

NORTHERN IRELAND RETIRED POLICE OFFICERS' ASSOCIATION

# **The Good Neighbour Bombing**

A response to the determination by the Office of the Police Ombudsman for Northern Ireland that a breach of Article 2 of the European Convention on Human Rights by the Police occurred.

October 2013

This document is an analysis of the OPONI investigation into the tragic deaths that occurred on the 31st August 1988 and the failure of the Ombudsman to apply the appropriate test in respect of both facts and law to the event as was known to Police at the time.

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# THE GOOD NEIGHBOUR BOMBING

An analysis by NIRPOA of the Section 62 public Statement of the Police Ombudsman and the determination that the RUC, in 1988, failed in their responsibility under Article 2 of the ECHR to uphold the right to life of Mr Dalton

## 1 INTRODUCTION

On 31st August 1988 an explosion took place inside 38 Kildrum Gardens, Derry/Londonderry with fatal consequences. The Provisional IRA had abducted the occupant of the first storey flat and then booby-trapped it with the intention of killing members of the Security Forces.

Three neighbours of the abducted man Sean Dalton, Sheila Lewis and Thomas Curran had not seen their neighbour for about six days and were concerned for his welfare. They approached the flat and forced open a window. Sean Dalton entered through the window and went to open the front door when there was an explosion that demolished the flat, killing Sean Dalton and Sheila Lewis instantly. Thomas Curran died on 31st March 1989 as a result of the injuries he received in the explosion.

The Provisional IRA admitted responsibility for the explosion.

a) On 10th July 2013, after eight years of investigation and the production of three variant draft reports by three separate Ombudsmen, a public Statement made under the provision of Section 62 of the Police (Northern Ireland) Act 1998 was finally issued. Amongst other determinations made by the Police Ombudsman was that contained at para 9.47 of the Statement which stated; *“In respect of complaint 3: that under Article 2 of the European Convention on Human Rights which states everyone’s right to life shall be protected by law; it is my opinion that the police failed in their responsibilities to uphold Mr Dalton’s right to life.”* This is an extremely grave determination and one which the Ombudsman says *“was reached on the balance of probabilities, which are evidence based and drawn from all sources of information available.”*

b) In the view of our Association the gravity of any determination in respect of Article 2 of the ECHR places a high threshold on the Ombudsman to demonstrate he has discharged the onus of proof that rests upon him with a weight and clarity of evidence that unequivocally supports his finding that Article 2 has been breached. The purpose of this analysis is to demonstrate that we believe, as an Association, that the evidential threshold was not reached and consequently the determination is not well founded.

## **2 THE STATEMENT**

a) The section 62 Statement was the product of eight years of investigation by OPONI. No one, neither the complainant, nor the ex police officers subjected to investigation, should have had to wait such an inordinate amount of time for the findings to be made known. In the view of the Association this wholly unjustified delay is but further depressing evidence of the systemic managerial and investigative weaknesses, identified in other reports, as being inherent in OPONI from its inception and still present to this day. Regretfully, the absence in the Statement of an apology or indeed any explanation for the delay must be regarded as an opportunity missed by OPONI to demonstrate that client management has at last become a priority concern.

b) In respect of the Statement itself, the complainant, retired police personnel and the public at large had the right to expect that after eight years, the published document would have been of the highest investigative standard, clearly laid out with considerable contextual detail and a full forensic analysis of events leading up to the fatal explosion that cost the lives of three people. Instead the Statement that emerged was of such a substandard construction and layout that it proved extremely difficult to read with any clarity as to the chronology of events, or to the identification of the relevant key determinants that were to the fore in the mind of the Ombudsman and which led to the determination that Article 2 had been breached.

c) In the view of the Association, it appears that the Ombudsman was presented by his investigators, with a report wherein a combination of failures had occurred; relevant information was mixed with non relevant information, such as that which became available after the fatal incident; speculation was indulged in relating to issues not fully investigated by OPONI; or more fundamental, where material totally irrelevant to the crux of the investigation was injected into the Statement without explanation or justification.

d) The interpretation applied to this cocktail of fact, alleged fact and outright speculation was, we believe, then heavily overlaid with the bias inherent in the application of hindsight to any historical incident; whereby those investigating the past are prone to believing that events, were more foreseeable than they actually were and subsequently present them as such. The outcome we believe was the production of an investigation so compromised and inadequate through the absence of appropriate investigative and presentational discipline that it resulted in the Ombudsman misdirecting himself both in matters of fact and in law.

## **3 ANALYSIS OF THE STATEMENT**

a) Consequently we have endeavoured to analyse the Statement's content in order to correct the shortcomings referred to above and to offer a more cogent presentation of relevant facts. In doing so we are conscious that in order to do justice, both to the complainant and other relatives of those who lost their lives so cruelly to a PIRA bomb and to the many retired police officers charged in 1988 with delivering a police service to the citizens of Derry/Londonderry and the residents of the Creggan in particular; certain key factors need to be kept to the forefront of our minds.

b) These are not exclusive of other information which needs to be considered but primarily relate to establishing the unique policing environment that existed in 1988, the volume and diversity of incidents of a terrorist nature that were occurring daily and had occurred throughout the previous year and that clearly impacted on service delivery and on the lives of the general public; particularly in respect of the relationship between the residents of the Creggan and the police where the fatal PIRA bombing in 1988 occurred.

c) The relevance of these key factors will become apparent as the next crucial criterion to be addressed is the Osman test. The principles espoused therein must be satisfied before a duty of care is established with any individual or individuals and any determination by the Ombudsman that seeks to affirm that a duty of care has been breached, must address the same.

#### **4 RELEVANT LAW**

a) As an aside however and before going on to an examination of the identified matters in detail, it is considered appropriate that we, at this juncture record, that it is in our opinion, not entirely clear that the appropriate test in respect of the events of 1988 and the determination as to any “duty of care” should be based on the law post the introduction of the Human Rights Act 1998 and the case law that flowed from it i.e. Osman v UK 1998

b) The UK government formally ratified the ECHR Convention in March 1951 but it is an accepted principle that the Articles were not assimilated into the English, Scottish or Northern Ireland legal systems. Legal thinking that prevailed certainly throughout 1988 proclaimed that common law rights and duties adequately served to safeguard the rights of the individual. The obligations on UK police services in 1988 in terms of protecting life were far less clear than they are now. In Hill v Chief Constable, the House of Lords said that the police had no duty of care to the public in terms of investigating crime. It was therefore, rightly or wrongly as the case may yet prove to be, that the police service in 1988 formulated its policing policies and operational protocols based on common law principles and consequently it may be argued that, in the interest of fairness, it would be more appropriate to consider the alleged duty of care owed by the police in respect of the tort of negligence rather than European rights based law.

#### **5 OSMAN TEST**

a) However, as the Ombudsman has sought to use Article 2 of the ECHR and the rights and duties associated with it as the basis for his determination, we will proceed to examine matters on that account. The Osman test in essence establishes that *“the first sentence of Article 2 .1 enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those living within its jurisdiction. It may imply a positive obligation on the authorities to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of any such positive obligation must be interpreted in a way which does not impose an impossible or disproportionate*

*burden on the authorities bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources.”*

*“Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising.....to find a violation of the positive obligation to protect life, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers, which, judged reasonably, might have been expected to avoid that risk”*  
(extract from *Osman v UK*).

b) Further elucidation on the principles of the test is found in *Van Colle v Chief Constable of the Hertfordshire Police* (2008) UKHL 50 where it is stated *“The Osman test tells us that the facts must be examined objectively at the time of the existence of the threat and that the positive obligation is breached only if the authorities knew or ought to have known at that time that it was a threat to life which was both real and immediate.”*

*“A real risk is one that is objectively verified and an immediate risk is one that is present and continuing.”*

*“The criterion is and should be one that is not readily satisfied: in other words the threshold is high and that it must be shown that the authorities failed to do all that was reasonably to be expected of them to avoid the risk to life. The standard accordingly is based on reasonableness, which brings in consideration of the circumstances of the case, the ease or difficulty of taking precautions and the resources available.”*

c) With these criteria in mind we will now examine the Statement to see if the criteria identified above are fully addressed in the determination arrived at by the Ombudsman in his Section 62 Public Statement.

## **6 GENERAL CONTEXT**

a) It cannot be emphasised enough that in historical inquiries context is everything, not only in respect of the baseline from which specific incidents are eventually examined, but equally important, for the perception that it conveys, to both the complainant and those being investigated, as to the consummate and impartial nature of the investigation undertaken, to the informed status of the adjudicator and ultimately to the rationale underpinning any determinations that flow from his analysis of the same.

b) The contextual dimension of any Statement has to be much more than just a brief historical narrative, a random handful of statistics, or a superficial passing acknowledgement such as that contained in the opening lines of para 6.5 “I accept that throughout much of The Troubles policing in Derry/Londonderry was challenging with elevated threat levels to the security forces but also to the general public from the terrorist activities of paramilitary organisations. During the summer of 1988 there were more than 160 recorded security related incidents in the area.”

c) The purpose behind a detailed contextual analysis is manifold. It should at the very least inform the investigator of the real time environment in which the incident under investigation occurred both from the perspective of the police and the community in which it occurred. It should provide a clear picture of the nature and degree of the threat levels under which policing was being delivered. It should identify the resources and technology available to police command at the time and how service delivery in different areas was effected. It should identify the impact that sustained threat levels had on individual officers and how it affected their perception and response to incidents. By creatively using available statistics and other publicly available information relative to any given period in our troubled history, a comprehensive picture can be presented upon which informed appraisal can then be made relative to the criteria identified in the Osman test.

d) In respect of this investigation, if such an approach had been adopted, then we would have expected to see within the Statement context, evidence that a full analysis had been carried out of the security incidents that had occurred during the 12-18 months prior to the bombing on the 31st August 1988 and of the police/military response to the same. If for no other reason than it would have demonstrated the degree to which the Ombudsman had made himself, not only cognizant of the magnitude and variety of the problems relating to the delivery of an effective policing service to the citizens of Derry/Londonderry; but also, as to how, in respect of each category of terrorist activity, specific tactical strategies were employed to deal with the same.

e) The same analysis would have informed any reader of the Statement as to how many of the 160 recorded incidents over the short period referred to in the Statement were bomb related? How many were of a booby trap nature and whether such devices had been deployed in rural or urban areas? How the police/military tactics worked in responding to the same, were they successful or did casualties result? How effective overall was operational planning and how did policing resource deployment dynamically adjust to the varying threat patterns emerging in the Derry/Londonderry area?

f) Our reasoning behind this can best be illustrated by reference to the Statement itself where at para 7.18 following the shooting and bomb attack on Rosemount Police station at 10.00 pm the Ombudsman states that *"my investigation has established that at 10.20 pm on 25th August 1988 police received intelligence, processed and interpreted by Special Branch that there should be no further follow up action as a result of the attack on Rosemount station."* The Statement goes on to define "no further follow up action" and to directly link it to intelligence received by Special Branch on 5th August 1988 regarding the intention of the PIRA to plant a booby trap device in a house in the Derry area and to lure the police to the same.

g) The point being made here is that, without a wider analysis of terrorist activity being at hand and a detailed understanding of what at the time shaped police thinking and tactics in responding; investigators of historical incidents can misinterpret intelligence reports or give a weight to information contained therein that it does not fully warrant. Had that wider study been undertaken in this instance then we have no doubt that the Ombudsman comments at para 7.18 would have recorded that the warnings given post the attack on Rosemount station were more likely to have been based on not only intelligence received but also the harsh reality of lessons learnt from recent experience in dealing with terrorist attacks that invited immediate follow up action.

h) We refer here to the knowledge gleaned from the murder on 23rd March 1987 of Detective Inspector Austin Wilson and Detective Sergeant Bennison. Both officers attended the scene of the murder of Mr Leslie Jarvis outside Magee College on the same date. Mr Jarvis, a Lecturer at Magilligan Prison, was shot six times as he sat in his car outside the College, his car was then booby trapped and the scene left for the police to attend. The device hidden on the back seat of the car exploded 50 minutes later as both Detectives were examining the body. Fortunately students leaving the campus at the time were not caught up in the blast.

i) The appraisal of terrorist tactics such as those used in this incident helped to inform not only the interpretation of future intelligence but also heavily influence the strategic thinking and operational response tactics available to those in command of police in Derry during 1988 and thereafter.

(j) This also applied in respect of the 73 'out of bounds' areas applied over the two-month period preceding the explosion. The inclusion in the Statement of evidence that a similar analysis had been undertaken, would have assured us that the Ombudsman had available to him a full assessment of the efficacy or otherwise of 'out of bounds' areas as a tactic for safety. It would have allowed the Ombudsman to show how, in the absence of specific intelligence, the security forces planned their activities in order to frustrate planned attacks against them.

(k) Regretfully, the Statement overall demonstrates, little if any evidence as to the use made of an empirical based approach to the analysis of any of the wide range of material that was available to OPONI investigators. There appears to have been no realisation as to its potential probative value in overcoming the difficulties experienced in the non availability of other sources of witness information which, OPONI acknowledged, had a negative effect on the completion of the investigation conducted.

## **7 SPECIFIC CONTEXT (THE CREGGAN ESTATE)**

a) It is a matter of considerable surprise that, even if the general context in relation to Derry/ Londonderry as a whole was not considered by the Ombudsman to need any further elucidation, over and above that already contained in his Statement; he did not see fit to provide a specific contextual picture of the area in which the bomb exploded, or to include any account of past terrorist activity, or to comment on the relationship the residents historically had with the police service. By any standard of investigation this omission is a serious oversight, as it is hard to conceive how any commentary on actual or potential police action, could be arrived at without demonstrating a full appreciation of all the above factors, as each aspect clearly would have a major impact on the range of tactics available to the police or the reasonable viability of their successful deployment.

b) A suggested context report is attached at Appendix A for the information of the reader and not included in the main body of this report as it was not an aspect addressed by the Ombudsman in his Statement.



## **8 RELEVANT MATERIAL**

- a) Crucial to the determination as to whether or not the police failed in their duty of care to Mr Dalton and by logical extension to Mr Curran and Mrs Lewis, is the establishment of what were the facts known to the police “at the time” of the explosion, or ought to have been known to them as to the existence of a real and immediate threat to the life of an identifiable individual or individuals from the criminal acts of a third party. If the police failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk, then the positive obligation which rested on them could be deemed to have been violated.
- b) Assembling the evidence to make such a judgement requires a strict examination and chronological logging of both intelligence and facts as they emerged to the police over the weeks and days leading up to the fatal explosion, so that each aspect of the Osman test can be separately addressed and verified, without the toxic application of hindsight, or the bias created by the inclusion of information that became available post the explosion.

## **9 POSSIBLE PIRA ACTIVITY IN KILDRUM GARDENS 14th July–18th AUGUST 1988**

- a) In our analysis of the case the assessment of events leading up to the fatal explosion begins with a study of the calls made to police between the 14th–21st July 1988. It is necessary to separately examine all incidents that gave rise to there being a police presence in the area and to focus on those made in response to information which can be adduced as being potentially terrorism related.
- b) The introduction of other material, where the caller ID has been established and the nature of the call rules out any terrorist connection, only serves to divert focus; consequently those calls that occurred on 3rd July and 29th July are discounted as no proven or suggested terrorism import is alleged or established.
- c) During the above dates, three anonymous calls, made on three separate occasions, informed police that a person and munitions could be located at a specific address in Kildrum Gardens; not the eventual property used by the PIRA. Regretfully the Ombudsman’s Statement does not sequentially record the detail of each call, the time of the call, nor the police response or non response as the case might have been. In fact these calls are so superficially glossed over and the information rolled into one that to all intent and purpose it strongly suggests that their real significance has not been fully realised. All that can be established is that after the third call Special Branch advised against any attendance at the address given.

d) What is clear however is that Special Branch had suspicions that the sequence of calls signalled the probable gathering of information as to police/military deployment in the Creggan and in particular the area of Kildrum Gardens; this led to the determination that to respond, in the absence of verifiable information, would only serve to provide usable intelligence to the terrorist as to police/military deployment/search tactics in responding to that location and to the type of information provided.

e) These suspicions, borne out of prior knowledge and experience of republican terrorist tactics, no doubt were further underpinned, to a limited degree, by information received by Special Branch on 5th August 1988 to the effect that republican terrorists were actively targeting the security forces and intended to plant a booby trap type bomb in a house in the Derry/Londonderry area. An incident, of some unspecified nature, would be staged in order to prompt police officers to carry out enquiries in such a manner that they would become targets of the concealed bomb. This information, whilst non specific as to time or location in the greater Londonderry area, served to sharpen SB awareness throughout the city as to how calls or incidents were to be responded to by uniformed officers, CID officers and military colleagues.

f) Whether or not the arrest made on 18th August 1988 at the unspecified address in Kildrum Gardens, to which police had been anonymously alerted during July, was as a direct consequence of the three anonymous calls, or was based on entirely separate intelligence, or for a totally unrelated purpose, the Statement is silent both as to cause or outcome in respect of the individual arrested or to the search conducted.

g) This summarises all that can be reasonably attributed to police knowledge of any activity in respect of Kildrum Gardens during the period 14th July until 18th August 1988 that had any potential terrorist connection. As for the rest of the Creggan area the Statement is silent as regards incidents or police/military arrests or searches conducted during this period.

h) No specific intelligence was available to Special Branch in respect of any terrorist plans for the Creggan or Kildrum Gardens area of Londonderry during the period 14th July to 18th August 1988.

## **10 INTELLIGENCE RECEIVED BY SPECIAL BRANCH DURING PERIOD 21st JULY 1988–25th AUGUST 1988**

### **5th August 1988**

a) Intelligence of a non specific nature was received to the effect that republican terrorists intended to plant a bomb in a house in the Derry/Londonderry area and then stage an incident to lure police to the premises. The device would be detonated by police attending to conduct enquiries.

b) This information was passed to all stations in Derry with additional advice that the response being made by the security forces to incidents was as always being monitored and that as regards search procedures, this in particular was also under observation with a view to placing a booby trap device.

## **11 GUN AND BOMB ATTACK ON ROSEMOUNT POLICE STATION 10.00 PM 25TH AUGUST 1988.**

a) A gun and bomb attack took place at Rosemount Police station on the above evening with several shots being fired and two devices exploding, one at the outer security fence and the other within the station perimeter. A gunman was observed at the corner of the Creggan Road but no vehicle or other attacker was noted.

b) In the immediate aftermath of the attack and no doubt to secure the perimeter, police and military personnel recovered two unexploded devices and both live and spent ammunition.

c) At 10.20 pm on the advice of Special Branch a halt was placed on any further follow up action to the attack. The actual detail of the intelligence/ information received is not recorded in the Statement so no further analysis is possible.

## **12 CAR ABANDONED IN KILDRUM GARDENS. 25TH AUGUST 1988**

a) At 10.35 pm police received a call from a member of the public about an abandoned car in Kildrum Gardens. The Statement of the Ombudsman does not record the exact content and detail of the call so it is unknown as to how specific the caller was at the time but it can be accepted that sufficient information was gleaned to establish the make, registration number and general location of the vehicle.

b) As for information that there were "two bombs" on board the abandoned vehicle it is unclear for the reasons given above if this information ever came to the attention of the police prior to the device/devices exploding, but if the Ombudsman has correctly reflected the record made by the military at para 7.21 then their record, made at 10.48 pm on the same date, shows that the police information at the time only informed them of an abandoned car at Kildrum Gardens.

c) A further call made to police at Strand Road at 2.10 am on the morning of 26th August by an anonymous caller again related information only in respect of an abandoned car.

d) The device/devices in the vehicle exploded at 2.35 am on 26th August 1988 and police and military did not attend the scene until 11.20 am on 26th August 1988. The vehicle was located behind number 21 Kildrum Gardens.

e) The Ombudsman's Statement at para 7.22 records that at some stage around 4.16 am on the morning of 26th August police in Shantallow were in possession of information that indicated the vehicle, in which a device/devices had exploded, had been abandoned by two men who, as they ran away, were heard to shout a warning there was a bomb in the vehicle and it was linked to the attack on Rosemount station.

f) Regretfully again the Statement is silent as to the origins of this information or if it was provided in further calls made to Shantallow police after the explosion at 2.35 am had occurred, as records would indicate that this information was not declared in any of the initial reports. It is not clearly established who recorded the information and if it was linked to the attack on Rosemount solely on the basis of what was allegedly shouted by those who abandoned the vehicle.

g) It would have been of significant value to have had this matter investigated in greater depth given that it was clear to OPONI investigators that no police had attended the scene and if so what was the provenance of the information recorded and was it speculative or factually based. If it was the latter, then crucial to the Ombudsman's own overall investigation would have been the need to determine whether or not the apparent withholding of such information, by those initially reporting the abandoned car, was indicative of the community's support for the PIRA actions that evening; or indeed of the willing participation by some residents to report only selected information regarding the vehicle as dictated by PIRA.

h) What this sample entry in the C6 book does do however, is to highlight the great care that needs to be taken over the import and evidential weight attributed to such entries made in the immediate aftermath of an incident; for the Ombudsman's own Statement records at para 7.35, a further entry that appears on the face of it to flatly contradict this earlier one. The entry made at 5.18 pm on 26th August, after police had been to the scene, states that it could not be determined if the vehicle *had been used in the attack* on Rosemount but that clearly its placement with a device on board was intended to kill security forces that would have examined the vehicle.

i) The vehicle was obviously a key factor in the overall PIRA operation, but in what way, had yet to be fully determined on the evening of 26th August 1988. As nothing in the note made by police who visited the scene at Kildrum Gardens recorded any reference to what was allegedly said by those who abandoned the car or to any gun and bomb attack on Rosemount, it has to be accepted that police knowledge of events on the evening of 26th August regarding the attack on Rosemount Station and the explosion at Kildrum Gardens were as reflected in the entry made at 5.18 pm on that date.

j) No suspect vehicle used in the attack on Rosemount had previously been noted and no report of any hijacked vehicle of the type in which the bomb exploded had subsequently been reported. The registered owner had not at that stage been located and interviewed.

k) The content of para 7.20 in the Statement includes information given to the police by the first caller regarding the abandoned car on the evening of 25th August. However as his statement was made in the aftermath of the explosion on 31st August 1988 and contains information regarding the "abandonment" of the car at Kildrum Gardens which was not previously disclosed, it is not further explored here as it has the potential to corrupt the establishment of the facts as known at the time to police. The attack on Rosemount Station was typical of PIRA operations at the time.

### **13 INFORMATION KNOWN TO THE POLICE ON 25/26TH AUGUST 1988 IN RESPECT OF KILDRUM GARDENS**

- a) In summary therefore as of the evening of 25th and morning of 26th August 1988 it can be regarded as established fact that what was known to the police as regards Kildrum Gardens is as follows:-
- b) A car was placed at the rear of 21 Kildrum Gardens some time before 10.35 pm on the evening of 25th August. Police were made aware in a telephone call from one local resident of the “abandoned” vehicle’s general position in Kildrum Gardens with no additional information provided over and above the make and registration number of the vehicle.
- c) A further call from an anonymous person also reported the abandoned car at 2.10 am on 26th August.
- d) A device in the car exploded at 2.35 am on 26th August 1988 at the rear of 21 Kildrum Gardens.
- e) No other resident of Kildrum Gardens made a report and no other anonymous call was made prior to the device exploding.
- f) Advice was received from Special Branch in the immediate aftermath of a gun and bomb attack on Rosemount Police station at 10.00 pm on the night of 25th August some one and a half miles from the location of where the car was reported abandoned at 10.35 pm; to the effect that there was to be no further follow up action by security forces in respect of the attack at Rosemount. This obviously related not only to search operations in the immediate vicinity of Rosemount station but also in respect of any other conceivable incident or report which could be regarded as having a possible link to that attack and which invited a police/military response.
- g) Consequently when the call re the car at Kildrum Gardens came in at 10.35 pm, this advisory warning was in effect and both the vehicle and the reported explosion of a device therein at 2.35 am on 26th August elicited no police reaction and the scene was not visited until mid morning on 26th August.

### **14 DETERMINATION OF POLICE RELATIVE TO THE VEHICLE-BORNE BOOBY TRAP DEVICE AT KILDRUM GARDENS AND SUBSEQUENT INTELLIGENCE RECEIVED ON 26TH AUGUST 1988**

- a) In the aftermath of the police and ATO’s attendance at the scene of the explosion in the car abandoned at the rear of 21 Kildrum Gardens on 26th August at 11.20 am it was determined by CID on the basis of information received that a device of approximately six ounces of commercial explosives had detonated within the vehicle at 2.35 am on 26th August. The device had the hallmarks of being a booby trap device placed in a vehicle abandoned in a manner that would have invited security force inspection and the triggering of the device.
- b) CID were unable to establish any positive link in respect of the vehicle’s prior use by the PIRA members who carried out the attack on Rosemount station, albeit its location and the timing of its reported abandonment, may have been intended to convey such an impression. From the record made at the time it is clear that CID concluded that the car’s abandonment had been an elaborate trap laid by PIRA to possibly catch police/military personnel alert to the earlier attack on Rosemount Station.

- c) An area search by security forces in respect of the explosion began by 1.20 pm but had to be abandoned by 4.30 pm due to sustained rioting against police and soldiers.
- d) At 4.56 pm an area bounded by Rathkeele Way, Rathlin Drive and Kildrum Gardens was placed out of bounds to police and security forces until further notice.
- e) This was most likely related to the receipt of intelligence by Special Branch on 26th August that the vehicle “abandoned” in Kildrum Gardens had been abandoned “convenient” to a house where a booby trap bomb was planted, that it was anticipated that follow-up searches would be conducted and this would embrace the location where the booby trap device was located. The intelligence said the location was secure and the device was not designed to be removed or dismantled by those who had placed it, so until triggered by the attendance of police it would remain in situ. This in effect was confirmation that the intentions of PIRA as declared in the intelligence of 5th August had been put into effect.
- f) The precise time this information was received was not established by OPONI investigators but it is inconceivable that a search of the area would have been sanctioned at 1.20 pm on 26th August had this information been known at that stage. It therefore can reasonably be presumed that its receipt was just prior to the OOB area being put into effect, that being the geographical area interpreted by SB as giving effect to what the source meant when using the words “in a house convenient to where the car was abandoned”. This included Kildrum Gardens and the surrounding streets.
- g) In summary, by the late evening of 26th August 1988 the police in Derry were alert to the probability that the attack on Rosemount Police station had been part of an elaborate plan by PIRA to lure security forces; firstly into the speedy attendance at or recovery of a vehicle which, they hoped, would be presumed by the security forces to have been used by PIRA in the attack and that the following examination of that vehicle, either in situ, or within the confines of a police station, would trigger the booby trap device within, killing either the ATO, CID, or forensic officers examining it.
- h) Secondly that those deaths, especially if they occurred in situ, would then trigger a wider search of all homes in the area of Kildrum Gardens and other nearby streets leading to the police eventually entering the location where a second booby trap device was planted to cause further deaths.
- i) Clearly the PIRA did not know or suspect at this stage that the police could now reasonably speculate, within the limits of their knowledge, as to PIRA’s possible overall plan of attack. However that state of knowledge was not of sufficient detail to allow for any response to be made, other than that of covertly placing the suspected geographical area, i.e. that which would have been encompassed by a search operation had PIRA’s plan succeeded and which correlated with intelligence received; as being OOB to police and military personnel until further intelligence could be obtained, or the possible house in which the suspected device was located determined by other means.

**15 THE SITUATION IN KILDRUM GARDENS BETWEEN 27TH AUGUST AND 31ST AUGUST 1988 AS KNOWN TO THE POLICE AND SPECIAL BRANCH**

- a) On the basis of what was known to Special Branch and senior command in Derry/ Londonderry on the morning of 27th August 1988 a suspected booby trap device was possibly in situ in a house encompassed by the OOB area then in place. The device was, on the basis of the intelligence to hand, securely located and designed to be triggered only by Security Force personnel lured specifically to its location. It was not the PIRA's intention to dismantle or remove the device until their objective was achieved.
- b) With this knowledge in mind it is apparent that the decision was taken to let matters remain as they were until further intelligence could be obtained or a clear indication was received from the PIRA, which would possibly pinpoint the location of the device. It has to be assumed that to have publicly made any disclosure as to police awareness of PIRA's plans at this stage could have had fatal repercussions for the agent providing the intelligence on the booby trap device and that agent's active attempts to pin down its location.
- c) It would have been within the general knowledge of Special Branch that in the past deployed explosive devices had been declared through third parties when PIRA were forced to abandon operations where they believed or suspected their plans to have been discovered, or where the security forces refused to react in the desired manner no matter what ploy was used to attract their attention to a given location.
- d) The skill level achieved by PIRA bomb makers in 1988 was well known by Special Branch and when combined with the specific intelligence to hand i.e. that it was a device designed and targeted specifically at police, it is in the view of the Association wholly acceptable that, the decision not to precipitate any action in searching for the device was a rational and proportionate tactical decision and that the suspect device, wherever its location, could be left in situ in the relative confidence that it would not otherwise detonate.

**16 ARMED ROBBERY AT MacDONALD's, BEECHWOOD AVENUE, LONDONDERRY 12.50 am 28TH AUGUST 1988.**

- a) These premises are located approximately one mile from Kildrum Gardens in the Creggan. Around 12.50 am on the morning of 28th August 1988 two armed and masked men entered the premises and carried out a robbery of £30 from the till. No claim to the effect that the robbery was being carried out on behalf of the republican movement was made, but on leaving the premises, one of the robbers was noted to drop a piece of paper on the floor which was recovered by staff and handed over to local police on their attendance at the scene. That piece of paper bore the name and address of person A and this information was duly circulated along with descriptions of the two suspects. It should be noted that while Person A was known to the local police he had no paramilitary connections.

b) The robbery was dealt with by a uniformed sergeant and a detective constable and sergeant from CID. They discussed the potential arrest of a person as a suspect but fearing that the overt dropping of the piece of paper could be part of a general “come on” ploy intended to lure officers into an ambush within the Creggan, they reported their suspicions to a senior officer who concurred with their thoughts and postponed further action.

c) As the area was already OOB at this stage, had authorisation been sought to conduct a planned arrest, it would have been refused by both police and military ops controllers without any reasons being disclosed.

d) While CID officers and uniformed personnel would have been aware in general terms of the presence of OOB areas they would have had no further knowledge of the specific operational or intelligence reasons as to why an area was so listed, as on a need to know basis, such information was necessarily held secure for many sound operational and security reasons.

e) Consequently while information “inviting” CID to attend at 38 Kildrum Gardens, the residence of Person A, had entered the police network it must be borne in mind that information handling in 1988 was conducted via departmentalised manually maintained systems without any of the benefits of the computerised cross distribution or analysis systems available today. Consequently the potential significance of the address was not readily apparent to local CID who treated it primarily as a possible lead in an armed robbery which had netted the robbers a mere £30.

f) Police arrest operations in the Creggan were planned and required major military logistical support. Such operations required the approval of Divisional Authorities and were normally listed for discussion at the weekly Divisional Action Committee meetings when there was no urgency required in conducting the operation. This allowed for a proper assessment of any intelligence/evidence needing to be actioned and for full account to be taken of the security situation relative to community tensions and the level of threat and ongoing terrorist activity in the area. Consequently the Sub Divisional Commander, with whom local CID discussed the robbery, would have listed this incident and the potential arrest operation for discussion at the next DAC scheduled for 30th August 1988.

As the Statement shows, in as far as that retired officer can recall, while he did not attend that particular DAC meeting, he is of the opinion that the robbery would have been discussed.

g) Until that DAC meeting occurred Special Branch would not have been aware of the “paper dropping” incident that led to CID being presented as it were with an “invitation” to visit an address in Kildrum Gardens. As the Minutes for that particular DAC meeting have not been recovered by the Ombudsman there is no definitive record that Special Branch were made aware of the potential ploy to draw police to 38 Kildrum Gardens at all.

h) However, working on the premise that on 30th August 1988 Special Branch did become aware for the first time that a potential lure had been presented to the police to revisit Kildrum Gardens, the first step would have been to assess how it fitted or otherwise with the known intelligence; in this respect some factors would not have readily fitted. The first being that the premises at 38 Kildrum Gardens was an occupied top floor flat, not a house, as stated twice by the source. Secondly, the occupant was not linked in any known way to the republican movement. Thirdly, reconciling the fact that PIRA, with four days already having passed from the date the device was planted, would indulge in such a “remote” ploy as to conduct a robbery in the belief that the police would mount a major operation in the heart of the Creggan for such a small sum of money, especially as the “suspect”, presented via the paper drop, could be picked up by police at his usual known haunts around the city at any time.



i) Nevertheless despite any reservations in the particular circumstances of this incident Special Branch's first required objective would have been to consult with the agent from whom the intelligence about the booby trap device first originated. This would be done in order to explore further the emerging suspicions in respect of number 38 Kildrum Gardens and to obtain assistance in determining the potential threat, in respect of that location and any of the other properties along the approach route to the flat, which fitted with the agent's initial information. It would also have been vital in terms of the agent's personal security to obtain a perspective on the potential threat to their life that may be inherent in any forthcoming overt police response or public disclosure of information.

j) This would have been a recognised and approved procedure and would have been carried out in the knowledge that the device, suspected to be in place, had been deployed as a booby trap bomb from the date on which the abandoned car was reported to the police, namely 25th August 1988, six days before and as it had remained stable throughout that period it could be reasonably assumed, on the basis of knowledge of previous attacks and PIRA's bomb making technical expertise, that it would continue to do so.

k) Consequently, for senior command in Derry/ Londonderry on 30th August 1988 to delay any overt activity for a further 24-48 hours was essential given the unique operational difficulties of the period and in order to afford intelligence officers the opportunity to re task the agent as regards confirming intelligence on the whereabouts of the occupant, and to maximise knowledge on the specific nature of the explosive device, its suspected location and intended targets.

l) Time was also required to initiate discussions with the military and ATO personnel as to the possible response options available should intelligence confirm the presence of a device and given the particular geography of the area and the non acceptance of police by the residents. This was, in the view of the Association, a reasonable and justifiable strategic course of action to take in order to better facilitate the planning and execution of a response that minimised the risk to life of the security force personnel who would ultimately have to deal with the device and to do so with the minimum of disruption and danger to the local community.

## **17 THE EXPLOSION AT 38 KILDRUM GARDENS ON 31ST AUGUST 1988.**

a) Regretably before police could acquire additional intelligence or even begin to formulate the complex operational plan and assemble the logistical support that would have been needed to ensure the eventual evacuation of residents living within the OOB area and to secure the same for the ATO to commence his task; an explosion occurred just prior to midday on 31st August 1988 at 38 Kildrum Gardens. A booby trap device secreted in the flat was triggered when Mr Dalton, a resident of Kildrum Gardens, with the assistance of two other neighbours, entered the flat through a side window and made his way into the hallway. A murder investigation commenced at 12.10 pm on the same date. Mr Dalton had been concerned about person A's non appearance but instead of informing the police of his concerns, he instead chose to enter the flat to check presumably as to his neighbour's presence and wellbeing; his good intentions resulted in his tragic death.

## 18 NON RELEVANT MATERIAL INCLUDED IN THE STATEMENT

- a) As previously stated, it is crucial in determining the state of knowledge of the police in the days and hours leading up to the murder of Mr Dalton that non relevant material be excluded in a fashion that permits examination only of that information which the police knew or ought reasonably to have known.
- b) Unfortunately, the Ombudsman's Statement is contaminated with references to matters that were not within the knowledge of the police in Derry/Londonderry at all, or did not become known until after the explosion on 31st August had occurred. Furthermore, substantial speculation has been indulged in by OPONI that, while having no evidential value to warrant it's inclusion in the Statement; it nevertheless has been included with the effect of corrupting the interpretation of established facts.
- c) We refer here to the discussion within the Statement in respect of person B, an individual who was in the care of St Patrick's on the Glen Road, Belfast. Person B had absconded from that location on or just prior to 3rd July 1988 as on that date, person A reported his presence at his flat at 38 Kildrum Gardens to the local police in Derry/ Londonderry. However person B had departed from the flat before police arrived and eventually returned into the care of St Patrick's in Belfast 13 days later.
- d) He again absconded on 25th August and that fact was reported to police at Andersonstown, Belfast, the designated reporting station for all absconders from St Patrick's. As the police at Andersonstown had no record of person B's association with person A in Londonderry, and no information was disclosed to them regarding this, the police in Derry/Londonderry were not subsequently informed as to the second reported absconding. It was abundantly clear to OPONI investigators that the last known presence to the police of person B being in Derry/Londonderry was on 3rd July 1988.
- e) Consequently, any discussion about person B in the Statement re his return to 38 Kildrum Gardens on the evening of 25th August; his abduction later the same evening by PIRA; the anonymous reporting of his alleged presence at the flat on 30th August to St Patrick's; or indeed his release on the afternoon of 31st August by the PIRA; serves to do nothing more than to inject further references to 38 Kildrum Gardens into the Statement. The simple fact is that the police in Derry/Londonderry were unaware of person B until his release by the PIRA in the aftermath of the explosion on 31st August 1988.
- f) Whether or not police in Belfast should have conducted further enquiries with St Patrick's re one of its many absconders, or whether or not the staff should have told police of the anonymous call received on the 30th August, has no evidential bearing on determining the actual state of police knowledge in Derry/Londonderry in the lead up to the explosion and its inclusion serves only to obscure and deflect from the core issues that needed to be examined by the Ombudsman.

- g) This issue, if it needed further examination, should have been made the subject of a separate report. This would have afforded a much more detailed and informed analysis of the reporting and investigating protocols in place between the police in Andersonstown and St Patrick's, in 1988, in respect of absconders than that reflected in the Statement.
- h) A similar inclusion of non relevant material occurs at para 7.33 in respect of a photograph taken on 26th August in the vicinity of Rosemount Station and upon which the Ombudsman speculates that the photograph shows "a substance believed to be blood is on the ground in the alleyway".
- i) This is then linked to a claim alleged by the complainant to the Ombudsman in para 7.32 of the Statement that a blood trail led from the car abandoned at the rear of 21 Kildrum Gardens to 38 Kildrum Gardens before the vehicle exploded.
- j) Despite the fact that no such blood was located or referred to by the forensic teams attending either the alleyway at Rosemount where the photograph was taken, or at the scene of the car explosion in Kildrum Gardens; or by any of the detectives or other uniformed officers who carried out a search of both areas on 26th August; or by the ATO who was at both scenes, the Ombudsman's investigators persist with inclusion of such details in the Statement.
- k) What makes this even more remarkable is that no eye-witnesses testifying to the existence of this blood trail either came forward to the police at the initial investigation into the murder of Mr Dalton, or indeed it would appear to OPONI investigators, when they conducted their extensive investigations at a later date; yet the Ombudsman without any hesitation creates such a spurious link and proceeds to explain away the absence of any physical evidence of blood at Kildrum Gardens on the explosion that occurred six days later, when he states that in the clearing of the debris *"it is possible that such a blood trail could have been destroyed"*.
- l) It can only be assumed that in the absence of any eye witness evidence from any resident of Kildrum Gardens, from police personnel, military personnel, or any other physical or forensic evidence testifying to the actual presence of blood at either scene; the only logical explanation for this exercise in outright speculation linking the two crime scenes, has been the need to underpin the hypothesis being developed within the Statement namely that 38 Kildrum Gardens was a clearly identifiable location for the booby trap device as far back as 26th August 1988.
- m) It is these and other examples of investigative bias contained within the Statement that has led the Association to the conclusion that the Ombudsman has misdirected himself as to what are the actual evidentially supported facts of the case and ultimately to the wrong determination in respect of Article 2.

## **19 THE DETERMINATION OF THE “RISK” POSED BY THE BOOBY TRAP DEVICE**

- a) Neither the Police Ombudsman nor the police themselves are experts on the subject of explosives or explosive devices so when the Association looked within the public Statement for an assessment provided by an Army Technical Officer or other qualified expert as to PIRA bomb making skills in general and in particular in respect of the specific engineering quality and specification of the booby trap device constructed by the PIRA in 1988 and placed in 38 Kildrum Gardens; none was to be found.
- b) Central to any determination as to whether or not the police in 1988 breached an Article 2 “duty of care” is the assessment of the risk posed by the explosive device placed by the PIRA. Risk defined as “the possibility of incurring misfortune or loss”, is not determined in this case from the fact that an explosion occurred, but by a careful analysis of the nature of the device itself, the quality of its construction, its physical location and the potential exposure to identifiable persons who may be actually, or reasonably foreseen to be, at real risk from its presence or through their capacity to access its vicinity.
- c) All explosive devices pose an inherent risk to life but that risk is capable of being graded on a scale from remote to high; otherwise we would not for example have soldiers carrying hand grenades on their person as part of their personal armament. The Ombudsman, in order to determine whether or not a duty of care arose, ought to have had as part of his investigation, expert opinion on the degree of risk posed by the device at 38 Kildrum Gardens and an assessment, based on the information available, as to whom that risk was determined as being of a “real and immediate” nature.
- d) As no such expert opinion was sought by the Ombudsman the Association requested the same from a retired military officer with particular experience of the period. His submission is attached in which he incorporates the views of an ATO colleague as to the technology employed by PIRA in the making and use of IED’s and the methodology employed by the military in combating the threat - See Appendix B.

## **20 THE APPLICATION OF THE OSMAN TEST TO THE FACTS KNOWN TO THE POLICE OR OF WHICH THEY SHOULD REASONABLY HAVE BEEN AWARE**

- a) To summarise, on best analysis of all the information known to the police on the evening of 30th August 1988 was a firm belief that, based on intelligence received on 26th August from a reliable source with limited access to local PIRA, a booby trap device had been concealed in a house convenient to 21 Kildrum Gardens. This was the location at which five days earlier, a device (believed on the basis of scene examination by an ATO to have been of a booby trap design) was deliberately detonated by the PIRA when the security forces failed to respond to reports of an abandoned vehicle in which the device had been planted.

- b) Secondly, as a consequence of an armed robbery at a local fast food establishment on 28th August, a piece of paper bearing the name and address of the resident of 38 Kildrum Gardens had been dropped by one of the robbers. The registered occupant, who was known to local CID and did not have a Modus Operandi for such crime, was nevertheless listed for interview by CID. He had no known association or connection with republican paramilitaries. No organisation had claimed responsibility for the robbery which netted the robbers the sum of £30.. This information was only passed to Special Branch and senior command on 30th August 1988 as it had been treated as nothing other than a potential lead to a local crime by officers who had no reason to suspect otherwise.
- c) Consequently, for the first time on 30th August the opportunity arose to bring together two separate strands of information and thought, against the background of available intelligence, namely the impression formed by CID officers that the piece of paper, recovered by staff at the scene of an armed robbery, had been deliberately dropped to draw police into the Creggan and to the vicinity of 38 Kildrum Gardens the home of person A.
- d) Secondly, that this scenario had the potential to be a possible rough fit with previous intelligence that indicated police would be lured to the location of a booby trap device; that such a booby trap device had recently been reported as having been placed in a house convenient to Kildrum Gardens and that PIRA did not intend to move or defuse it.
- e) However, the matter remained one of informed speculation upon which there were competing lines of interpretation that could only be resolved by further intelligence and detailed enquiry and research, before any physical search for a device of the nature described could be commenced. There remained no hard intelligence or information which confirmed number 38 Kildrum Gardens as the location of any explosive device or of the fact that the occupant was missing having been kidnapped by the PIRA.
- f) The booby trap bomb exploded the next morning 31st August 1988 when number 38 Kildrum Gardens was entered via a window by Mr Dalton assisted by his neighbours.

## **21 OSMAN TEST**

- a) As previously stated Article 2 of the ECHR may, according to Osman v UK, imply a positive obligation on the police to take preventative operational measures to protect an individual or individuals whose life is at risk from the criminal acts of another individual. However, the scope of any such positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the police bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources.

b) Furthermore, in order to find a violation of a positive obligation to protect life, it must be established that the police knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from that criminal act of a third party and that they failed to take measures within the scope of their powers, which, judged reasonably might have been expected to avoid that risk.

c) In the view of the Association this is the evidential threshold that the Ombudsman should have set for himself and he should have remained objectively and solely focused on the establishment of the facts known at the time of the threat. The judiciary have consistently stressed that the threshold is set high and not readily satisfied as it necessitates close examination of all the circumstances of the case, the ease or difficulty of taking preventative operational measures and the resources available to do so.

d) As we have established above, the first essential criterion has not been met by the Ombudsman, the police at no stage could have established that Mr Dalton was an identifiable person at real or immediate risk from the booby trap bomb. Nor could they, applying any test of what was reasonable, have foreseen him as being such a person; as the booby trap device was in a secured location i.e. a private occupied dwelling, his action of entering the flat instead of notifying the appropriate authorities of his concern for the occupant, falls, we believe, within that category of activity which the courts refer to as the unpredictability of human conduct. Consequently, no foreseeable real or immediate risk, given the nature of the device and its location, existed in respect of any person not placing themselves in a position to actively trigger the device.

e) Secondly, at no stage were the police in possession of sufficient information to pinpoint the location of the device in such a way that would have enabled them to take immediate preventative measures. Whilst at best they could speculate as to a possible location, they had the operational right and duty to work on the assumption that; the explosive device in situ would remain stable and undisturbed as it had done so for the previous five days; thus allowing for further intelligence to be obtained and plans developed within the joint constraints of available resources and the particular operational difficulties of taking preventative measures in an area such as the Creggan.

f) As the security forces were the intended target, any reaction made to the threat had to consider, in equal measure to any other consideration, the degree of risk that would exist to the lives of those personnel whose task it would be, to put into place preventative measures, as well as to physically locate and defuse the device. Regrettably, before a detailed appraisal of the situation could be made or the implementation of any plan effected, the device exploded.

g) For the Ombudsman therefore to make a determination that an Article 2 duty of care had been breached based “on the balance of probabilities” clearly does not meet the foregoing evidential obligation placed upon him by the courts and in the view of the Association his finding in this respect should be rescinded forthwith.

h) Not to do so sets a precedent that places an unwarranted pressure and disproportionate burden on the current police service, with the potential to severely restrict the operational freedom to exercise professional judgement in dealing with threats of a terrorist nature and to precipitate courses of action, designed, more to defend against the threat of litigation or subsequent adverse criticism, than to effectively pursue their objectives in the overall public interest. Whether it is the premature release of information before the full intelligence picture has been developed or a rush to implement preventative measures before adequate planning or resources are available; the police service must not be forced into adopting a detrimentally defensive mind-set in combating crime or terrorism on behalf of the community.

## **22 CONCLUSION**

a) In the view of the Association this investigation by the Police Ombudsman starkly illustrates two matters that need to be urgently addressed by the Department of Justice. The first is that in investigations conducted by the Police Ombudsman into allegations as grave as those which alleged breaches of the Human Rights Convention; it is totally offensive to any sense or portrayal of justice, that a complaint driven investigative body such as OPONI can proceed to act as adjudicator in its own cause and to make public, findings apportioning blame, without the evidence and the procedures applied to adduce the same, being independently assessed for probative value and procedural correctness.

b) If an allegation for example is made, that a serving or retired officer fabricated evidence or otherwise committed a criminal offence, the Ombudsman is obliged to forward his investigation to the Public Prosecution Service for the evidence to be evaluated and for charges to be brought. That evidence is then further tested in the independent forum of the court. In a similar fashion if it is for example an allegation of incivility or other conduct deemed to be contrary to the disciplinary code is alleged to have occurred, the evidence adduced has to be presented to an independent disciplinary tribunal to determine the guilt or innocence of those accused.

c) However, when it comes to matters as grave as alleged breaches of Article 2 of the ECHR Convention, no such requirement is placed on the Ombudsman. He can investigate, with the full powers of any UK police service, adduce only that evidence which he wishes to obtain and then proceed to issue a determination on whether or not a right was breached via the process of publishing a Section 62 Public Statement.

d) All this can be undertaken without any other legal authority being required to make an independent determination as to the quality of the evidence; the completeness or otherwise of the investigation; its compliance with the requirements of the CPI Act and other relevant legislation; or the impartial objectivity applied to the interpretation placed upon the evidence.

e) OPONI investigators are not gifted with investigative skills or standards of behaviour above and beyond that found within the police service anywhere else in the United Kingdom and they have the capacity, like other investigators, to make serious mistakes and should therefore in a like fashion be accountable for the same. This privilege needs to be immediately withdrawn and a procedure introduced which requires consistency of approach so that all evidence, if it is to be used to apportion blame, is assessed as to its veracity and probative value by an independent legal authority before it is used in whatever format OPONI chooses to make it public.

f) The privilege enjoyed by any investigative body to make comments, without penalty of civil action, which potentially can damage individual reputations or that of any public organisation, or worse still raise public anxieties and fear amongst the relatives of victims, needs to be exercised to the highest degree of responsibility. If not, then the public interest is not served by the publication or communication of misinformation and the privilege itself becomes no more than a licence to distort or misrepresent, in order to bolster conclusions which have been arrived at more by prejudice than by due process.

g) This brings us to the second matter that needs to be urgently addressed and that is the total absence of any right of appeal to an independent authority in respect of investigations conducted or determinations made by the Police Ombudsman. Currently any person aggrieved by the manner in which an investigation has been conducted or by the finding made, must make his/her complaint to the Ombudsman for it to be investigated by an officer appointed from his senior staff. It is untenable, in terms of natural justice and under the provisions of Article 13 of the European Convention on Human Rights (ECHR), to continue to protect from any form of redress of grievance, an institution which wields such enormous and intrusive powers, by maintaining a system that does not provide for rigorous independent oversight other than by way of judicial review.

h) Consequently, having considered in detail the analysis of the investigation conducted by the Police Ombudsman and the determination that Article 2 had been breached, the Executive of NIRPOA have reluctantly come to the conclusion that until this determination is rescinded and the two major issues, as identified above, are urgently addressed by the Justice Minister, the Association can no longer encourage its members to engage with OPONI in the investigation of historical incidents where breaches of the articles of the ECHR are alleged.

i) These allegations are of such gravity and import to the reputation of former officers and the organisation in which they served, that we consider it untenable for the investigation and adjudication to be left entirely to OPONI without independent legal scrutiny of the evidence adduced or the right of appeal to an independent authority by any person subject to the investigation by OPONI.

j) Investigations conducted by OPONI have to be Article 2 compliant; this means that each investigation must adhere to the five ECHR principles namely, independence, adequacy, promptness, public scrutiny, and victim involvement, otherwise OPONI will not have discharged its investigative remit to the standard required.



k) In the opinion of the Association, as alleged breaches of Article 2 of the ECHR are normally determined at a judicial level throughout the UK and Europe and we hold to the principle that it should remain the case in respect of Northern Ireland; then this radical and fundamental shift towards a process that permits the determination of such grave matters by the Police Ombudsman alone, should only occur when after due debate and process through the Northern Ireland legislature, the primary legislation applicable to the establishment of OPONI's investigative remit is duly amended and all appropriate safeguards are in place.

### The Creggan

1. The Chief Constable's Report of 1987 recorded the gravity of the threat facing Northern Ireland as follows: "The level of terrorism was the highest experienced since the early 1980's and there was confirmation that the PIRA in particular was set on further escalating its campaign of violence. In the following year 1988, his report made the following observation:
2. "The perception of 1988 is one of terrorist atrocity followed by another terrorist atrocity and the year will undoubtedly stand out as one in which murderous inhumanity was portrayed as never before." The report further stated that the threat from PIRA was considered so grave in 1988 that it was "necessary for the police to warn the public that the PIRA was intent on a bloody year, armed as they were with substantial quantities of Libyan supplied rifles, Semtex high explosives, heavy machine guns, flame throwers and SAM 7 missiles. The threat to the community was of the utmost gravity."
3. The Creggan area of Londonderry was a recognised Republican stronghold in 1988 and the tactics employed policing the Creggan on the west bank of Derry/Londonderry during the 1980's was similar to those used in a number of other republican strongholds. The area was a heavily populated urban area where PIRA had significant community support and exercised a dominant presence and control over the community. The prevailing environment, which represented both a power base and relatively safe haven from which PIRA could operate, was not conducive to constructive interaction between the RUC and the Creggan community.
4. The RUC had little by way of community cooperation and there was a void of community leaders who would engage with police. There was in fact substantial overt hostility to the RUC and the area represented a high risk which effectively inhibited the RUC's delivery of any meaningful community policing service. The threat posed within the Creggan area necessitated patrolling in strength and depth usually in the form of multiple armoured patrols in conjunction with military support. Police officers were required to wear armoured vests and carry long arms for protection purposes.
5. For police, the severity of threat posed required constant caution regarding all calls to the area and high alert when operating within the area given that there was an ever present threat of attacks by PIRA. The PIRA constantly exhibited creativity in its attack planning aided by a passive and largely compliant community. PIRA maximised use of the 'come on' scenario in various guises, by observing and amending their tactics to those of the police and military engaged in answering calls, operational patrolling and their procedures implemented at scenes. PIRA regularly utilised follow up secondary and tertiary devices to attack police and military responding to initial incidents. In many cases, these latter attacks were of a more substantial nature than the initial event. Given the level of popular support, PIRA was able to avail of safe houses and to initiate compliant hi-jackings and house takeovers as part of such attacks.

6. Within the Derry west bank, the Creggan, Rosemount and Beechwood Street areas are all within close proximity of each other, approximately one mile encompassing all three areas and are readily accessible on foot and vehicle within a few minutes.
7. PIRA, which sought to project its image as one of protecting the community, regularly warned locals to stay away when an attack was pending. Derry PIRA also engaged in the murder of those it suspected of providing information to the police, thereby reinforcing its dominance within the community and dissuading any form of engagement with the police.
8. Within the Creggan, PIRA had a ready ability to orchestrate public disorder at any police presence, both to facilitate attacks and to distract and divert the police from other subversive activity. Attending calls or undertaking any facet of police activity required sizeable resources and regularly necessitated military support. PIRA had ability to launch attacks against police and military at short notice, including opportunistic attacks, particularly against any static security force presence.
9. The murder of Constable Clive Graham by PIRA on 21st March 1988 in Lislane Drive, Creggan while manning a check point was such an example. Police and military could not remain for any sustained period of time without attracting some form of attack which was likely to escalate in severity the longer the time spent in the area. To achieve a presence for a prolonged period necessitated a significant escalation in police and military resources.
10. The Creggan was also used by PIRA to launch attacks throughout the Derry west bank. In October 1987 two members of Derry PIRA were killed in the estate when the stolen car they were travelling in exploded prematurely. The steering wheel of the vehicle had been packed with explosives, the intention being that the car would be used to plant a bomb and then abandoned. PIRA, having observed police methodology, expected the vehicle to be recovered for forensic examination and planned for it to detonate during this examination, killing those police officers involved.

1. Throughout the terrorist campaign in Northern Ireland, the Provisional IRA (PIRA) made extensive use of Improvised Explosive Devices (IEDs) to attack the Security Forces (SF). Over time these devices were refined and subject to constant development in conjunction with revised deployment tactics, intended to maximise SF casualties.

Devices ranged from basic blast type devices to very sophisticated IEDs incorporating anti-handling switches such as a mercury tilt switch, electronic micro-switches and collapsible circuitry. Typically, the safety-arming device used was a clockwork Memopark timer, which armed the IED shortly after it was placed, by completing an electrical circuit supplying power to the device. Depending on the particular design, such as Victim Operated or vehicle IED, an independent electrical circuit supplied power to a conventional timer set for the intended time delay.

2. Improvements in technology, particularly the electronic timer, enabled accurate detonation of devices weeks after concealment. The Brighton bombing of 1984 was a typical example of what was being achieved by PIRA.

Initially, PIRA IEDs were either time or command wire initiated. Additional mechanisms were developed over time to include various forms of remote control detonation. This change in terrorist tactics led to the development and subsequent deployment of electronic counter measure (ECM) equipment and changes in how military and police operated on the ground.

3. Large scale roadside IEDs were commonly used by PIRA. Typically, a roadside device was placed in a drain or culvert along a stretch of remote rural road and initiated from a vantage point using a command wire when a security force patrol presented itself. As a result of this type of attack, Security Forces ceased using overt transport by road in a number of areas, and reverted to helicopter transport or covert vehicles to reduce the risk from these IEDs.

4. Most IEDs comprised a main charge of illegally obtained military/commercial explosives or homemade explosives (HME). Semtex-H, supplied by Libya, was commonly used from the mid-1980s onward. To preserve stocks, Semtex was later used only as a booster to HME and for booby trap Under Vehicle IEDs.

Secondary attacks became a common PIRA tactic, concealing devices in locations where the security forces had been attracted into by an initial “come-on” incident. IEDs would be placed in those most likely positions that responding SF would either assemble to use as an Incident Control Point (ICP) or be deployed at a cordon position.

5. The British Army unit deployed to deal with IEDs and post-blast scene management was 321 EOD. This was a high risk function, particularly when the ATO was the intended target, and as a consequence the unit sustained significant casualties while engaged in Northern Ireland.

Teams from 321 EOD would be deployed in support of the RUC whenever there was an incident where an IED, explosives or weapons were actually present or assessed to be present. Their role was fundamentally twofold:

- 1 To deal with the immediate aftermath where a device had exploded, to clear that same area for the possibility of a secondary device and to facilitate forensic examination in support of the overall police investigation.
- 2 To respond to RUC requests to provide immediate specialist advice and assist in the event of any suspicion of the existence of an IED or the like, in order to protect the community and members of the security forces who may be deployed in any subsequent operation to deal with the threat.
6. If an explosive device or other hazard was discovered in the course of an operation, the ATO would undertake action to render the device safe and recover evidential material for provision to the attending Scenes of Crime Officer (SOCO), whilst at the same time minimising the risk to him/her and others.
7. Throughout deployment in Northern Ireland 321 EOD assisted police by providing analysis and commentary on PIRA device manufacture, its skill set, new developments and threats. An IED typically comprises the explosive main charge either, commercial, home-made or a combination, a detonator, a power source and a firing switch all within some form of container. If a device is discovered prior to detonation the ATO's primary role is to prevent initiation by separating the detonator component from the main charge, preferably without damaging or contaminating its forensic value.
8. The preferred tactic to minimise risk to personnel was the mechanical device known as the 'wheelbarrow' which utilises a robotic arm operated remotely and enables visibility on the device by way of closed-circuit television. In dealing with larger devices for example home-made explosives packed into a car, the tactic would be to disrupt the device by carrying out a small explosion, designed to remove the detonator from the main charge.
9. In each operation an assessment would be carried out by ATO as to how far the security cordon needed to be from the device in order to protect all deployed personnel in the event that it functioned during any attempt to conduct a render safe operation. Once in place, it would be an ongoing requirement to assess how long such a security cordon should be maintained given the fact that the ATO had full control over the time taken to achieve his task and the geographical extent of the physical security cordon.
10. A number of other specialist agencies were available to advise and assist the RUC, most notably the Royal Engineers Search Adviser (RESA) and the Reconnaissance Intelligence Centre (RIC). On receipt of information of a possible IED in a given rural area, an over-flight and aerial photography of the area would be tasked and the results analysed prior to the deployment of SF into the suspect area. Subsequent analysis thereafter identified the likely location(s) for any device(s) and enabled the RESA and ATO to narrow the area of interest in order to mitigate the threat posed by the device. This same methodology was not possible in the urban scenario given prevailing environmental conditions and the overwhelming number of locations that could be used to conceal IEDs; for example derelict houses, lamp posts, brick walls, wheelie bins etc.

11. PIRA was aware of the expertise of 321 EOD in rendering safe various types of device from which valuable forensic information had been gleaned. As such PIRA became very adept at mounting operations which introduced a variety of Victim Operated IEDs designed to thwart the action of the ATO. It was critically important therefore as far as possible, to avoid setting a pattern that could be interpreted by terrorists in order for them to mount an attack.

12. With regard to the sequence of events that occurred in Londonderry commencing with the attack on Rosemount RUC station and culminating in the explosion at Kildrum Gardens on 31st August 1988. As a pre-requisite to the ATO attending any scene to effect EOD actions, standard operating policy required police to implement an appropriate clearance and cordon operation. Fundamental to such an operation was an assessment in the immediate aftermath of any incident, as to the likelihood that the attack was designed to lure security forces into the area for the purposes of carrying out a further attack on them. Thereafter, in assessing what type of IED the ATO may have encountered in Kildrum Gardens, experience at that time indicated that PIRA was capable of utilising a Remote Controlled, Command Wire or Timed Device.

13. There was no precedent for such a booby-trap type device as occurred in Londonderry on 31 August 1988, representing as it did, a new development in PIRA tactics by using an occupied house in a densely populated area to deploy a highly destructive IED.

14. Undertaking a clearance operation and search for IEDs is a high risk and complex operation. The 321 EOD Unit was pivotal in providing specialist advice to the RUC on matters concerning IEDs and the only unit within Northern Ireland deployed to deal with such threats. Regarding Kildrum Gardens, given the inexact nature of the available information and the large area that this attack could have been mounted in, any clearance operation prior to ATO deployment would necessarily have required a very substantial commitment of police and military personnel, particularly to sustain the operation over any extended period in such a hostile environment. The escalation in resources necessary to achieve this would have required a minimum of 24–48 hours. Pending such a clearance operation, and in the operational environment prevailing at that time, an effective police tactic to mitigate risk, by not presenting the intended target, was to place an area temporarily Out of Bounds (OOB) to all Security Forces.

## NOTES

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