fired shots into an alleyway from where gunmen continued firing. This appears to be the same 'entry' which Police Officer 27 describes as being Chatham Street. Police Officer 26 fired 20 rounds in total from the Sterling submachine gun on 14/15 August.

Police Officer 27

- 6.22. Police Officer 27, deceased, stated that at about 1:00am a few shots were fired up Herbert Street from the direction of Butler Street, he did not see flashes but heard the shots. He stated that *'by the light of two houses which were burning in Herbert Street I saw a mob of about 150-200 coming up the street towards the Crumlin Road. This mob was shouting, throwing stones and petrol bombs'*. He stated at this stage he heard shots ricochet from the front of the armoured vehicle which appeared to be from an automatic weapon or other small arms. He stated Police Officer 26 discharged a Sterling submachine gun into the air which immediately dispersed the crowd. However, the gunman continued to fire from an entry at the rear of Chatham Street. At around 1:00am, Police Officer 27 fired four or five short bursts from a Sterling submachine gun emptying the magazine of its 20 rounds into the entry where the crowd were firing from. Police Officer 27 was of the opinion that there was a Thompson machine gun, one or two rifles and also a number of revolvers being fired at police by individuals in this entry.

Police Officer 28

- 6.23. Police Officer 28, deceased, was on duty in Hooker Street at around 1:30am on 15 August 1969. He stated that he was told there was a sniper shooting from a house on the left hand side of Herbert Street towards the Crumlin Road. The officer stated that he was given a Sterling submachine gun and instructed to try to stop the sniper from shooting onto the Crumlin Road. The officer discharged 15 shots at the sniper from the corner of the street. My investigation was unable to establish who provided the officer with the weapon and the instructions to stop the sniper. My investigation was unable to find evidence of a description of the house from which shots were fired at police.
- 6.24. Police Officer 28 did not provide a description of the sniper and did not give evidence to the Scarman Tribunal. The above brief account was provided in a report format to the Inquiry.

Police Officer 29

- 6.25. Police Officer 29, deceased, attended the Disraeli Street area at 10:30pm on 14 August. He patrolled the area in an armoured vehicle. He described members of the public throwing petrol bombs at the Edenderry Inn and at the houses in the front of the Crumlin Road. His vehicle was subjected to a heavy barrage of stones, bottles and petrol bombs in Hooker Street. He remained within the armoured vehicle at this location until police on foot retreated to the Crumlin Road.
- 6.26. Police Officer 29 stated that he was directed by Police Officer 22 to patrol the Crumlin Road in the armoured vehicle. When passing Butler Street he

saw police on foot being attacked with petrol bombs and stones. Police Officer 29 drove to Butler Street and the crowd then dispersed.

- 6.27. When Police Officer 29 got out of his vehicle in Butler Street he heard several shots being fired towards police. He saw the flashes of these shots from the corner of Butler Street and Elmfield Street. Police Officer 29 took a Sterling submachine gun from his vehicle and returned fire in the direction of the person firing towards police. The officer did not provide a time, but from his description of events, it occurred at approximately 1:00am on 15 August 1969.

Forensic Evidence

- 6.28. On 18 August 1969, forensic expert Witness R, examined the bullet which struck Mr McLarnon. He determined that it was a 9mm calibre which could have been discharged from '*any number of self-loading pistols or sub-machine guns*'. A handwritten note states '*the bullet is of the type used in Sten or Sterling sub machine guns as issued to the police*'. He further stated that the bullet was partly flattened at the nose which indicated the possibility of a ricochet.
- 6.29. Samuel McLarnon's home was examined by this expert in September 1969. Three bullet holes were observed in the front downstairs living room window. His report notes the 'Line of Fire' as '*diagonally from the corner of Chatham Street and from the Crumlin Road. Iron rails at the corner of Chief Street*'.

Scarman Tribunal Conclusion – The death of Samuel McLarnon

- 6.30. The Scarman Tribunal found that Samuel McLarnon was fatally wounded by police gunfire directed in Herbert Street from the direction of Crumlin Road. The Tribunal concluded that '*the fatal bullet was a 9mm copper jacketed pistol bullet of the type fired by a Sterling or Sten submachine or*

Luger pistol'. One report submitted to the Tribunal stated that the bullet was partly flattened at the nose, indicating the possibility of ricochet. The Tribunal found that Mr McLarnon's home had sustained bullet damage as had others in the street. The Tribunal concluded that '*clearly police shooting in the street was for a time heavy; but the police were fired on first*'.

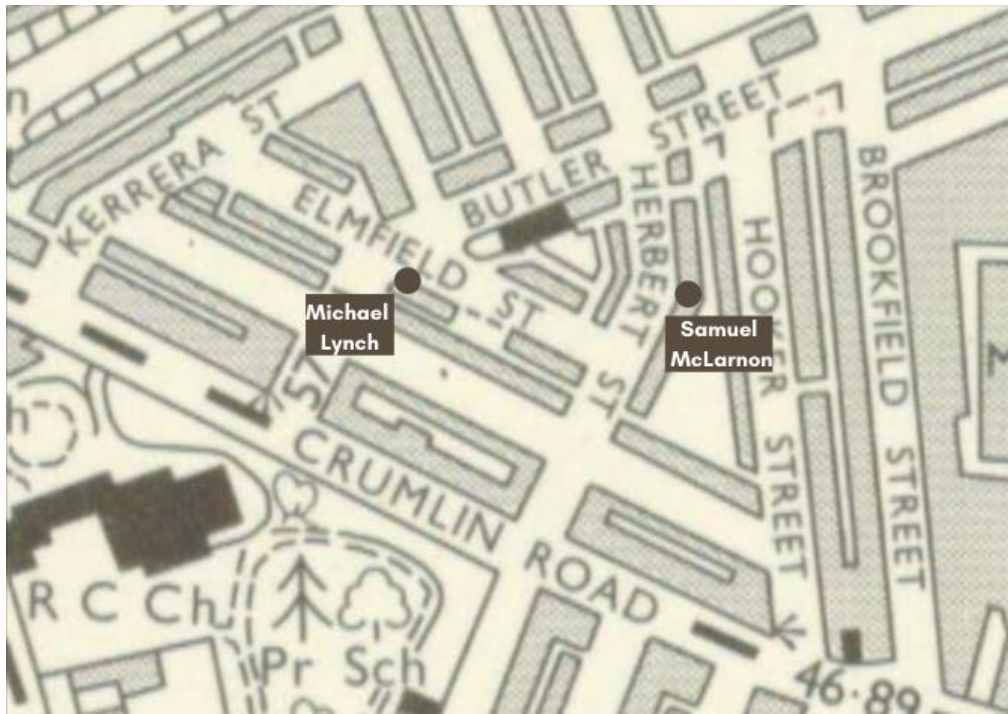
7.0

THE RUC ENQUIRIES, THE SCARMAN TRIBUNAL AND INQUEST – MICHAEL LYNCH

- 7.1. My investigators were unable to recover original RUC documentation relating to enquiries into Michael Lynch's death, conducted by the RUC in 1969. However, the Inquest file was recovered. This contained depositions of witnesses and material that was archived at PRONI. The PRONI material includes transcripts of the witness evidence and exhibits that had been forwarded to the Scarman Tribunal.
- 7.2. A report by Police Officer 21 stated that at approximately 7:00pm on 15 August 1969 a communication was received at Tennent Street Police Station requesting that a police officer attend the home of Mr Lynch to inform his parents of his death. Circumstances at the time did not permit this message to be delivered.
- 7.3. Despite efforts by the RUC through clergy and a local Member of Parliament, the Lynch family declined to engage with the RUC following Mr Lynch's death, and declined to be interviewed or make statements concerning their son's death.
- 7.4. Information obtained from a local Catholic curate by police indicates that Mr Lynch was shot at approximately 2:00am on 15 August 1969. However witness accounts dispute this assertion.

The following map illustrates the location where Mr Lynch was shot, based on the available evidence.

Map 4



Source: PRONI website

Post Mortem Examination

- 7.5. On 17 August 1969, a post mortem examination established that Michael Lynch died as a result of a single gunshot wound which damaged an artery of his heart eventually leading to his death. It was established that the wound was consistent with wounding from behind by a bullet of medium or high velocity fired at more than short range.

Witnesses

Witness BB

- 7.6. Witness BB was with Mr Lynch. He stated that he saw a group comprised of police officers and members of the public enter Butler Street. He stated they began smashing windows and throwing petrol bombs. He also heard gunfire which he believed was coming from the grounds of a

church on the Crumlin Road. Witness BB stated that between 12:15am and 12:30am he and Mr Lynch joined other persons who were crossing Butler Street from Lower Elmfield Street. He stated that after Mr Lynch had ran a few paces he was struck by gunfire. Witness BB ran on believing Mr Lynch was getting to his feet. He next saw Mr Lynch later that morning when he was put into a car to be taken to hospital.

Witness CC

- 7.7. Witness CC assisted another woman who was treating Witness FF who had sustained gunshot wounds that night. While she was tending to Witness FF, Michael Lynch was brought to the house and she identified that he had sustained a gunshot wound to his stomach.

Witness DD

- 7.8. Witness DD described an incursion by police officers, 'B' Specials, and civilians into Butler Street. She stated they had followed an armoured police vehicle which then began discharging weapons. Local residents attempted to repel them with weapons, missiles and petrol bombs. The armoured vehicle was set on fire and then withdrew. The crowd were driven back to the Crumlin Road whereupon they opened fire on the residents of Butler Street. Witness DD stated that Michael Lynch had been taken to her house before being transported to hospital in a car. Witness DD stated a total of eight people were treated in local houses for gunshot wounds. She had been told that Michael Lynch had been shot as he tried to cross Butler Street.

Witness EE

- 7.9. Witness EE also described battles in the area between police together with Protestant civilians against local residents. These culminated in gunshots which she described as sounding like a machine gun. Witness

EE had been told that Michael Lynch had been shot from the chapel grounds and she estimated the time to have been between midnight and 1:00am on 15 August 1969.

Witness FF

- 7.10. In his statement Witness FF said he was at home in bed on Thursday 14 August 1969 until between 11:30pm and midnight. He couldn't sleep because of the noise in the street and went out to see what was happening. He went up to a crowd standing at a chip shop at the corner of Elmfield Street and Butler Street. The crowd of about 30 men and youths were involved in rioting which included shouting and throwing stones, bottles and petrol bombs.
- 7.11. He heard banging which he believed was from the crowd in front of him shooting out onto the Crumlin Road. Witness FF stated there was a 'jeep' on the Crumlin Road in the mouth of Butler Street sitting in the middle of the Crumlin Road. This 'jeep' started to move off down the Crumlin Road and the crowd around him ran down Butler Street. He stated the crowd split up every way and he was left standing at the corner of Chatham Street/Butler Street. He said the shooting was coming into Butler Street from the Crumlin Road at this stage and he saw the sparks on the ground going down Butler Street. He stood for about three minutes and the banging stopped. He looked up onto the Crumlin Road and saw no-one. He then moved out to run across Butler Street when something hit him on the left side. Witness FF said it lifted him off his feet and he fell back into Chatham Street.
- 7.12. Witness FF stated that he could not move his body except for his hands, but only saw a small cut on his left thigh. A man he knew told him he would be alright and left him where he lay for about half an hour. He was then picked up by a couple of men who lived nearby and he passed out, before regaining consciousness in a house. At about 2:30am he was

taken in a car to the Royal Victoria Hospital. Michael Lynch was in the back of the car and appeared to be very badly wounded.

Police Witnesses

Police Officer 29

- 7.13. Police Officer 29, deceased, submitted a report stating that on the evening of 14 August he was patrolling Crumlin Road in an armoured vehicle. When passing Butler Street he saw police on foot being attacked with petrol bombs and stones. The crowd in Butler Street dispersed on arrival of his vehicle. After getting out of his vehicle he heard several shots being fired into Butler Street towards the police. He saw gun flashes as these shots were fired from the corner of Butler Street and Elmfield Street. He took a Sterling submachine gun from the vehicle and fired a number of single shots in the direction of the persons firing towards him. The shooting from Butler Street ceased shortly afterwards, although he did not make reference to a time. Police Officer 29 did not give evidence at the Scarman Tribunal.

Police Officer 30

- 7.14. Police Officer 30 described that on 14 August 1969 police officers were being shot at from Butler Street and that a police officer returned fire from a Sterling submachine gun and that a few warning shots were fired from a Browning. He did not state which officer/s discharged these shots or specify the time.

Police Officer 31

- 7.15. Police Officer 31 described seeing a crowd of 200 people coming down the Crumlin Road from Butler Street. He stated that a Shorland drove towards the crowd resulting in them retreating back into Butler Street.

Police Officer 31 stated that at approximately 1:00am on 15 August 1969 this Shorland vehicle was '*facing into*' Butler Street. He stated he heard shooting coming from Butler Street and that the Shorland vehicle fired a few rounds into Butler Street.

Police Officer 32

- 7.16. Police Officer 32 described the police attempting to enter Butler Street and being repulsed. He stated that he was informed shots were being fired from Butler Street at the police but he did not hear them. He then saw a constable fire single shots from a Sterling submachine gun into Butler Street. He formed the impression that these may have been blanks as rioters were '*dancing*' in the road and jeering at police. He stated they were then attacked and he heard machine gun fire which he presumed came from a Shorland which was parked at the junction.

Police Officer 33

- 7.17. Police Officer 33 described being at the junction of Crumlin Road and Butler Street when several shots were fired from Butler Street towards the police on Crumlin Road, to which automatic fire was returned from a police armoured vehicle. Shortly after the area was relatively quiet and the police were stood down. This officer did not reference the time of this incident.

Forensic Evidence

- 7.18. There was no forensic examination completed by police in respect of Mr Lynch's death. However, the post mortem report stated that the entrance wound and degree of penetration was consistent with a medium or high velocity weapon discharged at '*more than short range*'.

- 7.19. The post mortem report also stated that, if Mr Lynch had been upright at the time he was shot, the weapon would have had to have been at an elevated position.

Scarman Tribunal Conclusion – The death of Michael Lynch

- 7.20. The Scarman Tribunal concluded that Michael Lynch was in all probability shot by a police officer who fired a Sterling submachine gun into Butler Street. The Tribunal noted in particular that *'it is impossible on the evidence to establish who fired the bullet which killed Mr Lynch'*. The Tribunal further commented that *'again, though there were fatal consequences for a bystander, the police were in fact returning fire'*.
- 7.21. The Tribunal found that in the fighting that ensued on the 14/15 August 1969, shots were fired at police officers in Butler Street and that police returned fire. The Tribunal found that after the shooting in Herbert Street which led to the death of Samuel McLarnon, the centre of activity moved to Butler Street. Here, police were successful in driving back a crowd of people who were throwing petrol bombs and missiles. At this stage the shooting started again. However, the Tribunal acknowledged that the evidence was *'full of inconsistencies'*. The Tribunal concluded that an explosion near to a Shorland vehicle led to a number of warning shots being fired by police. Further, at a later stage, a policeman returned fire with a Sterling submachine gun. The Tribunal concluded that Michael Lynch was killed by police fire in Butler Street but stated that *'all else was unclear'*.

8.0

THE USE OF THE SHORLAND VEHICLES

- 8.1. The decision to arm the Shorland vehicles with the Browning machine guns and deploy them in the densely populated residential areas of Belfast is significant to the deaths of 14/15 August. My investigation has sought to establish who made this decision on 14 August 1969. It should be noted that the Scarman Tribunal stated that although Shorland armoured vehicles were used on the streets of Belfast on the night of the 13 August, Browning guns were not mounted. He stated this was not a deliberate act of policy but due simply to the lack of time available on the 13 August.

Police orders on the night of 14 August and the early hours of 15 August 1969 including the decision to use armed Shorland vehicles

Police Officer 34 – County Inspector

- 8.2. The County Inspector stated that he did not leave the police station on the night of 14/15 August 1969 and at no time did he hear shooting. He provided a statement to the Scarman Tribunal in which he said *‘the general order was that if police were fired upon they were to return fire with effect at the particular target but were not to fire indiscriminately’*. His evidence at the Scarman Tribunal was that the decision to equip the Shorland vehicles with Browning machine guns was not made at either his level, or the level of Police Officer 15.

Police Officer 15 – Deputy Commissioner of Police

- 8.3. The Deputy Commissioner denied that he was responsible for the decision to mount the Shorlands with Browning machine guns. He believed that this decision was taken on the morning of 14 August 1969 in discussion between the Belfast Commissioner and the Inspector General, informed by intelligence that the IRA were moving over the border. His account of the decision making process is corroborated by the County Inspector.

Police Officer 35 – Belfast Commissioner of Police

- 8.4. In his evidence to the Tribunal, Police Officer 35, the Belfast Commissioner, deceased, confirmed that he knew a decision had been made to arm the Shorland vehicles. He believed this would have been a decision made by the Inspector General, although he would have been consulted prior to this.
- 8.5. The Belfast Commissioner stated there was a police conference held on the evening of the 13 August, following reports of gunfire and hand grenades being thrown at police. He was unclear if the decision to use armed Shorland vehicles was made at this conference. He stated that the use of the Browning machine guns was the responsibility of the people on the ground and that the responsibility for providing these weapons to officers was taken at a higher level. He believed that he would have given consideration to the risks associated with the use of such weapons in a built up area.
- 8.6. He described the performance of his police officers on the ground on 14 August, as '*magnificent*' and stated: '*We held a situation which was absolutely desperate, or we tried to hold it, let us face it*'. He further stated, '*...this was akin to almost a rebellion in our opinion. There were areas into which we could not go without fighting our way in – I presume – at that stage. This was not the normal riot by any standards. The whole thing*

was a [sic] pretty – akin to a civil war’. He also stated, ‘you do not go shooting women and children, but if they happen to be there and get hit, it is a terrible thing, but these things will happen under those circumstances’.

- 8.7. At the conclusion of giving evidence to the Tribunal, the Belfast Commissioner was asked if a senior officer would be in a position to instruct a commander of the reserve force vehicles *‘on no account are you to open fire’*. He replied *‘I cannot see him doing it, my Lord, for this reason: it would be very difficult order to give because he is putting an absolute prohibition on them firing. He is not going with them’*. He continued *‘...if on the way to Hastings Street, or back up again, somebody throws a grenade at them and opens up with an automatic weapon, I think under the regulations they are perfectly entitled to return fire at an identifiable target’*. Police Officer 35 was asked *‘even though the weapon with which they return the fire is a Browning machine gun and even though the target happens to be in the centre of an inhabited block of flats?’*. The officer replied *‘I think so, my Lord, if they are being shot at; if it is an identifiable target’*.

Police Officer 36 – Inspector General

- 8.8. The Inspector General, Police Officer 36, deceased, was based at Headquarters. He also was aware of intelligence that indicated armed IRA members intended to move across the border. He stated he believed this may have commenced on 13 August 1969, when police officers were attacked in Leeson Street, in the Falls Road area, with grenades and guns. He stated that police needed to regain control. On 14 August 1969, he received reports that police officers had been attacked with automatic weapons and police resources were limited.
- 8.9. The Inspector General stated he did not receive a request to arm the Shorlands and stated he did not make the decision to do so. He believed the decision to arm the Shorlands may have been relayed to him in a

conversation with the Belfast Commissioner. He stated that had the decision been made by the Commissioner he would have accepted it.

- 8.10. He stated that he did not instruct the Browning machine guns to be discharged as this was a matter for the officers on the ground. He accepted that the use of any weapon in an urban area, particularly use of a high velocity weapon, such as a Browning machine gun, would have been difficult. The Inspector General denied knowing that any allegations of indiscriminate gunfire by police had been made until the day before he first gave evidence (1 April 1971). This evidence was given over 18 months after the disturbances on 14/15 August 1969.
- 8.11. He would not comment on the justification for the use of the Browning machine guns, as he did not know the exact circumstances of their use.

Instruction given to the Shorland crews by Police Officer 1 and Police Officer 2 on 14 August 1969

Police Officer 1 – District Inspector

- 8.12. The District Inspector stated that he was familiar with the use of both the Shorland vehicle and the Browning machine gun and was one of the first RUC officers trained as a Browning gunner. When questioned he stated that, *'the Shorland vehicle without a Browning gun was something that I did not contemplate at all. It was a useless vehicle without its gun mounting'*. In relation to the training provided, he stated that officers did not need to be instructed in the dangers of the use of such a weapon. Everyone would have known the dangers in the use of any type of lethal weapon. Police Officer 1 described a state of confusion when he arrived at Dover Street on 14 August 1969, with one member of the public dead (not the subject of this public statement) and police officers injured. He described the situation as *'critical'*. He stated that fire service operators told him they were going to withdraw as they had been shot at from Divis

Flats and that he had assured them that police would provide them with covering fire.

- 8.13. The District Inspector provided a report, dated 12 January 1970, stating that he observed the Shorlands firing in the general direction of Divis Flats and the maisonettes. He could not be clear on whether they were engaging a target or firing into the air. However, when giving evidence to the Tribunal, the District Inspector corrected this statement and denied that he saw the Shorland vehicles fire into the flats or maisonettes.
- 8.14. In his evidence to the Tribunal, he stated that the Shorland vehicles were already leaving when he arrived at Dover Street at approximately 1:00am. He stated that the Head Constable told him that he had instructed the Shorland crews to fire over the heads of the crowds in order to disperse them. He concurred with this decision. When the Shorland vehicles returned to Dover Street after the patrol, the District Inspector repeated the instructions previously given by the Head Constable, *'that if gunmen were in the crowds they could fire over their heads to disperse the crowds, they could engage an identifiable target, their bursts were to be kept short, and to be careful with their guns. I realised the potential of the guns and I certainly wanted them to keep their use to the absolute minimum'*.
- 8.15. The District Inspector was satisfied with the use of the Shorlands in the area given that he had received reports that there had been gunfire coming from the flats. However, he was unable to identify any person who had reported to him that there had been gunfire coming from the flats.
- 8.16. He could not recall any communication with the Commanders of the Shorland vehicles after they returned to Dover Street. He stated he had no knowledge of where or at whom the Shorland vehicles had fired. His interpretation of the situation faced by police concurred with that of the Head Constable. He stated, *'by the warfare we were forced into, lives were lost. However, I am satisfied if we had not deployed those vehicles*

and those guns in that fashion, the cost in lives and property would have been multiplied one hundredfold’.

Police Officer 2 – Head Constable

- 8.17. The Head Constable, deceased, stated that he requested the assistance of the Shorland vehicles on 15 August 1969 in Dover Street because a civilian and two police officers had been shot. Initially there was no intention to use the weapons mounted on the Shorlands. However, the situation became such that he instructed Police Officer 12, the commander in the lead Shorland, to take the Shorlands along Divis Street and discharge weapons into the air to disperse the crowd, and if fired upon to return fire for effect.
- 8.18. The Head Constable confirmed that he did not see any gunfire from Divis Flats. He heard shooting which he believed was at ground level. He also confirmed that he had been told by police officers that there was gunfire coming from Divis Tower and this concerned him. He stated at the Tribunal as follows: *‘because the towers really look down on our position and I could realise that if a sniper got into position then he could do a lot of damage’*. During questioning he confirmed that he told the sergeants in charge of the Shorland vehicle that *‘we (police) are being fired on from the flats’*.
- 8.19. When the Shorlands were deployed to Divis Street, the shooting had ceased in his immediate area. Therefore, the Head Constable made a transmission to Control instructing the Shorlands to cease fire and return to Dover Street. He later informed the Tribunal that he believed the Shorlands had been in Divis Street for under five minutes and that had caused all incoming gunfire to cease. However, he acknowledged that the use of the armed Shorlands in this manner may have endangered the lives of innocent people. He stated that he made the decision in an effort to end disorder in the area as quickly as possible and to avoid further bloodshed.

9.0

THE POLICE OMBUDSMAN INVESTIGATION

- 9.1. This investigation was significantly impeded by the passage of time since the deaths occurred. I am acutely aware that the circumstances outlined in this public statement occurred over 51 years ago. Therefore, many individuals who may have information on these matters are deceased or are now suffering ill health.
- 9.2. The cases outlined in this public statement were referred to my predecessor, Nuala O'Loan, by the PSNI in 2006. All of the families have also raised particular concerns or questions.
- 9.3. Although an initial review was conducted by this Office following the PSNI referral, it was not until 2013 that a preliminary investigation was undertaken. Following this, over a number of months, my investigators attended the offices of the Public Records Office for Northern Ireland (PRONI), where they recovered and examined copies of the Scarman Tribunal papers. My investigation into the actions of police officers on 14/15 August 1969 has relied greatly on that material. With the assistance of PRONI staff and using strict search parameters investigators identified material relevant to the circumstances of the disorder in Divis Street and the Ardoyne area of Belfast and the deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch.

Video Footage of the Riots in Divis (August 1969)

- 9.4. Radio Telefís Éireann (RTE) provided lists of their film and radio coverage of the disturbances in Belfast to the Scarman Tribunal. My

investigators located the footage relevant to Divis Street. This footage showed Shorland vehicles and also featured footage taken in the Rooney home. Although useful as context this footage did not provide new evidential opportunities for additional lines of enquiry for this investigation.

Witness Appeal

- 9.5. In 2016, the Office launched a public appeal for witnesses who could provide evidence of the public disorder in the areas in August 1969, specific to the deaths which occurred. Unfortunately this failed to identify new witnesses. Mrs Rooney (Patrick's mother) made a statement at this time. My investigators also wrote to two of the Shorland drivers; the third was deceased. One retired officer had no recollection of the events and the second declined to assist the investigation.

Witness statements

- 9.6. A number of witness statements were obtained as part of the investigation.

Mrs Alice Rooney

- 9.7. In 2016, investigators obtained a statement from Patrick Rooney's mother, Mrs Alice Rooney, detailing her recollection of the night her son was killed.
- 9.8. Mrs Rooney corroborated the account that her husband gave at the time in 1969. She described seeing red flashes outside the front bedroom window, just as the shooting occurred. As she saw the flashes, she felt a burning sensation to her cheek. Mrs Rooney's account is relevant, as she described tracer fire just as the shots entered her home. As this public statement has previously recorded, the Scarman Tribunal

concluded that the Browning machine guns were the only police weapons equipped with tracer bullets.

- 9.9. My investigators recorded statements from two witnesses who provided accounts to a local newspaper regarding their recollection of events on the night of 14/15 August 1969 in the Divis area. These witnesses provided evidence regarding the circumstances of the death of Hugh McCabe (outlined earlier in this public statement). However, their evidence also referred to the actions of the Shorland vehicles in Divis Street at that time.

Witnesses GG and HH relating to the Death of Hugh McCabe

- 9.10. My investigators became aware of two witnesses, Witness GG and Witness HH, who provided accounts to the Irish News.
- 9.11. Both witnesses were considered significant to my investigation. Both were interviewed and statements obtained from them. Although their accounts related primarily to the death of Hugh McCabe, they also stated there was '*indiscriminate firing*' by the Shorland vehicles in Divis Street on the night of 14/15 August 1969.
- 9.12. Witness GG recounted that she and a relative, Witness HH, were in a house in Balkan Street on 14 August 1969. When there, a large crowd of men began to gather in the street outside. They decided it would be safer if they all went to her friend's home at Divis maisonettes. Witness GG described the journey to the maisonettes.
- 9.13. On this journey she saw an armoured vehicle which she described as a '*tank*', driving from the city direction along Divis Street. Witness GG stated that the '*tank*' seemed to '*open up*' on the people trying to get into the flats. Witness GG described the '*tank*' speeding along the road and

'letting out' a burst of gunfire. She sought refuge in the maisonettes with her sister and grandmother.

9.14. Sometime after arriving at the home of her grandmother's friend, Witness GG went out on to the balcony. She could not recall the exact floor but recalled that the flat was at the end of the balcony facing in the direction of town. She recalled *'on our balcony there were empty paint tins and bottles which I believe had drops of petrol left in them because I could smell petrol'*. She stated that, looking out, she saw young lads at the bottom throwing petrol bombs at the *'tank'* which was driving along the road. Witness GG only saw one *'tank'* at any one time. She stated that she did not hear any specific sounds of gunfire when on the balcony, either coming from, or toward the building. However, she later stated that she heard the sound of gunfire coming from the other side of the road further past where the *'tank'* had been positioned.

9.15. Witness GG described hearing voices from directly above the balcony where she was standing. She described a square hatch above her location (believed to be the skylight on the roof of the stairwell). She heard a man shouting and saw the *'tank'* driving up and down the street. Not long after this, Witness GG heard another voice shout out from above, asking for help and saying someone had been shot. Witness GG then described an injured Hugh McCabe being lowered down from the opening above her and the assistance being provided to him. Witness GG stated that she did not hear any sounds which she would have associated with gunfire from the direction of the maisonettes.

Independent Forensic Examinations

9.16. My investigation sought to establish whether any advances in forensic science since 1969 could offer new forensic insight in relation to ballistic evidence recovered following the shootings.

The death of Patrick Rooney

- 9.17. The investigation into police actions concerning the death of Patrick Rooney has established that a number of ballistic exhibits which had been stored within the Scarman Tribunal archive remain at PRONI. These are:
- I. a bullet fragment recovered during Patrick Rooney's post mortem;
 - II. ballistic items recovered from 5 St Brendan's Path in the aftermath of this shooting.
- 9.18. My investigators commissioned an independently instructed forensic examination of this ballistic material. It is known from police witness accounts that the Browning machine guns mounted on Shorland vehicles returned fire into St Comgall's School in Divis Street on the night of 14 August 1969 and the early morning of 15 August 1969. As part of the forensic examination, a comparison was undertaken between the ballistic items linked to the shooting of Patrick Rooney and items recovered from St Comgall's School. This was to ascertain if there were any ballistic characteristics which could positively attribute the bullets that entered 5 St Brendan's Path and the bullet which killed Patrick Rooney, to a Browning machine gun.
- 9.19. Forensic opinion was also sought on the accuracy of the 1969 forensic examination. The conclusion of this independent forensic examination was in agreement with the 1969 findings. However, the examination was unable to establish either the calibre of the bullet or the type of weapon which caused the death of Patrick Rooney.

The death of Hugh McCabe

- 9.20. An independently instructed forensic examination was also commissioned regarding the death of Hugh McCabe. Although the bullet which killed Mr McCabe was not recovered as part of this forensic examination, a review of the trajectory of the bullet which killed him was commissioned. This was to ascertain, where possible, the likely location from which the shot was discharged. It was also necessary to establish the calibre of the bullet discharged.
- 9.21. The examination concluded that the shot which killed Mr McCabe had a trajectory which was consistent with the bullet having been fired from the roof of Hastings Street Police Station. It was determined that Mr McCabe was in a prone position when he was shot. However, it was not possible to conclude which officer was responsible for the gunshot which killed Mr McCabe.

The death of Samuel McLarnon

- 9.22. My investigators also commissioned a forensic examination of the bullet that killed Mr McLarnon (this was still available at PRONI) along with the relevant paperwork and maps in relation to the circumstances of the shooting. The purpose of this examination was to establish if the trajectory of the bullet could be determined, whether the weapon could have been possibly identified and if a comparison had been made at the time.
- 9.23. The bullet which struck Mr McLarnon was damaged by a ricochet against the metal grille covering the window where Mr McLarnon stood. The forensic expert stated that, in his opinion, despite the damage to the

bullet, there was the potential that the bullet could have been matched to a weapon presented for comparison. However, as previously set out in this public statement, it was not possible then or now to attribute the use of a specific police weapon to a specific police officer. Therefore, unfortunately there is no line of enquiry that can be pursued in respect of this evidence.

- 9.24. The forensic expert concluded that the shot which killed Mr McLarnon was consistent with a 9mm calibre full metal jacket bullet fired from a Sterling submachine gun or other unknown firearm of the same calibre and with similar rifling characteristics. He concluded that the weapon would have been fired from the junction of Herbert Street and the Crumlin Road towards the window as a direct shot either as a burst of automatic fire or one of three single shots. Further, that the damage to the bullet was consistent with hitting the grille covering the window and then hitting and smashing the window. This caused damage to the bullet and caused it to destabilise and tumble, hitting the deceased as it fell. He also concluded that this was consistent with the three shots being fired directly at the window of number 37 and that it was unlikely that three shots fired from the junction with the Crumlin Road would all have been ricochets which hit a single window.

Circumstances surrounding the death of Michael Lynch

- 9.25. My investigation also obtained an opinion from the forensic expert as to the type of firearm which caused the wound to Michael Lynch. The forensic examination also sought to establish the distance from which Mr Lynch was shot and the elevation of the weapon.
- 9.26. There were reports that a Shorland vehicle had discharged a Browning machine gun in Butler Street and this is referenced by two police officers. However, the available police records do not record a Shorland vehicle discharging its Browning machine gun in Butler Street.

- 9.27. The forensic expert was of the opinion that, if Mr Lynch's injuries had been caused by either a Browning machine gun or an SLR rifle at a distance of less than 800 metres then it would have been expected that he would have sustained more extensive internal injuries. The expert was also asked to state whether a .38 calibre revolver could have caused the injury. He could not conclusively rule out that Mr Lynch was shot with a .38 calibre revolver. Although he was of the opinion that this was unlikely taking into account Mr Lynch's wounds.
- 9.28. The forensic expert was of the opinion that the firearm most likely to have caused the injury to Mr Lynch was a 9mm calibre Sterling submachine gun. It was also likely that the shooting occurred within a closed area from a distance of less than 800m.
- 9.29. This expert opinion is consistent with the Scarman Tribunal conclusion that Mr Lynch was shot by a police officer who discharged a Sterling submachine gun into Butler Street. The only officer who stated this is now deceased.

Suspect Interviews

- 9.30. My investigation established that grounds existed to commence a criminal investigation into whether an offence had been committed by two former officers. These were Police Officers 7 in respect of the death of Patrick Rooney and Police Officer 17 in respect of the death of Hugh McCabe.

Patrick Rooney

- 9.31. In 2018, Police Officer 7 was interviewed under criminal caution for the offences of murder and attempted murder in respect of Patrick Rooney and injuries sustained by his parents.

- 9.32. Police Officer 7 gave evidence at the Scarman Tribunal and his account is set out in Chapter 4 of this public statement. This officer submitted a prepared statement to my investigators during his interview under caution. The officer stated that on reviewing the evidence he gave to the Scarman Tribunal and in light of his failing health it was clear he had forgotten most of the evidence he gave at the time. He stated that he assisted the Scarman Tribunal in as open, honest and truthful manner as possible and this evidence is reflected earlier in this public statement.
- 9.33. Police Officer 7 stated to my Office that there was considerable evidence from many witnesses to the Tribunal that all three Shorland gunners fired in the Divis Flats area. He stated he was never in a position to say that the other two vehicles fired in that area because he did not see them do so. However, he also made the point that because he didn't see the other vehicles discharge their Brownings did not mean that they did not.
- 9.34. The officer stated: *'While I have enormous sympathy for her (Mrs Rooney) and her family, I again today, as I did in 1969, absolutely refute the allegation that I directed gunfire towards St. Brendan's Path'*. The officer also said *'What I can say without hesitation is that I reiterate again, I did not direct gunfire towards St. Brendan's Path and therefore did not fire any of the rounds that resulted in the death of the poor child, Patrick Rooney, or any injuries to his family members'*.

Hugh McCabe

- 9.35. The second officer identified as part of my investigation and relevant to the death of Mr Hugh McCabe, was Police Officer 17. An attempt was made to interview Police Officer 17 in June 2018 at a police station under caution. However, engagement with his General Practitioner and the examination by the Forensic Medical Officer (FMO) confirmed that he was unfit for interview.

Samuel McLarnon

9.36. In respect of Samuel McLarnon, two officers admitted discharging weapons into Herbert Street at the time of Mr McLarnon's death. One officer described discharging a short burst of gunfire into the air, over the heads of rioters and as such was unlikely to account for the round that killed Mr McLarnon. My investigators sought an interview with this person as a witness. However, he was certified to be medically unfit for interview. The second officer described being in Hooker Street and was instructed to fire at a sniper in Herbert Street. The exact location of the sniper is unknown. It is unclear how this officer (who admitted discharging 15 single shots from the corner of the street) could have been responsible for Mr McLarnon's death. That is because the topography would make this impossible, if he remained in Hooker Street. A further interview with this officer would have been necessary for further clarity. However, he is deceased.

Michael Lynch

9.37. In respect of Michael Lynch, one officer, Police Officer 29, deceased, provided an account which detailed the discharge of a firearm that would be consistent with Mr Lynch's death. The officer is now deceased.

Submission of files of evidence to PPS

9.38. On 1 August 2018, my Office submitted comprehensive files of evidence to the Public Prosecution Service (PPS) in relation to the deaths of Patrick Rooney and Hugh McCabe. A file was also submitted for prosecutorial advice in respect of the death of Samuel McLarnon.

9.39. The PPS were provided with all relevant material which included:

- I. Witness material derived from the Scarman Tribunal and Inquests.
- II. Film footage.
- III. RUC documents and logs.
- IV. The original and an independently instructed forensic evidence.
- V. New witness accounts recorded by my investigators.
- VI. The prepared statement made by Police Officer 7 who was interviewed under caution.

Death of Patrick Rooney

9.40. I am satisfied that a bullet from a Browning machine gun killed Patrick Rooney. The trajectory of the shot which killed Patrick was consistent with having been discharged from a similar height as the Browning machine guns mounted on Shorland vehicles. However, it is not possible to forensically link the particular bullet that struck Patrick to a specific Browning machine gun. Therefore, it has not been possible to evidentially link a particular police officer to the discharge of the bullet that killed Patrick.

9.41. In June 2020, the PPS directed no prosecution in respect of the actions of Police Officer 7 concluding that there was insufficient evidence to prosecute the suspect reported for any offence. In respect of Patrick's death the PPS stated: '*The difficulty in this case arises from the fact that there is no evidence capable of proving beyond a reasonable doubt which of the gunners in the Shorland vehicles fired the fatal shot*'.

9.42. In arriving at its decision, the PPS gave consideration to the fact that none of the Shorland officers accepted discharging weapons at the relevant time, in the direction of the Rooney home. Consideration was also given to evidence from both RUC officers and members of the public regarding the actions of police at the relevant time. Full reasons for the decision was provided by the PPS to both my Office and the Rooney family.

Death of Hugh McCabe

9.43. The conclusion of the independently instructed forensic scientist, was that the shot which killed Mr McCabe had a trajectory consistent with having been fired from the roof of Hastings Street Police Station. The trajectory of the fatal shot and the firing position ruled out the possibility of the .30 calibre Browning machine gun mounted on Shorland vehicles as having fired the shot. The results of this examination focused my investigation on the actions of the two officers stationed on the roof of Hastings Street Police Station who discharged their weapons at the material time. The forensic scientist concluded that the exit wound sustained by Mr McCabe was consistent with being caused by a 7.62mm calibre bullet. However, this cannot be conclusively established and the lack of certainty around this created a further difficulty for my investigation. Records are available to identify the officers who were present on the roof of Hastings Street Police Station at the relevant time and the weapons in their possession at that time. These records evidence that there were two officers present. Police Officer 17 was armed with a .303 rifle, and one with a 7.62 SLR rifle. Police Officer 18 armed with the 7.62 rifle is now deceased. Police Officer 17 armed with the .303 rifle is the suspect identified on the investigation file of evidence sent to the PPS. In June 2020, the PPS directed that there was insufficient evidence to prosecute the suspect officer identified by my investigation.

9.44. Police Officer 17 was not available to be interviewed after caution for medical reasons. The only evidence available from him is that provided in his duty statement at the time. This outlines the circumstances in which his weapon was fired. He reported returning fire at a male on the roof of the stairwell of the maisonettes who was armed with an automatic weapon and firing from it. Police Officer 17 did not provide a description of this person, nor did he confirm whether this person was injured by any of his shots. Similarly, Police Officer 18 also provided a duty statement. He also provided a witness statement to the Scarman Tribunal, although he did not provide oral evidence. He confirmed that he returned fire at the maisonettes after seeing muzzle flashes coming from there. He did not specify whether this was on the roof of the stairwell or the main block. He also did not confirm whether any injuries were sustained by any person as a result of the shots he fired.

9.45. As outlined above, the PPS considered that it cannot be established with the required degree of certainty that Police Officer 17 was responsible for firing the fatal shot. The PPS also concluded that it could not be established that this officer acted with Police Officer 18, as part of a joint enterprise to act unlawfully and cause the death of Hugh McCabe. The decision not to prosecute the former officer is a matter for the PPS. Full reasons for the decision were provided by the PPS to both my Office and the McCabe family.

Death of Samuel McLarnon

9.46. After my Office had submitted a file for prosecutorial advice, the PPS considered the circumstances of Mr McLarnon's death on 15 August 1969. In light of the forensic opinion on the ballistic evidence that concluded the damage to Mr McLarnon's home was caused as a result of three aimed shots, consideration was given to the commission of any related criminal offences by police officers.

9.47. The remaining officer whose discharge of his weapon was considered is Police Officer 28. This officer is now deceased. In his duty statement he confirmed that, at approximately 1:30am on 15 August 1969, he returned fire at a sniper shooting from a house on the left side of Herbert Street. He confirmed firing 15 shots at the sniper, and that he was positioned at the corner of Herbert Street and Crumlin Road, which is the location from which it is believed the fatal shot was fired. Police Officer 28 is the only officer who confirmed firing directly at a property in the street and it is possible that the fatal shot was fired by him. It is of note that the Scarman Tribunal concluded that Samuel McLarnon was shot by police fire directed down Herbert Street from the junction with Crumlin Road. However, the Tribunal did not identify any individual officer, including Police Officer 28, as being responsible for discharging the bullet which led to Samuel McLarnon's death.

9.48. There is insufficient evidence available to identify any officer, now living, as potentially responsible for firing the shot which killed Samuel McLarnon. It is my view based on available evidence that the person most likely to have fired this shot was Police Officer 28, who is now deceased. In June 2020, the PPS confirmed that there was no likelihood of the test for prosecution being met in respect of any person in respect of this matter.

Death of Michael Lynch

9.49. It was not possible during my investigation to identify any officer who may have discharged the shot that killed Mr Lynch. Therefore, it was not possible to progress this matter any further.

3.0

COMPLAINTS AND CONCERNS OF THE BEREAVED FAMILIES

10.1. The Rooney, McCabe, McLarnon and Lynch families have each submitted complaints, queries or concerns to my Office. Each of those are outlined within this Chapter and many of these issues will have been covered previously in this public statement.

Lack of RUC investigation

10.2. A common feature of the families' complaints is that there was no effective police investigation into the deaths capable of leading to a prosecution. This included a failure by police to identify each officer responsible for each death and a lack of forensic examination of the scene. This concern is relevant to all the families and I deal with it at the outset of this chapter.

10.3. Senior police officers were questioned at the Scarman Tribunal in 1970 and 1971 and were asked to account for the lack of police investigation. They claimed that the disorder in the area, and the introduction of the army the following day, made it a '*no go zone*' meaning that enquiries could not be made. Even if police were unable to conduct enquiries with witnesses in the area, they ought, in my view, to have conducted interviews with the police officers deployed that night and secured their accounts. This may have been capable of identifying the officers who were responsible for these shots.

10.4. I acknowledge the limited enquiries conducted in respect of the deaths of Patrick Rooney and Samuel McLarnon. The Rooney home was forensically examined for ballistic material by members of the Department of Industrial and Forensic Science (DIFS). Mr Rooney stated that he had a recollection of an

examination taking place the day after the shooting. At the inquest, on 26 November 1969, police officers only indicated that enquiries were continuing and could not give a detailed report on the circumstances of the shooting.

- 10.5. Although the Tribunal came to the conclusion that the discharge of the Browning weapon that fired the fatal shot was not justifiable, it appears that the RUC made no further enquiries relating to the person responsible for discharging it.
- 10.6. My investigation found no evidence of any investigative process by police that was capable of establishing who was responsible for the death of Patrick Rooney and others.
- 10.7. Police Officer 21 recorded in a report that on 12 September 1969, following a request by police, military investigators called at the McLarnon's home where Samuel McLarnon lived with his father. This was to make arrangements for the police to interview relatives of the deceased or any other witnesses. However, Mr McLarnon's father refused to meet police and gave a verbal statement only to the Sergeant Major who spoke with him.
- 10.8. A post mortem examination took place, photographs were taken of the scene and scene examinations conducted. There is evidence that the RUC and the military attempted to carry out a more thorough investigation into Samuel McLarnon's death. However, these enquiries were restricted due to the severe public order issues and lack of co-operation of potential witnesses.
- 10.9. My investigation has established a number of failings in the RUC inquiries. In my view the police ought to have arranged for forensic tests on the weapons used by the officers on the night of the fatal shooting in order to link a firearm to the bullet which was recovered at post mortem.
- 10.10. Further, in my view, the manner in which the Sterling submachine guns were allocated to vehicles was wholly unsatisfactory. This impeded the identification of officers in possession of particular weapons at a specific time that night.

Ballistic tests ought to have been pursued and officers should have been interviewed in respect of the discharges, as a minimum investigative response.

- 10.11. Mr McLarnon's father stated that his solicitor had names of witnesses. One of these (Witness R) was contacted by the military, requesting that he contact police who required a statement from him. That witness refused to be interviewed, stating that he had given a statement to this solicitor.
- 10.12. I accept that initial efforts were made to engage with relatives of the deceased and other witnesses. However, the Scarman Tribunal concluded: *'the enquiries in this case could not be fully carried out, as relations are reluctant to make statements and the area in which possible witnesses reside, is inaccessible to police'*.
- 10.13. My investigators found no evidence that RUC investigators, at the time, attempted to forensically link or eliminate the bullet that killed Mr McLarnon to any of the relevant Sterling submachine guns issued to RUC vehicles. Witness II, in 2018, was of the opinion that, despite the damage to the bullet, there was the potential that the bullet could have been matched to a weapon presented for comparison.
- 10.14. My investigation was unable to obtain records of the weapons issued to each vehicle. Therefore this line of enquiry could not be pursued. It is my view that the failure of the RUC to carry out forensic tests on the bullet and the weapons issued on 14/15 August is further evidence of inadequate investigation by the police into Mr McLarnon's death. Police officers who may have discharged the fatal shots were not the subject of any investigations.

Failure to commission an independent investigation

The following records provide useful context for overall understanding of the factors that resulted in the inadequacy of police enquiries/investigations and ultimately the failure to commission an independent investigation.

10.15. My investigation obtained a Home Office document dated 7 November 1969 stating the following:

'The Lord Chancellor spoke to the Home Secretary after Cabinet yesterday and said that Mr Justice Scarman had told him that he was receiving disturbing evidence about the conduct of the Royal Ulster Constabulary in Belfast during the August disturbances. They agreed, however, that any intervention would be impracticable and undesirable and that there was no action which either the Lord Chancellor or the Home Secretary should take to pursue the matter.'

10.16. A Home Office document of 13 March 1970 was also obtained, entitled, 'Conduct of RUC in Belfast'. This referred to a meeting with Justice Scarman on the same date:

'Mr Justice Scarman said that he would not at all favour a simultaneous criminal investigation by police...while the relevant matters were still before the Tribunal in the sense that evidence was yet to be heard. As soon as the evidence concerning events in Belfast last August had been heard, the Inspector General could proceed with any investigation he thought it proper to undertake whether by his own officers, even though the Tribunal had still to present its report, or officers from elsewhere. He would have available the transcript of evidence given to the Tribunal, which might well guide any inquiry he thought it right to undertake. He might think it right to suspend certain officers from duty if the evidence that had been given to the Tribunal seemed to indicate that that was necessary.'

10.17. On 6 April 1970 the RUC Inspector General made the following statement.

'I am willing to the best of my ability to examine any responsible request regarding an individual complaint of crime or misconduct (on behalf of police). If no police enquiry has yet been made I will ensure that an investigation will be undertaken and the result reported to me. If such a matter has already been the subject of police enquiries I will examine police reports to discover –

- a. If the enquiry has been competently made*
- b. If it has been impartial*
- c. If further enquiries would be likely to be productive.*

If I am unsatisfied with the answer to any of these questions I will ensure a further enquiry which will result in a report to me personally. Such an enquiry will be undertaken either by the RUC or by officers of another force as I judge appropriate'.

- 10.18. Although these records may not relate directly to the circumstances of the deaths which are outlined in this public statement, their content records that consideration was given to the possibility of another police force conducting investigations. However no such investigation took place.

The Rooney Family

- 10.19. The Rooney family have raised the following complaints, concerns and questions to my office:

Why were the 'B Specials' and police officers who manned the Shorland armoured cars not named and only identified by letter?

- 10.20. The nine police officers who crewed the three Shorland vehicles were all members of the RUC Special Patrol Group Reserve force. They were not the 'B Specials'. The Scarman Tribunal had the power to hear evidence from witnesses in private if it was considered appropriate. The Scarman report details that: *'In one case we took the exceptional step of hearing evidence in the absence not only of the public but also of counsel and solicitors for interested parties. Only counsel for the tribunal and members of its secretariat were present. The time and place of these hearings was not made public. The witnesses concerned were four policemen who had formed part of the crews of three Shorland armoured vehicles operating in Belfast on the night of 14 August 1969. The state of affairs in the Province combined with information received from the RUC convinced us that the identity of these men should be kept secret. It was in these wholly exceptional circumstances that we felt it right to depart from normal procedure in order to take evidence which was vital to our inquiry. The evidence of these witnesses was made public after we had satisfied ourselves that it gave no clue to their identity'.*

Who was in charge of the police deployment?

10.21. In giving his evidence to the Tribunal, the District Inspector (Police Officer 1) accepted that he was in command of police on the ground on 14 August 1969. His command included the deployment of the Shorland vehicles.

Who gave the order to open fire?

10.22. When deployed from Dover Street shortly after 1:00am on 15 August, the Shorland crews were given orders by Police Officer 2 that they should fire over the head of rioters to disperse them, and that if fired upon they should return *'fire for effect'*. This order was approved by the District Inspector.

10.23. Prior to commencement of duty on 14 August 1969, there is evidence that police officers were reminded that great care was to be taken in the use of weapons. Gunners were instructed only to fire the Browning machine gun under the instruction of the person in charge of the vehicle. They were not to be used in the vicinity of women and children in a riot zone and, if possible, only warning shots should be fired.

10.24. Once the orders were given, it became the responsibility of the Shorland commanders to instruct the gunners to fire at specific targets and whether or not to *'fire for effect'*.

Why was the order given 'to fire for effect' rather than 'fire for non-effect'? Or even if such orders were given and the police were acting under their own initiative, why was the person who killed Patrick not identified and prosecuted?

10.25. The term *'fire for effect'* means to fire to kill or injure an individual. The District Inspector and Head Constable were responsible for giving the orders to fire over the heads of the crowds in an effort to disperse them. This could be regarded as *'firing for non-effect'*. However, if fired upon the Shorland crews

could *'fire for effect'*. The RUC Regulations at the time also directed that if officers were fired upon, they could return fire.

- 10.26. My Office submitted file of evidence to the PPS in respect of Police Officer 7, the gunner in Shorland Red 7. The PPS directed no prosecution. The evidential difficulty remains that it is not possible to prove which officer fired the shot that killed Patrick.

Why were the family never contacted and never updated by Police?

- 10.27. With one exception there is no evidence that police engaged with the family of Patrick Rooney. A statement from Mr Rooney was provided to the Scarman Tribunal. There is no evidence that the Tribunal further engaged with Mr Rooney or invited him to give evidence. I am unable to conclude the reason for no further engagement by the police with the Rooney family.

The McCabe Family

- 10.28. The McCabe family have raised the following complaints, concerns and questions to my Office:

'Why were the police initially deployed into the Falls Road/Divis Street area on 14 August? I wish to know the 'Rules of Engagement' relating to the RUC from that time. I believe that there was no reason for the police to be firing. I would like to know if authority was ever given for the RUC to use Browning machine guns. From reading the newspapers at the time it appears that nobody was in control of the armoured cars. I would like to know more information in respect of this matter'.

- 10.29. Senior police officers in command during August 1969, have stated that serious rioting occurred on 13 August 1969 and further trouble was expected on 14 August 1969. Police officers were on duty to deal with the disorder. The Deputy Commissioner of police (Police Officer 15) stated that the emerging intelligence on the morning of 14 August resulted in a decision being made to mount

Browning machine guns on top of the Shorland vehicles in anticipation of this disorder. He stated that this decision would have been negotiated between the Commissioner and RUC Headquarters.

10.30. Initially the Shorland vehicles deployed on 13 August were not armed. The Scarman Tribunal concluded that rather than this decision being a deliberate act of policy, the vehicles were not armed due to pressures of time. The Scarman Tribunal determined that it was the Deputy Commissioner and Belfast Commissioner (Police Officer 35) who decided that the Shorlands would be armed on 14 August.

10.31. I have provided commentary in this public statement regarding the RUC regulations in relation to the use of firearms. The Deputy Commissioner referred to these regulations in his statement to the Tribunal. However, he added that in such circumstances, where the police come under fire from persons in riotous assembly, the regulations⁸ ⁹ provide that fire may be returned.

10.32. Forensic evidence concluded that Hugh McCabe was not killed by a bullet from a Browning machine gun. However, I will briefly comment below on the use of the armed Shorland vehicles.

10.33. Police Officer 2 provided evidence in which he stated that he spoke to the Sergeant in charge of the leading Shorland vehicle on 15 August. Police Officer 2 advised him that there was gunfire coming from the flats and St Comgall's School, that a member of the public and two police officers had been shot and that Hastings Street Police Station was under fire. Police Officer 2 instructed the Sergeant to: *'take his vehicle up and down Divis Street, to fire in the air and if fired on to return the fire for effect'*.

⁸ RUC Code 907 Armed attempts (A) against lives of police (B) police stations (C) to rescue prisoners charged with atrocious crime.

⁹ RUC Code 908 Firing

10.34. The term '*fire for effect*' was used at the time and described by the Scarman Tribunal to fire to injure or kill. The exact time at which Police Officer 2 conveyed this instruction is unknown. He stated that the time the Shorland vehicles arrived in Dover Street was around 1:00am. He stated that at around 1:10am he told the crews that there would be no more firing unless absolutely necessary. Justice Scarman was critical of the use of the Shorlands in these residential areas of Belfast.

10.35. In relation to the arming of the Shorlands, Mr. Justice Scarman reported that on 14 August the Belfast Commissioner and Deputy Commissioner decided that the Shorlands should be armed.

Scarman explained that these officers would have expected that the Inspector General would have made this decision. The Inspector General (Police Officer 36) stated that he did not think this was a matter on which he would be asked to give a decision. He is reported to have said: '*A Browning gun is part of the vehicle and it would be a decision for the operational commander as to whether he would mount the gun or not*'.

'Police said that it was a marksman who shot Hugh. Why was there a marksman there? What was his purpose? I would like to see the report done by the 'marksman'.

10.36. On the night of 14/15 August there were two marksmen (Police Officers 17 and 18) and a third officer operating in the role of '*spotter*' (Police Officer 19) who were positioned on the roof of Hastings Street Police Station. The purpose of positioning these officers on the roof was to provide cover and protection to police, both within the station and positioned outside the station on Divis Street. The two marksmen provided accounts, the contents of which are outlined earlier in this public statement. Neither officer was called to give evidence to the Tribunal. The spotter, however, was called to give evidence. His account is outlined in Chapter 5 of this public statement.

10.37. The instructions provided to the marksmen on the roof are unknown. However, a radio message was communicated by one of the marksmen, advising RUC command that there had been gunfire coming from the flats and to advise that fire would be returned.

I wish to know the extent of the forensic work carried out on Hugh and the subsequent content of this report. I would like to see any photos of Hugh taken at the scene and be informed of any forensic work carried out on him. What test, if any, were carried out on his body/clothing?

10.38. On 15 August 1969, the State Pathologist conducted a post mortem on Hugh McCabe. His examination concluded that death was due to a single gunshot. There is no indication that the bullet which killed Hugh McCabe was ever recovered. The forensic report included confirmation that there was no alcohol in Hugh McCabe's blood at the time of his death.

10.39. My investigation is not aware of any further forensic work having been conducted on Hugh McCabe's clothes. There is no record of what happened to his clothing. In contemporary policing practice, it would be expected that the clothing would have been seized at the post mortem and, if no evidential lines of enquiry were established, these personal items would be returned to the deceased's family.

10.40. A photograph of Hugh McCabe was taken after he was shot at Divis Flats and published by the Irish News newspaper. My investigation is not aware of any other photographs taken at the scene. Photographs were taken at the post mortem examination and these photographs are currently held with the Scarman archive at PRONI.

The McLarnon Family

10.41. The McLarnon family have brought the following complaints, concerns and questions to my Office:

The RUC (Royal Ulster Constabulary) has never carried out a formal investigation into the death of Samuel McLarnon.

10.42. The issues around the lack of a police investigation are outlined at the outset in this Chapter.

The fatal bullet was not a ricochet, and that the bullet was fired from a weapon directly aimed at Mr McLarnon by a police officer.

10.43. The forensic evidence from 1969, as presented to the Scarman Tribunal, is clear that the damage to the bullet was consistent with being caused by a ricochet.

10.44. The bullet was forensically examined in 2016 as part of my investigation. The conclusions of the forensic expert, Witness II, were as follows:

'The bullet which struck Mr McLarnon was fired from the junction of Herbert Street and Crumlin Road towards the window of 37 Herbert Street as a burst of three, or three single shots'.

The forensic expert was also of the opinion that *'the wound to the deceased... was consistent with being caused by a bullet fired directly at the window which became unstable and started to tumble after hitting the window grille and glass'*. This opinion is based on the trajectory of the bullet and the line of fire as calculated by the expert.

10.45. The forensic evidence presented to the Scarman Tribunal, and later forensic tests, are both indicative of a ricochet bullet having caused the death of Samuel McLarnon. The 2016 independently instructed forensic examination also

established that the bullet most probably ricocheted from the metal grille on the window of Mr McLarnon's home.

The police have never apologised for their actions.

10.46. My investigation has found no record of an apology by the RUC for their actions on the night of 14/15 August 1969. Also, there is no record of the police accepting responsibility for the shooting of Mr McLarnon, despite the Scarman Tribunal finding that a bullet from a police gun fatally struck Mr McLarnon.

The Lynch Family

10.47. The Lynch family have raised a number of concerns surrounding Michael's death.

That there was no police investigation into Michael's death.

10.48. The issues around the lack of a police investigation are outlined at the outset of this Chapter.

The family state that police have never been in contact with the family at any stage since Michael's death and it was a local parish priest who informed the family of his death, not police.

10.49. As set out previously in this public statement Police Officer 21 stated that at approximately 7:00pm on 15 August 1969 a communication was received at Tennent Street Police Station requesting that a police officer attend the home of Mr Lynch to inform his parents of his death. Circumstances at the time did not permit this message to be delivered.

The family believe that Michael was killed by a 'B Special' and not a police officer.

10.50. The Scarman Tribunal concluded that Michael was in all probability shot by a police officer who fired a Sterling submachine gun into Butler Street. The Tribunal noted in particular that *'it is impossible on the evidence to establish who fired the bullet which killed Mr Lynch'*. The Tribunal further commented that *'again, though there were fatal consequences for a bystander, the police were in fact returning fire'*.

10.51. My investigation unfortunately has not been able to progress this matter. There is no available evidence which determines which police officer was responsible for the shot that killed Michael.

11.0

PROCEDURAL FAIRNESS

Introduction

- 11.1. In concluding this public statement, I am mindful of the need to ensure procedural fairness to those who may be affected by the content of this public statement. Mr Justice McCloskey (as then) in the High Court in *Re Hawthorne & White*¹⁰ provided guidance to this office as to what was generally required. In particular, I have considered relevant passages from that judgment which I outline here for ease of reference, highlighting the requirements of procedural fairness in this context:

[113] In my judgement, it matters not that the police officers thus condemned are not identified. There is no suggestion that they would be incapable of being identified. Further, and in any event, as a matter of law it suffices that the officers condemned by the Police Ombudsman have identified themselves as the subjects of the various condemnations. Procedural fairness, in this kind of context, cannot in my view depend upon, or vary according to, the size of the readership audience. If there is any defect in this analysis it is of no consequence given that the overarching purpose of the conjoined challenge of the second Applicant, Mr White, belongs to the broader panorama of establishing that reports of the Police Ombudsman couched in the terms considered exhaustively in this judgment are unlawful as they lie outwith the Ombudsman's statutory powers.

[114] The somewhat different challenge brought by Mr White, imbued by corporate and broader ingredients, gives rise to the following conclusion, declaratory in nature. Where the Police Ombudsman, acting within the

¹⁰ [2018] NIQB 5

confines of his statutory powers, proposes to promulgate a “public statement” which is critical of or otherwise adverse to certain persons four fundamental requirements, rooted in common law fairness, must be observed. First, all passages of the draft report impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations. Second, a reasonable period for making such representations must be permitted. Third, any representations received must be the product of conscientious consideration on the part of the Police Ombudsman, entailing an open mind and a genuine willingness to alter and/or augment the draft report. Finally, the response of the individual concerned must be fairly and accurately portrayed in the report which enters the public domain. ‘

11.2. This process, sometimes called ‘*Maxwellisation*’, involves four fundamental requirements as outlined by Mr Justice McCloskey:

- (i) That all passages of the draft public statement impinging directly or indirectly on the affected individuals must be disclosed to them, accompanied by an invitation to make representations;
- (ii) A reasonable period for making such representations must be permitted;
- (iii) Any representations received must be conscientiously considered, entailing an open mind and a genuine willingness to alter and/or augment the draft report; and
- (iv) the response of the individual concerned must be fairly and accurately portrayed in the statement that is published.

The ‘Maxwellisation’ Process

11.3. In order to give the officers concerned a fair opportunity to respond to any proposed criticisms in this public statement, correspondence was sent on 24 February 2021 from this Office to Police Officer 1, Police Officer 6,

Police Officer 7 and Police Officer 12 along with extracts from the draft public statement that impinged directly or indirectly on those individuals, seeking their comments. As is standard practice in my office, a period of 30 days from receipt of that correspondence was provided in order for the individuals to respond.

- 11.4. Between 1 and 3 March 2021, responses were received from each of the officers, in which all of the officers indicated that they did not wish to participate in the process and that they all had concerns about the powers of the Police Ombudsman to publish a public statement, referencing the judgments in *Re Hawthorne and White* from both Mr Justice McCloskey and the Court of Appeal (on appeal from the judgment of Keegan J). The contents of this correspondence from these former police officers was the subject of careful and conscientious consideration by me. Further, before publication of this public statement, I responded to those concerns in detail in writing. I received further correspondence in relation to that response from Police Officer 7 on 15 April 2021.

Retired Officers Responses – general complaints/comments

- 11.5. The complaints and comments raised by these retired officers can be categorised as those of a general nature and also those specifically relating to specific sections and paragraphs of the draft report. The general complaints suggested that I did not have the legal power to issue this public statement and further made various complaints about fairness. Those complaints of a general nature are summarised below:
- i. That Police Officer 1, Police Officer 6 and Police Officer 12 were not informed/involved in the Police Ombudsman investigation (prior to promulgation of the draft public statement and the sharing of draft extracts with them);
 - ii. There was a lack of information about what recommendations, if any, were made to the PPS by the

- Police Ombudsman's Office and whether the officers had been the subject of a criminal investigation;
- iii. That the Police Ombudsman is not entitled to make evaluative judgments regarding the conduct of these retired officers;
 - iv. That material has been presented out of context, without explanation or understanding of command and deployment roles;
 - v. That there has been inadequate provision of information; the information provided is both partial and lacks context; and the original documentation not available to the officers in questions (only extracts had been provided);
 - vi. That procedural fairness cannot be achieved;
 - vii. That there was an inadequate time to respond;
 - viii. That the Police Ombudsman was acting *ultra vires*;
 - ix. That the retired officers were being asked to respond without being told what is being alleged or as to the conclusions reached;
 - x. That there was a breach of the retired officers rights under Article 6 and 8 European Convention of Human Rights (the Convention);
 - xi. The Police Ombudsman has made an adjudication that would lead a reader to conclude that the officers may have been guilty of a criminal offence;
 - xii. The Police Ombudsman has no authority to publish a report implying criminal liability;
 - xiii. There was a lack of due process/adherence to PACE;
 - xiv. That I, as Police Ombudsman, had no right to express my views on the issues noted in the conclusions in the draft extracts provided
 - xv. That I was acting in ignorance of the *Hawthorne & White* judgments;
 - xvi. The individuals had concerns about jigsaw identification;

- xvii. That I had made a determination which amounts to a public finding of guilt, not permitted under section 62;
- xviii. All officers asked for clarification as to which independent body to complain to about the Police Ombudsman.

The response to the General Complaints

11.6. I have carefully considered the general concerns expressed by these retired officers. By letter dated 13 April 2021, the Director of Historical Investigations, on my behalf, responded to these general complaints and comments/concerns raised by the officers. In broad terms, that correspondence addressed the issues of whether or not the Police Ombudsman's process had been conducted in accordance with the requirements of fairness, the question of vires, alleged breaches of articles 6 and 8 of the Convention and also the issue of article 8 and 'jigsaw' identification. That correspondence also outlined the procedure for making a complaint to the Police Ombudsman's Office. In short, I did not concede that by publishing this statement that I would be acting beyond my legal powers. Nor did I concede any procedural unfairness.

11.7. In relation to the complaints from Police Officer 1, Police Officer 6 and Police Officer 12 about lack of information and involvement in the Police Ombudsman's investigation; it is correct that these retired officers were not previously involved in the Police Ombudsman's investigation. That is because they were not considered as suspects, during the course of my investigation in relation to any criminal act. Further their actions had already been the subject of scrutiny by the Scarman Tribunal.

The Retired Officers' Specific Complaints

11.8. In response to the relevant extracts from my draft public statement, the following specific complaints were made by Police Officer 1 as follows:

- i. Relying on specific draft paragraphs he asserts that there is a suggestion that the text implies that police engaged in indiscriminate firing in a built-up area;
- ii. He also suggests that referring to the lack of a proper subsequent RUC investigation was unfair to him because he was not responsible for that;
- iii. He also asks what conclusions the Ombudsman reached in respect of him, specifically regarding recommendations for prosecution (or not);

I consider that the text referred to by Police Officer 1 reflects and summarises evidence from witnesses. It does not give rise as to any kind of finding or determination in respect of Police Officer 1 or the police generally. I have addressed the issue of the responsibility for an RUC investigation earlier in this public statement.

11.9. In response to the correspondence with relevant extracts from my draft public statement the following specific comments were made by Police Officer 6:

- i. Asks for details of what criminal offence he was being investigated for and further asks whether I admit an intention to publish defamatory material;
- ii. He also references specific paragraphs stating that these sections can only be understood to allege that he may have been guilty of criminal conduct, in commanding a crew that was engaged in indiscriminate firing.

I have clarified at paragraph 11.7 above that Police Officer 6 was not the subject of a criminal investigation and no file was submitted to the PPS. Furthermore, I am of the view that the statement cannot be read by a fair minded observer as concluding or indicating that Police Officer 6 commanded a crew that was engaged in indiscriminate firing.

11.10. In response to the correspondence with relevant extracts from the earlier draft public statement the following specific comments were made by Police Officer 7 as follows:

- (i) Referencing certain paragraphs that the PPS no prosecution decision in respect of his actions should be the end of the matter so that the Ombudsman cannot state that he is somehow nevertheless guilty and that I have chosen to ignore the PPS decision;
- (ii) Referencing the claim of indiscriminate in relevant draft and suggesting that (notwithstanding no prosecution) it is 'manifestly clear' that the adverse reference refers to him and that this would surely amount to a criminal offence.

I do not consider that my public statement, properly and fairly construed, gives rise to the issues raised by Police Officer 7.

11.11. In response to the correspondence with relevant extracts from my draft public statement the following specific comments were made by Police Officer 12 as follows:

- (i) Referencing relevant draft paragraphs that this amounts to an allegation that he may be guilty of criminal conduct (to command a crew that was engaged in indiscriminate firing in a built-up area).

I have carefully considered these comments. I have recorded the evidence as given in witness accounts in this public statement. I have also recorded and fairly set out the evidence of the police officers involved. Setting out the evidence gathered during an investigation is an important feature of any public statement and does not amount to a

finding of criminal conduct as against Police Officer 12 or any other retired officer.

11.12. A second response was received from Police Officer 7, dated 15 April 2021, outlining additional comments and concerns. I have carefully considered the content of this correspondence and note that he repeats earlier assertions in relation to my power to issue a public statement in this case. I am satisfied that I have addressed all of these matters in this public statements.

12.0

CONCLUSIONS

Summary of events preceding the deaths of Patrick Rooney & Hugh McCabe

- 12.1. During August 1969, the RUC were presented with widespread, escalating levels of public disorder. The Scarman Tribunal observed, however, that in comparison to other parts of Northern Ireland, west Belfast had been relatively peaceful until 13 August when members of the Catholic community made their way from Divis Flats to the Springfield Road and Hastings Street Police Stations in order to present a petition protesting against police actions in Derry/Londonderry.
- 12.2. Following police reports of missiles and petrol bombs having been thrown by some of these protestors, police deployed armoured vehicles to Divis Street to disperse the crowd. The Scarman Tribunal heard evidence that firearms were discharged at police as a result of which they withdrew to police stations.
- 12.3. On the evening of 13 August, senior police officers at Hastings Street Police Station made the decision to deploy Shorland vehicles to the area. On this occasion they were not equipped with Browning machine guns. Police told the Scarman Tribunal that there had been insufficient time to mount the Brownings.
- 12.4. On 13 August, in response to missiles and gunshots being directed at Springfield Road Police Station from a crowd outside the station, two police constables discharged '*warning shots*' into the air from the first floor of the building. Evidence was adduced, however, that at around the same time two young men at street level sustained gunshot wounds. A bullet

recovered from one of the injured parties, both of whom survived, was forensically linked to a revolver discharged by one of the officers. The Scarman Tribunal concluded that *'at least one of the two police constables who fired from the station fired for effect.....neither the security of the station nor the safety of the police was at such risk as to permit "firing for effect", a euphemism for firing to injure or kill people in the street below'*.

- 12.5. In response to a further attack on Springfield Road Police Station at 2:00am on 14 August 1969, a police officer on the roof of the building was reported to have discharged eight warning shots into the air from a Sterling submachine gun.
- 12.6. The Scarman Tribunal reported that the events of 13 August 1969 informed police planning for potential serious public disorder on 14 August 1969, such that 400 police officers were made available for *'riot duty'* in Belfast on that date.
- 12.7. The Scarman Tribunal observed that on 14 August 1969: *'The situation was explosive. Catholics were alert to move up along their ends of Dover and Percy Street. Protestants were sensitive to any movement up these streets. If the police should not be present in between the two communities, as in the event they were not, each side could well misinterpret the actions of the other. Thus it needed only a movement of Catholics into Dover or Percy Street or a threat of Protestants down the same streets for there to develop an uncontrolled faction fight. Both these movements did in fact occur: and the result was an "invasion" of Divis Street by Protestants, which ultimately led to Catholic gunfire intended to repel invaders and to much heavier police gunfire intended to silence the Catholic gunmen. The immediate price in human suffering and damage to property was tragic enough – a boy and two young men killed, an unknown but substantial number of persons injured, a considerable area of residential and other property devastated. But there was more to pay. The major casualty of the night was the complete loss of confidence by the Belfast Catholic community in the police force as then constituted and the determination thereafter by subversive*

elements such as the IRA to exploit the opportunities for urban guerrilla warfare in Belfast'.

- 12.8. Evidence heard by the Scarman Tribunal indicated that at 7:00pm on 14 August 1969 missiles and petrol bombs were thrown at Hastings Street Police Station by a crowd from the Catholic community. As public disorder escalated, between 10:00pm and 11:30pm fighting took place between members of the Catholic and Protestant communities at Dover Street and Percy Street. At Conway Street, homes of the Catholic community were set on fire. The Tribunal also heard evidence that in response to gunfire from crowds of Catholics, police discharged shots *'in the air'* at Cupar Street, and *'fired for effect'* at Conway Street, where a Browning machine gun mounted on a Shorland armoured vehicle was discharged.
- 12.9. The Scarman Tribunal was told by police that at approximately 12:30am on 15 August shots were fired from the direction of Divis Street towards members of the RUC and groups of Protestants who were at *'the mouth of Dover Street'*. A Protestant civilian, Mr Herbert Roy, was killed and three police officers sustained gunshot injuries.
- 12.10. As police lines moved into Divis Street, the Tribunal was told missiles were thrown from the roof of the Whitehall Block of maisonettes as a result of which armoured Shorland vehicles were requested to the area. The Tribunal heard that police continued to come under gunfire from the direction of both St Comgall's school and Divis Flats. Police were seen to discharge revolvers and 'bursts' from Sterling submachine guns into Divis Street.
- 12.11. Upon the arrival of the Shorlands, with Browning machine guns, other police officers were withdrawn to Dover Street. At this point civilians had *'scattered'* with members of the Catholic community returning to the precincts of Divis Flats while others could be seen at St Comgall's School.

12.12. In my investigation I have gathered and considered a large amount of evidence in respect of each complaint. I have also carefully evaluated this evidence in light of the specific complaints and in the context of my obligations. In undertaking this evaluation I have come to certain views about whether certain police actions were justified or not in each case. These are my views based on the evidence considered in my investigation. They do not represent a determination of criminal offending or misconduct on the part of any individual. When expressed in a public statement these views should be considered as integral to a comprehensive narrative of all the evidence considered as an appropriate acknowledgement of the specific complaints of the families of those killed on 14/15 August 1969.

The use of Shorland vehicles

12.13. The decision to deploy Shorland armoured vehicles mounted with Browning machine guns, a vehicle primarily designed for rural use, was significant. The Scarman Tribunal recorded contradictory accounts regarding who made the decision to mount the Brownings on the vehicles on 14 and 15 August 1969. There is evidence indicating the Inspector General of the RUC made this decision in consultation with the Belfast Commissioner of the RUC. However, the Inspector General stated that he did not receive a request to arm the Shorlands and did not make the decision to do so.

12.14. It is also noted that he told the Tribunal: *'I cannot fully recall whether I decided if or whether the Commissioner told me he had done it and I approved it, but whichever way it was, my Lord, it basically comes back to being my decision'*. It would be reasonable to conclude that the Inspector General was responsible for this decision. Both officers are deceased.

12.15. My investigation secured expert ballistics advice on the Browning machine gun used by the RUC with their Shorland armoured vehicles. It discharged .30 calibre bullets and its usual effective range was 800 metres. However, bullets could travel much further and still cause serious injury. When bursts of fire were discharged from the Browning they formed a cone effect which

widened as bullets travelled a greater distance. Bursts of fire from the Browning could penetrate brick walls.

- 12.16. The Inspector General told the Scarman Tribunal that the decision to discharge the Brownings was a matter for police officers on the ground on 14/15 August.
- 12.17. A Head Constable told the Scarman Tribunal that initially he did not intend to use the weapons mounted on the Shorlands. However, the situation had deteriorated which led him to brief a Sergeant who was the commander in the lead Shorland: *'that police were being fired at from the streets on the left and St Comgall's Schoolthat the police station was being fired on from the flats..... that a civilian and two police officers had been shot'*. Consequently he instructed the Sergeant to *'take the Shorlands up Divis Street, to fire in the air to disperse the crowd and, if fired on, to fire for effect'*.
- 12.18. The Shorlands proceeded as directed. The Scarman Tribunal heard considerable evidence of the Brownings mounted on the Shorlands discharging *'short bursts'* of fire. The Scarman Tribunal concluded that *'the evidence adduced puts beyond doubt that during the period that the three vehicles were in Divis Street a considerable number of rounds of Browning ammunition were discharged in the direction of the flats on the south side of Divis Street'*.
- 12.19. The Head Constable acknowledged his orders may have endangered the lives of innocent people. However, he also stated that he made the decision in an effort to end the public disorder and risks to life in the area as quickly as possible and to avoid further bloodshed. The District Inspector, arrived on the scene after the Shorlands had moved into Divis Street but told the Scarman Tribunal that he had concurred with the decision taken by the Head Constable.
- 12.20. The officers on board the Shorlands had limited experience of the vehicle and the accompanying .30 Browning machine gun. Police Officer 6, the

commander of one of the Shorlands stated that he had no experience of the vehicle and had not been trained in the use of the Browning. Indeed, he had not seen a Shorland prior to that night. Police Officer 7, a gunner, stated that although he had received one week of training on the Browning three years previously and thereafter annual refresher training, he had never discharged the weapon at night prior to 14/15 August 1969. Police Officer 7 acknowledge that neither he nor the other Shorland gunners had used the vehicle or the weapon in live fire circumstances before that night. Another Shorland commander told the Scarman Tribunal that he had received no training in, and had no knowledge of the Browning machine gun. He stated that his first duty on board a Shorland had been on 14 August 1969.

- 12.21. On 26 August 1969, an Advisory Committee led by Baron Hunt was appointed by the Minister of Home Affairs for Northern Ireland *‘to examine the recruitment, organisation, structure and composition of the Royal Ulster Constabulary and the Ulster Special Constabulary and their respective functions and to recommend as necessary what changes are required to provide for the efficient enforcement of law and order in Northern Ireland’*.
- 12.22. The Advisory Committee observed that at the time of their appointment *‘the importance and urgency of this task was impressed upon us in view of the situation following the disorders earlier in the month’*.
- 12.23. The Committee reported in October 1969. Among many recommendations there is one of particular significance to the use of Shorland vehicles; *‘....certain vehicles of a war-like character are inappropriate to a civil police role. We recommend that the armoured cars now in use should cease to be part of police equipment.....’*
- 12.24. My investigation has been concerned with four deaths. I am, however, mindful of evidence heard by the Scarman Tribunal that other members of the public in the Gilford, St Brendan’s and Whitehall blocks of the Divis housing complex had sustained what were believed to be gunshot injuries. Evidence of these injuries was, in part, provided by an RUC officer who,

having removed clothing that identified him as a police officer, entered the buildings at potential risk to himself, in order to tend injured members of the public. It would be remiss of me not to commend that officer for this act of courage and humanitarianism.

- 12.25. The velocity, effective range and pattern of fire from .30 calibre Browning machine guns, from which approximately 200 rounds were discharged on the night of 14/15 August 1969; the topography of the Divis Flats area and neighbouring streets, being a densely populated urban area; and the limited experience of the gunners, all lead me to the view that the decision to deploy Shorland armoured vehicles equipped with Browning machine guns was fundamentally flawed.
- 12.26. Based on all available evidence, I am of the view that the use of Browning machine guns created a severe, disproportionate and unjustified risk of injury and death to others.

The Death of Patrick Rooney

- 12.27. Shortly after 1:00am on 15 August 1969, nine year old Patrick Rooney was struck by a bullet, sustaining fatal injuries, while in his home at the St Brendan's Block of Divis Flats.
- 12.28. The Scarman Tribunal concluded that *'firing from Browning machine guns mounted on Shorland armoured cars, fatally injured Patrick Rooney'*. My investigation also obtained evidence, including a forensic examination of the bullet fragment which struck Patrick, which supports the conclusion that the round that struck Patrick was discharged from an RUC Browning machine gun.
- 12.29. Only one of the gunners on board the three Shorlands, (Police Officer 7), gave evidence at the Scarman Tribunal. Therefore only his account was tested. The Tribunal heard evidence that the Shorland vehicles had

discharged 'warning shots' from their Browning machine guns, though not in the St Brendan's Path area.

- 12.30. The Scarman Tribunal heard '*a considerable volume of evidence*' from civilian witnesses who asserted that they had witnessed the Shorlands indiscriminately shooting into the flats. The Tribunal concluded that there was '*no doubt that at least one of the Shorlands opened fire on the flats, hitting St Brendan's block and the city face of the Tower block*'. The Tribunal was satisfied, however, that there had been no shots fired at police from this area of the housing.
- 12.31. The Tribunal made the following observation in respect of evidence from police officers involved in the discharge of Browning machine gun(s) which resulted in the death of Patrick Rooney:
- 'We believe that, appalled at the human consequences of their shooting and frightened by the spectre of revenge, the Shorland crew members have not made to the Tribunal a full disclosure of what they know occurred'*.
- 12.32. There was no evidence obtained as part of my investigation to link a specific Browning machine gun, Shorland vehicle and gunner, to the round which killed Patrick Rooney.
- 12.33. Two of the three Shorland gunners (Police Officers 10 and 13) are deceased. The role of the third gunner (Police Officer 7) in events leading to the killing of Patrick Rooney was the subject of my investigation. At interview he acknowledged that he had discharged a Browning machine gun on the night of 14/15 August 1969 but denied being responsible for the shot that killed Patrick.
- 12.34. At the conclusion of my investigation a file of evidence was collated and forwarded to the PPS as it was considered that a criminal offence may have been committed by Police Officer 7. In making a decision as to whether or not to prosecute the PPS considered accounts from members of the public

and RUC officers deployed in the locality on the night. The PPS also considered the absence of any admission by Police Officer 7 or other Shorland operatives who may have discharged Browning machine guns in the vicinity of the Rooney home. The PPS directed no prosecution in respect of Police Officer 7.

12.35. I have earlier expressed the view that Shorland armoured vehicles equipped with .30 calibre Browning machine guns ought not to have been deployed and nor should their weapons have been discharged in the Divis Flats area on the night of 14/15 August 1969.

12.36. It is my view that one or more of the Browning machine guns directed fire into the central area of the flats. I believe that the evidence supports the view, expressed by the Rooney family, that this was unjustifiable. This led to the tragic and wholly unnecessary death of a nine year old child, Patrick Rooney.

12.37. I can find no evidence of a prompt, adequate police investigation into the circumstances of Patrick Rooney's death and the potential culpability of the police officers who were responsible. Similarly there was no examination of the criticism made by the Scarman Tribunal in respect of the accuracy of police accounts provided to the Tribunal in respect of Patrick's death. Such investigations should have taken place at the earliest possible opportunity following the deaths.

The Death of Hugh McCabe

12.38. The Scarman Tribunal heard that at around the same time as the fatal shooting of Patrick Rooney, members of the public were seen on the roof of the Whitehall Block from where missiles were being thrown at police on the street below.

12.39. One of the officers (Police Officer 19) on the roof of Hastings Street Police Station gave evidence that he had seen what he believed were '*muzzle*

flashes from an automatic weapon at the top of the Divis Street end of the Whitehall flats'. He also saw 'petrol bombs thrown from the roof of the staircase which was at a slightly lower level than the roof'.

- 12.40. In response to the *'muzzle flashes'*, which were believed by two police 'marksmen' positioned on the roof of Hastings Street Police Station to relate to gunfire directed at their station, the officers discharged some 18 rifle shots at the roof of the Whitehall Block. One officer gave evidence that shots fired at the police station were falling short of the building.
- 12.41. An individual on the roof sustained a gunshot wound to his neck and Mr McCabe suffered a fatal shot to the head. Reference was made by the Tribunal to other injuries also having been sustained from the police gunfire.
- 12.42. The Scarman Tribunal heard conflicting evidence as to whether or not an automatic firearm had been discharged from the Whitehall Block. None of the evidence adduced from police officers during the Tribunal indicated that they had engaged a clear target. However, in a document located within the PRONI papers, Police Officer 17 stated that he observed an individual on the stairwell roof of the Whitehall Block discharging an automatic firearm at police and he returned fire.
- 12.43. The Tribunal concluded that *'there was no firing from the Divis flats save for some shots fired either from the staircase roof, or from the roof of, the Whitehall Block'*. It also noted, however, that Mr McCabe and the individual who suffered a wound to his neck and survived, had been engaged in throwing objects at police.
- 12.44. Witness evidence to my investigation indicates that when Mr McCabe was shot he was on the flat roof of the stairwell of the Whitehall Block, accompanied by other members of the public who were throwing missiles and petrol bombs at police below. The witnesses denied that any of them, including Mr McCabe, were in possession of a firearm. Neither the Scarman

Tribunal nor my investigation have identified evidence that would undermine these accounts.

- 12.45. Consistent with the findings of the Scarman Tribunal, I agree that Mr McCabe was shot by one of the police marksmen positioned at Hastings Street Police Station. An independently instructed forensic scientist was of the opinion that the rifle used by Police Officer 17, could not be conclusively ruled out as having been the weapon which fired the fatal shot. However, he observed it was most likely that the shot was fired from the rifle of Police Officer 18.
- 12.46. Police Officer 18 is now deceased. My investigators sought to interview Police Officer 17 in relation to Mr McCabe's death. However, for medical reasons the interview could not be conducted. Despite Police Officer 17 being unfit for interview a file of all the available evidence was collated and submitted to the PPS as it was considered that a criminal offence may have been committed by Police Officer 17. The PPS considered all of the available evidence and the fact that Police Officer 17 was unfit for interview and directed no prosecution.
- 12.47. The Scarman Tribunal concluded *'that the firing which killed Mr McCabe was justified. While the police marksmen ran the risk that they might kill or injure innocent people in the flats, their target was a legitimate one. It was a grave decision to take, but (unlike the Shorland firing) the shooting consisted of single shots carefully and skilfully aimed'*.
- 12.48. The presence of an armed individual at an elevated position, such as the roof of the Whitehall Block, firing an automatic weapon would clearly have presented a serious risk to police officers and members of the public. In such circumstances the discharge of an appropriate firearm by a skilled 'marksman' may have been justified, subject to a clear target and consideration of risks to others.

- 12.49. The Scarman Tribunal concluded that there were shots fired towards Hastings Street Police Station. There are inconsistencies in the accounts provided to the Scarman Tribunal and gathered by my investigation. However I concur with Scarman that there were shots fired at police. Police were firing at what they believed to be '*muzzle flashes*', in poor visibility, with no clear target and in the knowledge that other members of the public were in close proximity. In addition, a risk existed that shots would pass over the roof and strike unknown objects beyond the Whitehall Block. As a consequence, a number of people, some of whom may well have been throwing missiles and petrol bombs, were struck by the police gunfire from Hastings Street Police Station.
- 12.50. Notwithstanding Scarman, I have grave reservations as to whether returning fire in the volume that was discharged, with Browning machine guns and rifles, was justified given the risk to civilian life. I am satisfied, based on the evidence, that Mr McCabe was shot by a rifle in the context of the general risks to civilian life posed by police actions on that evening.

Summary of events preceding the deaths of Samuel McLarnon and Michael Lynch

- 12.51. The Scarman Tribunal described public disorder in the Ardoyne area of Belfast on the night of 14/15 August 1969 as a '*catastrophic riot*'.
- 12.52. The Scarman Tribunal established that late on the evening of 14 August 1969, groups from the Catholic and Protestant communities gathered in side streets north and south of the Crumlin Road respectively. The Tribunal heard evidence that shortly after 10:30pm members of the two communities engaged in what was described as a '*pitched battle*' on the Crumlin Road.
- 12.53. As the violence escalated, police were reported to have launched a number of '*baton charges*' into the mainly Catholic Hooker Street, using a Humber armoured vehicle to break through barricades. The Scarman Tribunal recorded that they were followed by a crowd from the Protestant community

such that police found themselves between the two opposing factions. Petrol bombs were thrown by both sides and buildings caught fire, including houses. Police told the Tribunal that at this time they had come under gunfire.

- 12.54. Having entered Butler Street, the Humber vehicle was struck by a petrol bomb, caught fire and stalled. As the police officers on board alighted a Head Constable *'heard what he thought was shooting (from what he believed to be revolvers) and saw flashes from a crowd of at least 50 which had appeared'*. Petrol bombs and other missiles were also being thrown at police. The Head Constable told his officers to fire a warning volley over the heads of the crowd which they did using revolvers and Sterling submachine guns. When the shooting at police resumed the Head Constable instructed his officers to *'fire for effect'*.
- 12.55. The Scarman Tribunal found that it was *'not possible to be certain whether as the police leapt out of their vehicle they were in fact fired upon or merely thought that they were. In either event it is very probable, and we so find, that a policeman, as he emerged believing he was under fire, did himself fire: he would have done so before the Head Constable left the vehicle and knew from his own observation what was going on. We are satisfied that, as the incident progressed, shots were fired from the crowd and that, thereafter, the affair developed as described by the Head Constable. The episode marked a turning point in the riot. The shooting was heard by many: interpretation of it varied according to the loyalties of those who heard it. (The) Head Constable, for example, assumed that the shooting was exclusively Catholic in origin. From then on the Protestants believed the Catholics were provoking a gun-battle, the Catholics were sure that the police had decided to use firearms against them: and the police, some of whose senior officers already believed they were faced with an armed uprising, were confirmed in their belief. The ensuing tragedy of death and maiming by gunfire which overwhelmed the area this night and the following day developed from this incident'*.

- 12.56. Although faced with conflicting evidence regarding police gunfire into Herbert Street, the Scarman Tribunal determined that three police officers discharged 55 rounds from three Sterling submachine guns but that other officers may also have discharged firearms, including handguns. Two of the Sterling submachine guns had been set to automatic fire, contrary to instructions given by a senior officer earlier the same evening.
- 12.57. The Scarman Tribunal records *'that in the Ardoyne area on the night of 14/15 August 1969, gunshot injuries were sustained by twelve men of whom two, Mr Samuel McLarnon and Mr Michael Lynch died. Ten of the twelve were injured by bullets and two by shotgun pellets. Since there is no evidence of bullet firing weapons in the hands of Protestant civilians it is probable that the ten bullet casualties were caused by police fire. All those who sustained gunshot injuries during the period 11 pm 14 August to 1 am 15 August were Catholics'*.

The Death of Samuel McLarnon

- 12.58. Mr McLarnon was at home with his family on the ground floor of his home at Herbert Street with his wife at approximately 1:00am on 15 August 1969 when he was struck by a bullet.
- 12.59. Although a representative of the RUC at the Scarman Tribunal did not accept unequivocally that Mr McLarnon was shot by police fire, the Tribunal concluded that the forensic and other evidence was 'irresistible' and concluded that his fatal wound had been sustained from *'police fire directed down the street from its junction with the Crumlin Road'*.
- 12.60. The findings of my investigation, including independent forensic evidence, lead me to the view that a police officer discharging a Sterling submachine gun, either as a burst of automatic fire or single shots, was responsible for the death of Samuel McLarnon who was at home with his family. There is no evidence that Mr McLarnon was discharging a firearm at police. I was, however, unable to firmly establish which of three police officers who

discharged Sterling submachine guns at the time in question was responsible as none could be interviewed, two having passed away and the third being unfit for interview. The absence of contemporaneous forensic examinations to identify the firearm(s) which discharged bullets into Mr McLarnon's home further undermined the ability of my investigation to establish which police officer had shot Mr McLarnon. In my view the decision to discharge police firearms at a number of houses on Herbert Street, including Mr McLarnon's home, in order to deal with reports of sniper fire was disproportionate and posed a risk to civilian life.

- 12.61. The Scarman Tribunal was established in accordance with the Tribunals of Inquiry (Evidence) Act 1921 as an Inquiry into civil disturbances in Northern Ireland in July and August 1969. The Tribunal examined the circumstances leading to a number of deaths at the time. However, this examination was not equivalent to an investigation into potential criminal offences by police officers involved in those deaths. Evidence given by witnesses could not be used against them unless it related to wilful misleading of the Tribunal. The passage of time, not least because many of those involved in events in the Ardoyne area on the night of 14/15 August 1969 are deceased, in many respects undermined the prospect of establishing accountability and potential culpability for the death of Samuel McLarnon.
- 12.62. The Scarman Tribunal concluded that *'police shooting in the street was for a time heavy: but the police were fired on first'*.
- 12.63. Based on all available evidence my assessment of the manner in which police discharged firearms at Herbert Street, resulting in the death of Mr McLarnon and bullet strikes on other houses in the immediate vicinity, is that officers gave insufficient consideration to the risks this created for members of the public who were not engaged in potentially lethal attacks on police. The manner in which police fired their weapons in the area of Herbert Street was, in my view, unjustified.

The Death of Michael Lynch

- 12.64. The Scarman Tribunal heard evidence that following the incident in which three Sterling submachine guns were discharged at Herbert Street, *‘the centre of activity moved up the Crumlin Road with police and rioters in the Ardoyne area engaging one another successively at Butler Street and in the vicinity of Kerrera Street’*. The Tribunal observed that *‘at this time there were groups of youths from the south side of the Crumlin Road, some wearing helmets and armbands, assisting the police and intermingling with them’*.
- 12.65. As the crowd from the Catholic community were forced into Butler Street, the Tribunal found that an explosive device was thrown at a Shorland armoured vehicle. Police responded with *‘warning shots’* and gunfire was returned from Butler Street. A police officer then discharged a Sterling submachine gun into Butler Street. There were inconsistent accounts about a Shorland also discharging its Browning machine gun.
- 12.66. Mr Lynch had been taking cover in a doorway at Butler Street. As he and a companion attempted to make their way to Elmfield Street, Mr Lynch was struck in the chest by a bullet, probably discharged from a Sterling submachine gun, and died from his injuries.
- 12.67. My investigation established that Mr Lynch was shot between 12:15am and 12:30am. Consistent with the findings of the Scarman Tribunal I believe this points to Mr Lynch having been struck by a bullet discharged from a Sterling submachine gun.
- 12.68. The Scarman Tribunal stated; *‘Again, though there were fatal consequences for a bystander, the police were in fact returning fire’*. The Tribunal also records that the evidence is full of inconsistencies. No definitive police account was identified by the Scarman Tribunal which indicates the officer responsible. I am however satisfied that Michael Lynch was killed by a bullet discharged from a police Sterling submachine gun.

Based on evidence obtained by my investigation and the conclusions of the Scarman Tribunal, I am of the view that the police officer who, in all probability, fired the fatal shot is a police officer who discharged a Sterling submachine gun into Butler Street, who is now deceased. Therefore, I have been unable to conclude on this matter. The circumstances of Mr Lynch's death illustrates the risks to civilian lives from the manner in which police discharged submachine guns in a densely populated residential area without particular consideration as to potential collateral injuries, such as those sustained by Mr Lynch.

12.69. Therefore I am of the view that the discharge of the Sterling submachine gun leading to the death of Michael Lynch, in the manner indicated by the evidence, was unjustified.

12.70. As with the other deaths outlined in this public statement, the absence of a reasonably prompt police investigation into the circumstances of Mr Lynch's death compromised the chances of establishing who, specifically, fired the shot that killed him.

Concluding Commentary

12.71. I have made reference throughout this public statement to the absence of effective police investigations which could have established accountability and where necessary culpability in respect of criminal and/or disciplinary offences by police officers with respect to the circumstances of the deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch.

12.72. In this public statement I have made reference to a number of documents which provide some insight into the views of Justice Scarman, senior government officials and the Inspector General of the RUC regarding commencement of police investigations into the conduct of police officers in relation to events in Belfast during August 1969. The documents indicate that, by early November 1969, Justice Scarman had told government officials that he was '*receiving disturbing evidence about the conduct of the*

Royal Ulster Constabulary in Belfast during the August disturbances. Agreement had been reached, however, that *'any intervention would be impracticable and undesirable'* and that the matter should not be pursued.

12.73. A subsequent Home Office document of 13 March 1970 noted that Justice Scarman had expressed opposition to 'a criminal investigation by police....while the relevant matters were still before the Tribunal' but that 'the Inspector General could proceed with any investigation he thought it proper to undertake whether by his own officers, even though the Tribunal had still to present its report, or officers from elsewhere'. Although the Tribunal conducted hearings until June 1971, the Inspector General of the RUC announced on 6 April 1970 that he was willing 'to examine any responsible request regarding an individual complaint of crime or misconduct (on behalf of police)'.

12.74. I have not identified evidence that a co-ordinated investigative effort followed. The Scarman Tribunal would subsequently state that the Catholic community, particularly in the areas of Belfast affected by the disturbances, had lost confidence in the RUC. The lack of engagement with the authorities in respect of the deaths subject to my investigation and other serious incidents which occurred in August 1969 may not, therefore, be surprising. The absence of police investigations of these matters either in 1969, when the opportunity to secure 'best evidence' was presented, or during the subsequent period between 1970 and 1971, as indicated by the Inspector General, undermined efforts to establish the facts and to hold those responsible to account for their actions, whether by a criminal or disciplinary process.

12.75. The deaths of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch were referred for investigation by the HET to my predecessor Nuala O' Loan in 2006. A number of complaints and concerns were also raised by the families of each of those killed; these have been outlined in Chapter 3 and in greater detail in Chapter 10 of this public statement.

- 12.76. In the Court of Appeal judgement in *Re Hawthorne and White's application*, the Lord Chief Justice clarified that the principal role of the Police Ombudsman in investigating complaints from members of the public is investigatory. The Court expanded on this by pointing to the fact that the role of determining matters of criminality or misconduct resided exclusively with the PPS or a disciplinary panel, as the case may be. In this case, the PPS has directed no prosecution in respect of the actions of former RUC officers in respect of the deaths of Patrick Rooney and Hugh McCabe. A number of the relevant officers are retired and therefore the question of disciplinary proceedings does not arise. Some officers are deceased.
- 12.77. Further the judgement (at paragraph 63) outlined that although the Police Ombudsman could not make a determination about the outcome of a complaint, he could (with reference to the specific facts of that case) acknowledge certain matters uncovered by his investigation, in the context of the particular complaints at issue. The court said: *'We do however accept, that in light of the families complaint in the context of article 2 it would have been appropriate for the Ombudsman to acknowledge that the matters uncovered by him were very largely what the families claimed constituted collusive behaviour'*.
- 12.78. I have carefully considered the Court of Appeal judgment and its clarification of the Ombudsman's powers in the context of the complaints from the families in this case. The answers to the families' queries as to the authority for and identity of those who gave the order to fire, the absence of an effective police investigation and prosecutions at the time are outlined in this public statement, as is the outcome in each case of relevant forensic evidence obtained by police at the time and by my investigation. The lack of engagement by police with families is also explained in this statement.
- 12.79. The tactics employed by police officers in discharging various high velocity firearms at the Divis Flats housing complex and at Herbert Street and Butler Street in the Ardoyne area on the night of 14/15 August 1969 were, in my opinion and on occasion, disproportionate and dangerous. As a direct

consequence a nine year old boy (Patrick Rooney) and three young men (Hugh McCabe, Samuel McLarnon and Michael Lynch) were left dead and their families have endured a lifetime of grief. I regret that my investigation has been unable to gather the evidence necessary to identify the individual police officers who were responsible for the deaths, but the absence of prompt and effective investigation, allied with the long passage of time, have compromised my efforts to do so.

12.80. The families of Patrick Rooney, Hugh McCabe, Samuel McLarnon and Michael Lynch raised concerns about the circumstances that led to the deaths of their loved ones on the night of 14/15 August 1969. The families complain that they were shot by police without good reason. The Scarman Tribunal heard oral evidence and received accounts from police officers and civilians who witnessed the events of that night unfolding. The former Chief Constable of the PSNI referred these deaths to my predecessor on the basis that the actions of police may have resulted in the deaths. After a lengthy and detailed investigation, files of evidence were submitted to PPS seeking a direction as to prosecution of a number of officers specifically in relating to the deaths of Patrick Rooney, Hugh McCabe and Samuel McLarnon. No prosecutions of former RUC officers have been directed by PPS. However, having considered all of the available evidence, I am of the view, for the reasons set out in this concluding chapter, that the families of those shot by police on 14/15 August have legitimate concerns and that their belief that their loved ones deaths were caused by the actions of police without good reason are justified.

12.81. Finally I thank all concerned for their patience and co-operation during this investigation.

Marie Anderson
Police Ombudsman for Northern Ireland
5 May 2021

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