

Coimisiún Fiosrú
(Ronan MacLochlainn)



Commission of Investigation
(Ronan MacLochlainn)

Mary Rose Gearty, S.C., Comhalta Aonair / Sole Member

Private and Confidential
Príobháideach agus Faoi Rún

Mr. Charles Flanagan T.D., Minister for Justice and Equality,
Department of Justice,
51 St. Stephen's Green,
Dublin 2.

Thursday, 28th June 2018

Re: Final Report of Commission of Investigation (Ronan MacLochlainn)

Dear Minister,

Please find attached the final report of the Commission of Investigation established pursuant to S.I. No. 346 of 2014 to investigate matters relating to the fatal shooting in May 1998 of Ronan MacLochlainn in Ashford, County Wicklow. The Commission was established after a case was taken by Mr. MacLochlainn's partner, Ms. Gráinne Nic Gibb, to the European Court of Human Rights concerning an alleged breach by Ireland of the European Convention on Human Rights in respect of the police investigation into his death.

The report is dated 13th May 2016. At its concluding stages, it was the subject of an application to the High Court pursuant to s. 35 of the *Commissions of Investigation Act 2004* by Ms. Nic Gibb. Those proceedings were commenced on 16th May 2016. Judgment was delivered on 9th February 2018, when the High Court refused to direct any amendments to the draft report, and a decision on costs of these proceedings was delivered on 20th April 2018. On 4th May 2018, Ms. Nic Gibb informed the Commission as a matter of courtesy that she would not be bringing an appeal against the decision of the High Court. The Order of the High Court was perfected on 6th June 2018.

I trust that the foregoing is in order. If you have any queries in relation to the report, I will be glad to discuss same with you. I wish to thank the staff in your Department, in particular in the Policing Division, for the assistance afforded to me in the course of my investigation.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Mary Rose Gearty', is written over a horizontal line. The signature is fluid and stylized, with a long, sweeping flourish extending to the right.

Mary Rose Gearty, S.C.

FINAL REPORT

Commission of Investigation
(Ronan MacLochlainn)

Mary Rose Gearty, S.C.

13 May 2016

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- All of the witnesses, each of whom voluntarily assisted the investigation.
- Hugh Hartnett, S.C., with Fionnuala O’Sullivan, B.L., James MacGuill and Claire McQuillan, Solicitors, who appeared on behalf of Ms. Nic Gibb.
- Michael Durack, S.C., with Jim Benson, B.L., Peter Leonard, B.L., and Maura Teahan, Solicitor, who appeared on behalf of An Garda Síochána.
- Members of the Policing Division of the Department of Justice and, in particular, Kathleen Connolly, Marian Miller and Linda Ryan.
- The experts who gave evidence to the Commission: Alan Bailey, Michael Burdis, Mark Mastaglio, Mark DeGiovanni and Mark Nangle.
- Gwen Malone and her excellent stenographers.

I am greatly indebted to Counsel who acted for the Commission. They not only advised me but assisted in maintaining an atmosphere within which all those involved were able to cooperate so professionally and efficiently. All of the lawyers involved in the hearings contributed in this respect and made my task an unexpectedly pleasant one throughout. My heartfelt thanks to Counsel for the Commission who were: Roderick O’Hanlon, S.C., Dara Hayes, B.L., and (before she was appointed a Judge of the Circuit Court) Karen O’Connor, B.L. Joanne Williams, B.L. not only acted as Counsel to the Commission but completed most of the legal research required and set up all the necessary office systems and the Commission archive. It would have been difficult to complete this Report without her assistance and extraordinary diligence.

Acronyms & Abbreviations

AGS:	An Garda Síochána
Commr:	Commissioner
A/C:	Assistant Commissioner
Chief Supt:	Chief Superintendent
Supt:	Superintendent
Insp:	Detective Inspector or Inspector
D/S:	Detective Sergeant
Sgt:	Sergeant
D/G:	Detective Garda
CSB:	Crime & Security Branch
ERU:	Emergency Response Unit
NSU:	National Surveillance Unit
NBCI:	National Bureau of Criminal Investigation
SDU:	Special Detective Unit
GRA:	Garda Representative Association
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
EOD	Explosive Ordnance Disposal
CIRA:	Continuity Irish Republican Army
PIRA:	Provisional Irish Republican Army
RIRA:	Real Irish Republican Army

Executive Summary

Introduction

1. Ronan MacLochlainn was a member of the Real Irish Republican Army ('RIRA') who was fatally shot by a member of An Garda Síochána ('AGS') on 1st May 1998. Mr. MacLochlainn was attempting to leave the scene of an attempted robbery at the time. The target of the attempt was a Securicor van carrying over IR£280,000 in cash and cheques. Five other raiders were arrested at or near the scene. The location is known locally as the Cullenmore Bends, and is close to Ashford, in County Wicklow.

2. Ms. Gráinne Nic Gibb, the partner of the deceased, applied to the European Court of Human Rights ('ECtHR') on the basis that the investigation into her partner's death had not satisfied the requirements of the European Convention on Human Rights ('ECHR'). To settle the case, the State offered to set up a commission of investigation and the ECtHR ruled that this was an appropriate method by which to vindicate the rights of the family and of the public. That settlement resulted in the establishment of this Commission of Investigation.

3. Ms. Nic Gibb, and the family of Ronan MacLochlainn, have been seeking an investigation into the circumstances of his death for over 17 years. The key areas of concerns they have identified are these:

- The state of knowledge of AGS prior to these events;
- The events surrounding the shooting itself;
- The preparation for the operation, including training;
- The control of the operation and;
- The investigation of the shooting.

Factual Background

4. In April of 1998, members of the *National Surveillance Unit* ("NSU") were monitoring the movements of Pascal Burke, whom they suspected had defected from the Provisional IRA to the RIRA. He was known to them as an "Engineer"; in other words, he was a member of the explosives department of a splinter group from the IRA. Mr. Burke did not know that he was being monitored but did employ anti-surveillance techniques from time to time as a precaution.

5. Pascal Burke was followed to numerous addresses and locations around the country in the weeks leading up to 1st May 1998. On Friday 7th April he and Ronan MacLochlainn went to Killiskey in County Wicklow where Mr. Burke drove around, apparently aimlessly, before returning to Dublin. The NSU did not identify his passenger at that point, and one operative even replicated the journey the next day, but could not ascertain the purpose of the trip; it could have been an anti-surveillance measure.

6. On 15th April, Pascal Burke was seen beside a white Transit van in Heuston Station. He met Ronan MacLochlainn there. The registration number of the van was noted. The next day, Mr. MacLochlainn was identified as the person who had been in Killiskey the week before with Mr. Burke. The NSU knew that Mr. MacLochlainn too had connections with subversive groups and that he had been at IRA training camps some years before in Wicklow.

7. On 24th April, Pascal Burke drove to work, where his car remained, after a short trip at around noon, for the rest of the day. He was not seen again. Mr. Burke in fact went to Heuston Station that afternoon, unobserved by the NSU. The RIRA was keeping two vans in the car park of the station. One of these was the Transit van already noted by the NSU. The other was a white Daf van. By Friday 24th April, the white Transit van had been sprayed blue.

The First Attempt

8. Pascal Burke and Ronan MacLochlainn drove the two vans from Heuston Station to Wicklow in the late afternoon of 24th April. Mr. Burke was in the Daf and Mr. MacLochlainn was in the Transit. Mr. MacLochlainn collected Saoirse Breatnach, Philip Forsyth, and Daniel McAlister on the way. Stephen Carney drove separately in a gold Carina. Every member of this group was a member of the RIRA.

9. The group had identified an unescorted Securicor van; they knew its route and they knew that on a Friday evening, it would be returning to Dublin along the N11 with a substantial amount of money. The plan was to set up a road block on a narrow section of the main road known locally as the Cullenmore Bends, attack the van and steal the money. The group had weapons with them in the blue Transit van. Mr. Carney in the gold Carina was to be armed with a shotgun, had the plan succeeded that day. The white Daf was the getaway vehicle and Mr. Burke would wait for the rest of the group a few minutes' drive away, at Killiskey.

10. The would-be raiders arrived on 24th April and encountered the Securicor van after it had passed through the Bends; they were too late. The blue Transit van and the white Daf van were then driven back to Heuston Station. The weapons were in a bag in the back of the Transit van.

11. The raiders parked the two vans in Heuston Station and Mr. MacLochlainn was still with the Transit when a member of the NSU drove into the car park and saw him and another man. The NSU operative hid his vehicle and called for backup, which was some time arriving. He noted that the previously white Transit van had changed colour and was now blue. The men left on foot and the NSU operative, hiding in his car, could not follow them.

12. That same evening, a white Toyota Carina drove into Heuston Station carrying three males. One was Ronan MacLochlainn. He transferred a bag from the Transit van to the waiting car. He put on gloves to do so, removing them when he had finished at the Transit van. The Carina drove away. This bag probably contained the weapons and it is likely that these were driven to a house in Clondalkin. The NSU back-up had arrived at this stage and, having observed the removal of the bag, tried to follow the Carina at a distance, but lost sight of it almost immediately on Wolfe Tone Quay.

Operation Morrison

13. Operation Morrison began that evening. It was initially named Operation Van but the name was changed to Morrison, presumably as a less obvious code name. Both vans at Heuston Station were monitored from then on and the *Emergency Response Unit* ('ERU') was put on standby. This was another specialist unit of AGS, used for the interception of suspects, particularly if it was considered that firearms might be needed. The ERU was very highly trained in both weaponry and tactics for armed interceptions.

14. Nothing of note happened for the rest of the week, although members of the NSU continued to monitor Pascal Burke and the vans, and a number of ERU operatives remained near Heuston Station in case they were needed. Had AGS known of the previous attempted robbery, they would have known to put a plan in place to thwart its repetition. The raiders had already arranged that the next attempt would be at a slightly earlier time the following Friday, in exactly the same place.

15. A major issue of concern to the family of Ronan MacLochlainn was whether AGS knew that the robbery was attempted on 24th April. After Mr. MacLochlainn was shot dead in the course of the second attempt, they could not understand why AGS had not intercepted the robbery at a much earlier stage to avoid a dangerous and unpredictable armed incident on a public road in heavy traffic. It was clear, once the ERU had descended on the scene, that one of the group was under garda surveillance. If so, the family reasoned, how could AGS possibly have missed the first attempt and how could they not have guessed what was planned?

16. Surveillance reports from the month of April 1998 were examined by the Commission and most of the surveillance gardaí present at the scene gave evidence on this issue. There was no evidence that any member of AGS saw the first attempt to rob the Securicor van on the 24th April. Even though the NSU followed Mr. Burke on his trip to Killiskey on 7th April, and one operative had gone back on 8th April to explore possible reasons for the journey, neither of these days was a Friday and therefore there was no sighting of the Securicor van, which might have prompted the suspicion that this was the group's target. Nor did the NSU observe the RIRA trip to the Cullenmore Bends on Friday 24th April. That day, Pascal Burke had been followed to work, where his car remained. He got to Heuston Station and on to Wicklow without being followed. The vans only attracted increased monitoring that evening, too late to point the finger south to Wicklow.

17. The men involved did not have any connection with one another that would have led to them being identified as a gang at any time before 1st May 1998. AGS had noted that Pascal Burke and Ronan MacLochlainn knew each other but had not seen any link with those of the others who were on the Garda radar, so to speak. They suspected Mr. McAlister of being a member of the RIRA also. Mr. Breatnach and Mr. Forsyth were associated with the Provisional IRA and Mr. Carney was known only as having criminal convictions, as opposed to subversive connections.

18. The RIRA was a relatively new group but Pascal Burke was well known to AGS and they associated him almost exclusively with explosives. The other subversive groups at the time had recently focused almost entirely on explosives offences; the Good Friday Agreement had just been signed, and the RIRA was one of a number of groups that was opposed to the peace process, to the extent that it had planned and executed terrorist offences in order to protest against it.

19. It was against that background and with a notable dearth of information as to what was planned for the two vans that the two units of AGS awaited developments at Heuston Station. A written briefing note, dated 24th April, confirms a few scant details of Operation Morrison. The nearest hospital to the Operation is filled in: St. James's Hospital. This is within walking distance of Heuston Station and far from the Cullenmore Bends in Wicklow.

20. Another significant feature of the same briefing note is that the section in which "command and control" should be identified is left blank. Command issues will be addressed again below but it is sufficient at this stage to comment that from 24th April 1998 there was a surveillance operation in place involving two units of AGS, with no overall commanding officer.

Events of 1st May 1998

21. The 1st of May was a warm, bank holiday Friday, and was also the day of the 'Blue Flu', when many members of AGS did not attend for work due to an industrial dispute. Many senior officers were on duty that day in order to ensure that there was at least a skeletal staff and a visible garda presence on the streets. Members of the specialist units had been effectively exempted from the action and those who were rostered were all on duty.

22. That morning, the NSU watched as the white Daf van was moved across the car park to jump start the Transit in Heuston Station. Ronan MacLochlainn then drove the blue Transit van to a housing estate in Clondalkin, followed by Garda surveillance. He went to a house in the estate and is likely to have collected weapons there but the NSU operatives were not close enough to observe this transaction. The Transit van returned to Heuston.

23. The two garda units were alerted that one of the vans had moved and the ERU began to mobilise its members. It is important to note at this point that most events viewed by the NSU were made the subject of duty reports, which were put into a ledger and, in turn, typed and copied to a disk. For reasons that have never been satisfactorily explained, this trip to Clondalkin was not mentioned in the collective duty report that was compiled to describe what was observed on 1st May. That duty report begins at 2.26pm when the first of the vans left Heuston to travel to Wicklow. However, not only was the trip to Clondalkin mentioned in a summary report drawn up in the weeks after these events, but one of the operatives who followed the van recalled it well and described what

could be observed on that trip both at a meeting with counsel for the Commission and later in evidence at the oral hearings.

24. That afternoon, the two vans left Heuston, followed by members of the NSU. The ERU followed at a distance. The raiders travelled south from Dublin, eventually stopping north of Ashford where the blue van was joined by Stephen Carney in a gold Carina and both parked at in a lay-by, waiting for the opportunity to block the road at the Bends when the Securicor van arrived. The signal that the Securicor van was on the way was probably given by local spotters acting with the raiders, who were never apprehended.

25. Meanwhile, traffic had built to a heavy flow in both directions on the N11. This was the main road from Dublin to Wicklow and Wexford, and it was a fine day, with a particularly large number of cars heading out of Dublin on a Friday afternoon to spend a bank holiday weekend in the south-east.

26. The ERU sent a team to the north of the Bends and another team travelled south, in an effort to contain what they guessed might become a crime scene. They were careful not to blow their cover, however. The ERU was more recognisable than the NSU as a garda unit, being bigger in build, usually, and with more equipment to carry. The ERU usually included at least one large vehicle in a team in order to stop traffic, should that be necessary. They did not want to alert the suspect group to their presence when they did not know what was happening at the Bends. It was still possible that this operation would come to nothing, as had happened before on joint operations.

27. During this time, members of the NSU continued to travel in and out of the Bends, trying to ascertain what was planned. The radio channels of the two units were synchronised so that they could communicate. The area was a communications blackspot and had been specially chosen by the raiders to frustrate efforts at apprehension, should there be an attempt to alert local gardaí. Nonetheless, most messages appear to have got through to members of AGS in the area. NSU members were constantly transmitting what they saw as they passed through the Bends. There was nowhere for an NSU operative to stop and monitor the group without revealing her presence there. It soon became obvious that Operation Morrison was “going live”. The NSU watched as road cones and a “Road Narrows” sign were placed on the roadway beside the blue Transit van. Pascal Burke and the white Daf were already parked at Killiskey and they, too, were being monitored by the NSU.

28. When the gold Carina parked in a lane very close to the Transit van overlooking the Bends and the road signs appeared, the ERU operatives, hearing the messages about what was happening, were beginning to worry about manpower. They did not know how many vehicles or subversives were involved now that the Carina had been identified as one of the suspect vehicles. One of the NSU sergeants drove through at this point and guessed from the positioning of the two vehicles at the Bends that some kind of road block was planned and decided that an ERU interception had to be arranged. The time was 4.42pm. Before that interception could be arranged, however, the target van drove through Ashford.

The Securicor Van is Spotted

29. One member of the NSU was sitting in Ashford when she saw the Securicor van and immediately realised its significance. She began transmitting radio messages to her colleagues to alert them that she had seen a possible target. She followed the Securicor van, as did two other members of the NSU who had also seen it. Due to poor radio coverage at that point, it was some minutes before the first such message was received by another member of the NSU. By this time, the Securicor van was passing a Glanbia co-operative, north of Ashford and only a few minutes drive from the Cullenmore Bends. Several members of the NSU and three ERU vehicles were parked in the car park of Glanbia co-op and many of them saw the Securicor van drive past them, even as the first messages of its approach were being relayed by the NSU.

30. Some of the NSU vehicles in Glanbia immediately pulled out onto the road after the Securicor van. There was no direction or order from any senior officer in the NSU at this point, either handing the operation over to the ERU or directing the NSU to follow or to pull back. These orders should have been given when the operation went live. Within seconds, the ERU vehicles had followed the NSU onto the N11. A feature of the scene in Glanbia was that, although most of the NSU members had spotted the ERU and their vehicles in the car park, none of the ERU had noticed that there were several members of the NSU parked there also, so unobtrusive were they. Nor did the ERU know that several NSU cars had preceded them in traffic following the Securicor van; two had immediately left the co-op when the message got through and two had been following the van from Ashford.

31. Concern was expressed at the Commission's hearings as to why the ERU did not immediately intervene and stop the Securicor van. One witness summarised the evidence in this respect very well:

"It isn't a matter that we were in Ashford and the van was spotted five minutes away and we had five minutes. We hadn't. The van ... was actually on top of us when the message was coming out that there is a van in Ashford and it is heading towards the target area."

32. The Securicor van had passed before the ERU knew that it was coming. There was insufficient time to mobilise and intercept; there was just enough time to follow it, which they did.

33. The Securicor van approached the Bends just after 5pm. Unbeknownst to the driver of the van, there were several NSU and three ERU vehicles following behind it in traffic. The raiders' gold Carina and blue van moved to block the road, trapping the Securicor van between them. Civilian cars were, inevitably, caught in this road block. The car immediately in front of the Securicor van was a black Orion. The driver of the Securicor van later said that he would have driven right through the raiders' van and the men around it once he saw the block, had it not been for the civilian car in front.

34. The time was 5.08pm.

35. In considering the wisdom of the actions of AGS, it should be noted that the nature of the RIRA group had a significant bearing on the reaction of the ERU and the NSU to what was developing. The men involved were members of a subversive group which had broken away from a parent organisation with a long history of violence. Subversives in both groups were known to hold very strong political beliefs, for which many of them were prepared to kill or to die themselves. This group could not be classified as simply robbers; there was an element of publicity attaching to their project and a history of unwavering belief in the justice of their cause that made the various members of this group dangerous and unpredictable. The short history of the RIRA led AGS to expect one thing (i.e. the movement of explosives); then, they saw a moving target, which required a complete reassessment of the situation. All the while, the disrespect that members of this group and its parent organisation had consistently shown for human life had to be considered. One of the raiders gave evidence that the group was under orders not to shoot at members of AGS. However, the leadership of such an organisation, even if it does actually espouse such principles, cannot predict what young men with guns will do in a position of stress

and while attempting to carry out, or to flee, a violent offence. The treatment afforded to the Securicor employees and to civilians at the scene showed no such peaceful intention. It would have been extremely difficult for AGS to predict the outcome of what would amount to an emergency interception, not knowing who else was involved, or anything about their intentions or capabilities.

36. It was not possible to launch a safe interception at that late stage, given all the risks involved. The option of racing out to stop the Securicor van – explored at the Commission’s hearings – was greeted with disbelief by many garda witnesses, doubtful acceptance by some and outright laughter by two who maintained that it certainly could not have been done, let alone done safely. As one witness put it, “*we couldn’t stop it; we couldn’t catch it: the traffic was chaos*”.

The Securicor Van is Attacked

37. The raiders left the blue Transit van. Stephen Carney remained at the southern end of the Securicor van, beside the gold Carina. He was keeping civilians away from the area by wielding a shotgun. All of the raiders were wearing balaclavas.

38. The other four raiders surrounded the Securicor van, beating on the windows and shouting at the driver and passenger to get out. Philip Forsyth went to the driver’s side, with a consaw and a lump hammer. Ronan MacLochlainn, holding a revolver, and Saoirse Breatnach, holding an AKM assault rifle, went to the left-hand side and shouted at the Securicor employees to get out of the van. Their guns were pointed at the windows of the Securicor van. Daniel McAlister had an imitation rocket launcher, which was pointed at the Securicor van. The raiders also had an adapted fire extinguisher and materials for use as a flame thrower.

39. One of the Securicor employees pressed the panic button and the other got out, accidentally locking the driver into the cabin of the van in his understandable panic. He was forced to the ground and threatened. Meanwhile his colleague in the cabin was unable to move and he too was being threatened by the raiders as they tried to force him to open the van; they probably did not realise that now he could not do so.

40. This raid had only just commenced when members of the ERU arrived. To understand the sequence, which has some relevance when considering the management of the whole operation, it is necessary to return to Stephen Carney at the southern end of the scene with his

shotgun. The first car to drive up to him as he blocked the road and emerged from his vehicle was an NSU car. The two operatives in it had no time to challenge this man, who was pointing his shotgun at them. The passenger began to discreetly, but somewhat frantically, transmit radio messages to her colleagues that an armed raid had begun, while the driver did an emergency U-turn and drove back towards Ashford. The passenger knew that the Securicor van was the target.

41. The next car to arrive from the south was a red Laguna being driven by another NSU garda. This man was unarmed. An NSU sergeant arrived just behind him and the unarmed garda saw that the sergeant was getting out of his car with his firearm. He distracted Stephen Carney by revving and driving at him, and the sergeant approached shouting at him to drop his weapon. Mr. Carney jumped into his car and drove forward. As he did so, the red Laguna drove towards him and the two cars collided. The lead ERU jeep arrived immediately after this collision, crashed into the Carina to disable it, and sent it spinning into the ditch. The jeep travelled on into the scene, making for the Securicor van. Two other ERU vehicles were right behind it.

42. The ERU operatives in the other two vehicles stopped short of the Securicor van, jumped from their vehicles, and saw the raiders flee, most dropping their weapons. All the masked men ran north, away from the approaching ERU. The raiders ran toward civilian cars stuck in a line of traffic behind the blue Transit van. They tried to hijack some of these vehicles. The last of the group was Ronan MacLochlainn. As he ran, he turned and pointed his gun at the Sergeant who had led the team of ERU members in this chase up the road. The Sergeant, fearing that he would be shot, fired six shots at Mr. MacLochlainn in response.

43. Ronan MacLochlainn ran to a green Mazda 323F, being driven by a married couple. The female passenger shouted at him that the driver, her husband, had a heart condition - he had had a quadruple bypass the previous year. However, the armed and masked man opened the driver's door and said, "*Get out of your car, get out of your car, I want your car*". He put the gun to the driver's head. The driver was confused and did not know what to do. Ronan MacLochlainn pulled the driver out of the car and pushed him to the ground. The driver lay on the ground, face-down. His wife also got out of the car then. She had the presence of mind to take her handbag with her. The driver was becoming more confused and more traumatised by then. The couple lay on the ground. Both had their faces down in the grass and clay on top of the ditch.

44. The driver was a slight man and Mr. MacLochlainn took his seat, now somewhat crouched in the car, as the seat was quite far forward and the sun visor was down. He turned the car so that it pointed north and rolled down the driver's window fully.

45. The ERU continued to run after Mr. MacLochlainn and an Inspector now caught up with the hijacked Mazda and shouted at him again to surrender. Mr. MacLochlainn pointed his revolver at the Inspector, out of the window of the Mazda, and the Inspector reacted by firing two shots, in self-defence, which went into the side of the departing car.

46. As he pulled away, heading north, Mr. MacLochlainn saw another green Mazda, a bigger model, a 323 GLX, coming towards him from the north. He pointed his gun at the driver of this car, holding it out of the window of the hijacked car, which he had rolled down for that purpose. The driver of the oncoming car "DS-06" was another member of the NSU, a sergeant with previous experience in the ERU.

47. To understand how the NSU sergeant came to be there, recall that the ERU had sent two teams north of the scene but that they had not been tasked to intercept, nor indeed had they time to intercept this group on the N11 before the raid began. DS-06 was one of a number of NSU operatives who was north of the scene when he heard a message transmitted by his colleague in the NSU that there was armed raid going on. He and his colleagues did not know whether or not the ERU was there, but it was a reasonable guess that the armed unit had not arrived, given that the ERU is usually further back from the action in any operation until summoned for an interception. DS-06 and two colleagues drove straight to the scene to assist their NSU colleagues and were first to arrive from the northern end of the road, meeting the hijacked Mazda as Mr. MacLochlainn attempted to drive out of the scene.

48. DS-06 saw the driver of the hijacked car in his balaclava pointing a gun at him. In fear of his life, he shot at him twice. His second shot hit Ronan MacLochlainn, grazing his chin as he sat crouched in the stolen car, and entering his chest. The Mazda came to a stop in front of a red Seat Cordoba being driven by an NSU operative who had driven south with DS-06. The two cars collided but with little or no force.

49. Meanwhile, back at the gold Carina, members of the ERU had apprehended Mr. Carney, who was stunned after his car was struck by the ERU jeep, and who surrendered immediately when challenged. As

he was removed from the Carina, the NSU operatives around him heard the some of the shots from the north.

50. Ronan MacLochlainn was removed from the Mazda by the Sergeant and Inspector who had initially fired at him. There was a short struggle during which the Sergeant's gun went off accidentally, causing no harm to anyone. Mr. MacLochlainn was placed face down on the roadway and handcuffed. He then told the officers around him that he had been shot.

51. The time was 5.12pm.

52. Members of the NSU and ERU performed CPR on Ronan MacLochlainn and an ambulance was called. By the time the ambulance arrived, those treating Mr. MacLochlainn knew that it was too late. Paramedics also tried and failed to revive Mr. MacLochlainn, who died within minutes of being shot.

53. While all of these events were occurring, one of the other raiders had been apprehended and was lying, face-down, near a line of civilian cars where he was being guarded by a member of the ERU. As two civilians watched, this prisoner was kicked in the face by a member of AGS, who was then led away by a colleague. The garda assailant asked the raider, "*Did you think I was sick?*", in an obvious reference to the Blue Flu. Because the incident was not followed up by AGS, it is now impossible to tell who the assailant was, other than that he was one of the gardaí at the scene. The ERU member standing guard over the prisoner must have been aware of this assault, although he says he was not. One of the civilian witnesses to this assault reported it to AGS that evening but her complaint was not taken down in writing, nor was it followed up.

54. This incident gives some idea of the kind of scene this was. It was fraught, it was dangerous and it was very traumatic. The incident was also a good example of the kind of difficulty that attends the work of AGS. When an armed raid takes place and the lives of citizens and gardaí are put at risk, it is perhaps not surprising that some people react with anger and this was certainly just such a reaction. It can only be deplored but at least the assailant could have pleaded momentary loss of control, had he ever come forward. What makes the incident far more serious is that it was effectively ignored by AGS although at least two colleagues must have been aware of it at the scene and another heard about it that evening from one of the civilians who witnessed it. While one can understand loyalty to a colleague, it is very wrong when such

loyalty extends to ignoring an assault on any citizen, even a criminal. The civilian witness who described to the Commission what had happened concluded that, while she did not condone anything the raiders did, this was not right. It was far from right, but the way in which it was managed made it even worse.

55. The Mazda in which Mr. MacLochlainn tried to escape remained at the scene beside his body. The revolver he had carried was found in it but this car and the scene of the shooting were not properly preserved.

56. The revolver found in the Mazda was loaded and in the driver's footwell. By the time it was photographed, it had been moved to the seat. The Ballistics Section made it safe after it had been photographed so this was not why it had been moved at an earlier stage. The door of the car was open when Mr. MacLochlainn was removed and when the paramedics were there. It was closed two hours later when aerial photographs were taken by a civilian in a passing helicopter. Again, this was before the photographer had arrived and when the scene was, supposedly, being preserved.

57. The hijacked Mazda sustained damage from at least one crash, although only a collision with a red car was noticed by witnesses. However, the red Seat, DS-06's Mazda, a third surveillance vehicle which had stopped behind the Mazda, and the ERU jeep which had also been closely involved, had all been moved from the scene before the forensic team arrived, so it is still not clear which vehicle or vehicles were involved in these collisions other than to state that it cannot have been the jeep, and was not the red car alone, due to the nature of the damage.

58. The NSU deployed an airplane on the day but its presence was not disclosed in the subsequent criminal proceedings or at the inquest, nor was there an indication at that stage as to whether or not there was any video footage of the attempted robbery or the shooting. In fact, a video was taken of the journey to Wicklow and of the attempted robbery and shooting, or at least what was visible of those events from the airplane, but is no longer available.

59. The remaining raiders at the Cullenmore Bends were arrested in the undergrowth near the roadside at the north end of the scene. None but Mr. MacLochlainn had succeeded in hijacking a car.

60. A journalist who happened to be in traffic and walked into the scene at this early stage described it as chaos. She saw the NSU gardaí

who were wearing tabards; red bibs with the word “Garda” on them. Many of them seemed to her to look very young, and she wondered if they were on “*some kind of training course*”.

61. This description of numerous gardaí at the scene is very significant. It is most notable from the point of view of the family of Mr. MacLochlainn. It was absolutely clear to all of the witnesses at the scene, including the raiders themselves, that there had been a large number of gardaí present at the time of the shooting and the arrests of the other raiders, which were within minutes of the hijacking. However, many of these garda witnesses simply melted away, taking their cars with them. By the time uniformed gardaí arrived and began to take control of the scene, it was already too late to preserve it properly and key reference points had gone. When a garda file was compiled and completed in August of 1998, it must have been clear to anyone who had been there on the day that *many* of the gardaí present had not provided statements to the investigation, or if they had, they were not in the documents disclosed to the accused men in the criminal proceedings that followed.

62. Shortly after the first uniformed gardaí arrived at the Cullenmore Bends, Pascal Burke was arrested at Killiskey, where he had remained, waiting for his associates. One of those who assisted in his apprehension and arrest was DS-06. The expert evidence received by the Commission was that he, of all officers there, should not have been redeployed at that point (if that is what occurred) having just been involved in shooting incident. While it was not certain at that stage who had fired the fatal shot, best practice would have been to take DS-06 away from the scene to a neutral venue, for his own welfare and for the investigation, and to get an early account from him as to what had occurred. If indeed he was redeployed, it was not necessary to send DS-06 to Killiskey as other operatives were available to perform the necessary arrest.

63. A feature of the whole operation is highlighted by this apparent redeployment. It is not clear, and sadly DS-06 can no longer be asked, whether or not he was directed to assist at Killiskey or heard a general request for assistance and volunteered. One of the most disturbing features of the day was the *laissez faire* approach of the Inspector in charge of the NSU, both in his evidence and in how he appeared to have conducted Operation Morrison. He does not know if he directed DS-06 to Killiskey. This man was, in theory and as the senior officer there, the operation commander. The only evidence of orders given by him on 1st May were of two in particular: he directed one NSU operative to drive to Ashford at a point when the blue Transit van had first stopped in the

Bends, and another to direct traffic after the incident ended. This is commented on further below.

64. The last example of a direction given by an NSU operative at the scene is equally disturbing and it is that of the NSU Sergeant who ordered NSU personnel and cars to leave the scene. He was at the southern end, near the Carina, but his direction was non-specific and it is likely that most NSU cars and personnel left as a direct result of it. The direction countermanded the order of a local Superintendent at the scene who had at that stage directed that all cars remain. The only reason given for the direction was the view that the Superintendent's view was wrong and that it was important that the NSU leave; their cars were not part of the scene. It was in fact the Sergeant's conduct that was wrong, both in giving the order and in countermanding his senior officer.

The 1998 Investigation

65. The *National Bureau of Criminal Investigation* ('NBCI'), a unit of AGS, was requested to undertake an investigation into the attempted robbery and the shooting. An incident room was set up in Wicklow Garda Station and the investigation took several months. It resulted in a report dated August 1998, which recommended prosecutions in relation to the attempted robbery and no prosecution in relation to the shooting. The five raiders who had been apprehended at the scene pleaded guilty to firearms offences and each served a prison sentence.

66. While the investigation of the attempted robbery was extremely professional and thorough, the investigation of the shooting was minimal and sub-standard. The main reason the NBCI was involved at all was because of the shooting and yet the focus of their efforts was on the attempted robbery. From scene preservation, to witness statements, to final report, there was an unmistakable emphasis on the robbery to the almost total exclusion of the shooting.

67. The shooting is mentioned in a small number of statements that were taken in 1998. Pertinent questions were not asked by the investigation team. It formed a few paragraphs in a report of over 100 pages that was sent to the DPP. By way of small example, no garda witness (let alone civilian) was asked whether Mr. MacLochlainn held his gun in his left or in his right hand. The bare fact of the belief of three officers that he was pointing a loaded gun was set out in the statements provided and nothing more. Despite this, the NBCI never sought any further details.

68. The NBCI never established how many NSU operatives had been at the scene. The responsibility for failing to identify crucial witnesses must be shared by both units. The NSU never offered the information that there were other witnesses to the shooting. Yet, the NBCI knew the unit had been there and was charged with investigating the incident. It is a first and basic step to identify the witnesses. It is not appropriate to expect garda witnesses to volunteer, without making any cursory enquiry as to who was there, particularly when the witnesses are members of the NSU who traditionally do not give evidence when it can be avoided, for obvious reasons.

69. The notable exception was the work done by the ballistics section in the Garda Technical Bureau of AGS. Their investigation was meticulous, properly recorded and the file and original exhibits were appropriately preserved. The ballistics report appeared to confirm the NBCI view that there was no need to investigate further in that it supported the evidence of the three gardaí who had fired shots at Mr. MacLochlainn. However, a ballistics report could only confirm the consistency of the ballistics evidence with the account contained in the statements of the main garda witnesses; it could not determine whether or not Ronan MacLochlainn was pointing a gun at any of them.

70. By way of example, it is indicative of the general approach to the investigation of the shooting that the revolver used by Mr. MacLochlainn, and still in the vehicle when the photographer arrived, was not noted by the mapper or the first uniformed garda to note the items at the scene, and nobody in the investigative team noticed this.

71. This Commission of Investigation has decided, as did the NBCI, that the accounts of the three gardaí who fired shots are accurate. There was a difference in approach, however. Those accounts have now been tested; other witnesses (who were always available but never asked) have been invited to come forward and give their accounts, and the surveillance background to the whole incident has finally come to light. While it may be a matter of disappointment and even distress to the family of Mr. MacLochlainn to know that he did point a gun at the various officers as originally described, I hope that they have at least had the satisfaction of knowing that the issues they have raised were treated with the utmost seriousness, that their concern was acknowledged and that the account given by a small number of gardaí was carefully examined and tested instead of being accepted without question.

Subsequent Proceedings

72. The Coroner's Inquest was adjourned on multiple occasions, finally taking place in 2009, with a small number of witnesses who had been involved in the events of 1st May and in the subsequent investigation. Against the wishes of Mr. MacLochlainn's family, the inquest went ahead in the absence of some witnesses, and no member of the NSU was present to give evidence at the inquest. The family also argued that insufficient disclosure was made to them before the inquest.

73. Civil proceedings were taken by the family of the deceased in 1999 and these proceedings are still in being. Discovery orders were made in 2006 and in 2011 a Supreme Court appeal by the State was dropped and, that same year, AGS disclosed some material pursuant to that High Court discovery order. This is a significant feature of the case, as some of the material given to the Commission by AGS was available at that time but was not given to Ms. Nic Gibb or her legal representatives.

Command Structures

74. A commander should be identified for every operation. In particular, an operation should have an identified, remote, static, strategic commander.

75. A number of difficulties arose on 1st May 1998, some of which were insurmountable and beyond the control of AGS. They included the unexpected nature of events from the point of view of AGS, communications limitations, Bank Holiday traffic, and the effects of the Blue Flu, which meant that resources were very limited. None of these prevented the appointment of an identifiable commander. Had a strategic commander been nominated for Operation Morrison at the outset, consideration might have been given to the creation of contingency plans based on the information available to AGS.

76. Operation Morrison was a planned surveillance operation which became a spontaneous armed intervention. AGS did not predict the purpose, timing or location of the RIRA's actions. However, the absence of intelligence to suggest what, if any, event was planned does not explain why there were no contingency plans at all. The inspectors and sergeants should have been appropriately briefed, including a discussion about what might occur and how the units would approach the operation. They might not have known specifically what was planned, but they could have put in place broad plans for an incident involving

two vans and suspects who might be armed. They strongly speculated that the transfer of explosives would occur, yet there is no evidence of planning for such an event. By the time the blue Transit van stopped in the Bends, it was obvious that an incident would occur but at that stage, it was too late to make plans.

77. The direction by an NSU Sergeant that surveillance cars leave the scene was in direct contravention of a Superintendent's order, as described above. It was never explored by any senior officer in the NSU. If the unit ever discovered that this inappropriate direction was given, there is no record of that discovery. This indicates to me that the NSU viewed themselves as being "ringfenced", to use the word of one witness, from AGS to an unjustified extent. The normal rules were not seen to apply to them. To some extent, it makes sense for the NSU to maintain a level of secrecy but it ought to go without saying that orders from a superior officer should be obeyed and that basic rules of scene preservation must be applied, particularly at the scene of a shooting. It is inconceivable that the same approach would have been taken if a civilian had fired shots, killing someone, in the presence of the NSU.

78. It does not appear to have been recognised at any point from the moment of the shooting right up to the hearings of this Commission, 17 years later, that the area where Mr. MacLochlainn was shot was as important a scene as the site of the attempted robbery. Here, the hijacked Mazda should have been the focal point. At that time there was no protocol specifically dealing with the identification of a separate scene when a person had been shot by a member of AGS.

79. The reason for this blind spot, as mentioned above, appears to have been the simple fact that it was immediately clear that a guard was responsible for the shooting. Several eyewitnesses confirmed that the shooting was in response to a gun being pointed. Within a few days, the ballistics team confirmed the garda account of these events and the case was, effectively, closed. This failure to fully appreciate that the importance of the scene of the shooting, together with the anxiety of the NSU to disappear, the lack of leadership and the lack of training for such a joint operation, combined to produce the result that vehicles and operatives left the scene when they should not have done.

80. In the aftermath of the shooting of Ronan MacLochlainn, this was a live scene. There had been gunfire and armed members of a terrorist organisation had been arrested; all on a public roadway. There were over 30 civilians present, including women and children.

81. For a time after the shooting, the most senior officer present was an ERU Superintendent. He gave conflicting evidence as to who was in charge of the scene, nominating both an Inspector and an SDU Sergeant. When the local Superintendent arrived, he took over as the senior local officer and ordered that vehicles remain where they were. This was countermanded as described. This is a useful illustration of the difficulties caused by the lack of defined command structures.

82. Garda management failed to clearly identify any commanding officers, whether as overall commander, or as tactical commanders for each unit. As a result, the impression of individual autonomy attaching to each garda operative on the ground was enhanced when, in fact, such autonomy ought to have been minimised. The experience of the NSU and the training of the ERU stood them in good stead on the day. However, this does not excuse the fact that garda management had not put in place a routine, joint, briefing system under a proper command structure in which contingency plans could be considered. Such a structure would have prompted informed debate as to what was afoot and should also have led to a better understanding about who would command at what point, and when a handover might take place

83. Instead of engaging in planning, however, senior officers expected that the ERU and, in particular, the NSU would simply go about their business without coordination, instruction or orders. They relied largely on the experience of the relevant units to deploy effectively.

84. Since 1998, the two units have trained together and have a detailed written agreement about their respective roles. However, in 1998, there had been no joint training and it would be four years before the protocol was put in place. The ERU had been trained to be conscious of each other's roles and of the risk to civilians. Individual witnesses showed an excellent understanding of how their ERU colleagues would react and how they accordingly concentrated on tasks appropriate to where they were themselves. However, their training did not contemplate the presence of plainclothes, armed NSU members in the middle of the scene. In the circumstances, it was inappropriate for senior management to rely on the units to deploy effectively without direction and effective command structures.

85. It was for the NSU Inspector to say when the optimum time was reached for a handover; he did not. The NSU officer in charge should have triggered the handover to the ERU; he did not. The decision to intercept could not be made without communicating with the ERU both as to whether the decision was correct and as to whether it could be

implemented. There was no evidence that the NSU leader knew where the ERU teams were or that he considered asking for that unit's interception at any stage. There should have been a direction to the surveillance teams to pull back once the ERU became involved, even if the operation had not been formally handed over. There was no such direction. The Inspector suggested in evidence that a sergeant issued the order that the ERU engage but this was not supported by any other evidence and is incorrect.

86. While individual officers did act appropriately at the scene, there was an abdication of responsibility on the part of the commanders of the NSU. It is only fair to point out, however, that what chaos there was at this scene was caused by a dangerous and unexpected heist and not by ineffective operational policing; the two teams deployed effectively.

87. Since 1998, a specific protocol has been introduced to regulate such joint operations. The guidelines adopted advocate being specific about each individual plan, identifying the commanders, and setting the demarcation lines in a pre-operation briefing. While reassuring, the terms of the protocol highlight the deficiencies of Operation Morrison and, in particular, the poor approach by AGS to command and strategic issues at the time of that operation.

88. A final deficiency, caused by the poor command structures in place in AGS in 1998, was that there was no comprehensive debrief involving both the NSU and the ERU. There should have been a structured meeting, at which all were present. A note should have been taken of the contributions made, at least in summary. This did not happen or, if it did, no records remain in relation to it.

89. Many of the NSU who had been present attended a meeting the next morning. Few remember what exactly was discussed at that meeting. The meeting was not particularly contentious because the shooting was not analysed. Some mistakenly thought that an internal investigation was prohibited because of the ongoing NBCI investigation and, in any event, there was no expectation that a rigorous investigation into the shooting was necessary. The official view was, and still is, that there was no need to cover up or invent this meeting as there was no "disaster" to cover up.

Record Keeping and Disclosure

90. Through inadequate systems and management in AGS, much contemporaneous documentation or evidence from 1998 is not available.

However, numerous witnesses have been able to substantiate the matters in issue and it has proved possible to be satisfied beyond a reasonable doubt of the main issues of fact set out in this report.

91. The general process whereby records in AGS are identified as relevant, maintained and stored in an organised system, and are thereby easily recovered and disclosed, is very weak. AGS did not realise or believe that its investigation had been sub-standard, thus there was no identification of relevant papers or materials as being potentially required. The destruction of relevant documents was a result of poor practice, not a conspiracy surrounding the events of 1st May. There was no doctoring of files, no deliberate removal of duty reports and no malicious tampering with the material relevant to this case.

92. There was, however, no rigorous system whereby hard copy documents were stored or retained in the long term, in either (or both) the NSU or the *Intelligence Section*. This does not appear to have changed significantly. Perhaps the NSU and the *Intelligence Section* consider that this is a safe way to hold such sensitive material but in the unlikely event that this is a deliberate security measure, it is very unwise. As has occurred in this case, it leads to concerns about the accuracy and comprehensiveness of the information itself and can lead to theories of serious wrongdoing on the part of one of the most powerful agents of the State.

93. Vital information was contained in the original ballistics file, extra booklets of photographs, a box from the original incident room in Wicklow Garda Station and in Santry (in the form of the hijacked Mazda). However, the system whereby documents are stored and retrieved in AGS meant that this material was only produced months after this Commission began its work. Even the Garda Technical Bureau, otherwise meticulous, was not immune from this communications deficit in that the original ballistics files did not emerge until after the Commission had obtained its first expert report on ballistics. In many cases, the Commission was only alerted to the existence of the material in March 2015. This was one month *after* the first date on which the final report of the Commission was due to be submitted to the Minister for Justice.

94. While I do not think it was deliberate, the failure to maintain and disclose the relevant material in a timely way was careless management to such a degree as to be culpable. The impression is also strongly given that no section of AGS has control over any other and few know where material is, or should be, stored. The loss of so much documentation,

the reappearance of some of it, and the lack of communication between sections as regard records certainly deserves strong criticism, but it was not a deliberate attempt to suppress documents. It is too wide-ranging a loss to have been specifically engineered for this case alone. I also note that it was almost entirely through the persistence and diligence of individual members of the force that the Commission received the amount of material which was eventually retrieved.

95. Much more significantly, Ms. Nic Gibb has sought much of this material for many years. However frustrating this experience was for the Commission, it must have been galling for Ms. Nic Gibb. A litigant against AGS would be justified in fearing that her success in proceedings against the police force will depend more on the diligence and experience of the particular officer who is chosen to seek out the documentation ordered, than on the content of any discovery order made by a court. That is a shameful situation and must be remedied by AGS if it is to retain credibility as an organisation.

96. One of the main issues explored in this Commission's investigation was the theory that there had been a conspiracy to hide wrongdoing on the part of one or more members of AGS. That theory was exacerbated and fed by the approach taken to the disclosure of documents. However, in order to make that theory tenable, there must be some wrongdoing in the first place. One theory tested at the hearings, though not pursued in final submissions, was that there had been an unlawful killing; another was that AGS knew of the plan to rob a van and incompetently managed the operation instead of safely intercepting the raiders before the attack began. What came through very clearly from the evidence of individual garda witnesses who were there on the day, or part of the NSU surveillance operation, was that they were surprised by events in the Bends. The evidence therefore did not sustain either conspiracy theory; it pointed instead to a systemic failure to maintain careful records rather than to deliberately destroy suspicious documents.

97. Poor auditing in the *Intelligence Section* and the NSU is the main explanation for anomalies and omissions in the records at those units. This is an important conclusion, as AGS must explain its actions not only in a court of law, but also to the families of those killed or injured, to their communities, and to ensure that the public maintains confidence in the police. This can only happen when members of a police force, and the policing body as an institution, can explain what happened and why it happened. When there is no audit trail, people will form their own views as to what happened, often erroneously, and the consequences can

be significant in terms of community disturbance, loss of morale in the police service, and legal challenges. Every failing becomes suspicious, and missing documents, seen in the light of a secretive approach and a failure to document, are very easily characterised as documents which have been deliberately destroyed. This can be avoided if senior officers explain their actions and, even better, can point to a contemporaneous, documented account of the evidence upon which they acted.

Accountability and Transparency

98. The general secrecy of the NSU as a unit is understandable but was excessive in this case. The very nature of what they do means that it is not surprising that NSU members prefer to say as little as possible about any aspect of their work, but there is a danger that this attitude can leak into their approach to every policing issue that arises, even those that require the utmost transparency. An extreme view of the importance of being covert in all matters may have led some NSU operatives and senior management to the view that the importance of their covert work allowed them to hide matters, even to the point of misleading their colleagues and others. If any witness held, or still holds this view, it is very wrong. In this context, I should add that this Commission acknowledges the valuable assistance and cooperation that it received from individual members of the NSU and from its present management.

99. One of the most dangerous aspects of Operation Morrison was the absence of a leader or commander and of formalised system of coordination and communication between the two units. There was evidence of an operational order which should address these issues. If it has not yet been implemented, AGS has yet to learn from this failing. One of the reasons, which may explain the reluctance of AGS to implement such an obviously beneficial measure, is the natural disinclination of the body to commit anything to paper which might reveal operational matters to third parties. The problem is that this ignores the very pressing need for a police force to be transparent and accountable to the people it polices.

100. Our police force will be helped, not hindered, by adopting more rigorous systems and by recognising that its members share the limitations of all human beings: they are loyal to each other and not best-placed to investigate each other. We must all be encouraged to act in accordance with what is right, particularly when it involves criticising a colleague and, even more crucially, when that colleague has engaged in misconduct. Members of a police force are no different to the rest of

society in this respect, but the consequences for the rest of society can be devastating when gardaí, of all people, fail to achieve the high standards of conduct that must be expected from any body entrusted with the right to use force against civilians.

Conclusion

101. On 1st May 1998, three members of AGS fired shots at Ronan MacLochlainn while he was attempting to leave the scene of a heist. One of the shots proved to be fatal. Each of them in turn genuinely believed, for good reasons, that Mr. MacLochlainn had threatened his life, and it was necessary and justified to respond by shooting at him in each case.

102. The subsequent investigation proceeded on the assumption that the shooting was justified and did not correctly preserve the scene of the shooting or test any garda account of the circumstances of these events, nor did it identify multiple witnesses from whom accounts could have been taken.

103. This report may be summarised by saying that AGS should have adopted and practised more rigorous training for its senior management. This would have encouraged recognition by its members of the need for accountability and real independence in an investigation. It might also have prompted AGS to maintain better records and systems, which would have ensured that full and appropriate disclosure was made by the organisation and thereby minimised the potential for theories of wrongdoing to fester. These measures could have saved the family of Mr. MacLochlainn the long ordeal of seeking answers that this process became. Further, the civilian witnesses and the members of AGS, in particular the members who fired shots and the family of the late DS-06, would not have had to endure such a distressing investigation, so very long after these events.

A. Introduction

1. In 1998, Ronan MacLochlainn was shot dead on a public road in Wicklow by a member of the surveillance unit of An Garda Síochána ('AGS'). Many of the garda witnesses to this shooting were not identified at the time and some of the cars most closely involved were removed from the scene before it was preserved. The guard who fired the fatal shot went soon afterwards to arrest another person a short drive away from the scene. While it was clear that Mr. MacLochlainn had been attempting to commit a robbery shortly before he was shot, the circumstances surrounding his death were addressed only peripherally in statements made by some of the gardaí who were present. In each case, the focus of the statement was on the attempted robbery and not on the shooting. Many more witnesses had been present than those who later made statements about these events.

2. Three members of AGS fired shots at Ronan MacLochlainn, and all three made statements in 1998 in which they asserted that he had been carrying a gun, which he had pointed at them, in the course of attempting to escape the scene of the attempted robbery. The family of the deceased was very concerned by the fact that there appeared to be no adequate inquiry into the circumstances of this man's death, beyond accepting the statements of the three gardaí in question.

3. It was many years before an inquest was held, and even then none of the surveillance gardaí at or near the scene gave evidence. After the establishment of this Commission of Investigation, numerous additional witnesses were identified, met with counsel to the Commission, and gave sworn evidence about what they had seen. The evidence has established that what the three gardaí had originally stated is reliable and Mr. MacLochlainn was not only committing a criminal offence, but was shot because he posed an immediate threat to others at the scene.

4. In a distressing postscript to these events, the garda sergeant who fired the fatal shot, anonymised for the purposes of this Investigation, subsequently died while on duty. Members of his family, and indeed most of the gardaí involved that day and the civilian witnesses, have had to endure an investigation of traumatic events which was 17 years late, through no fault of their own. The family of Ronan MacLochlainn, meanwhile, has spent 17 years waiting for an adequate investigation into the circumstances surrounding his death. They knew they had not been given a full account of what happened at the Cullenmore Bends.

5. This was a wholly avoidable situation, caused by the basic failure of AGS to recognise that when a member of the public, whether or not he is committing a crime, is killed by member of the police force, a full and transparent investigation must be made into the events. Anything less than that inevitably leads to conspiracy theories based on partial information, and is very damaging to the relationship between the public and its police force.

Factual Background

6. Ronan MacLochlainn was a member of the RIRA who was fatally shot by a member of AGS on 1st May 1998. Mr. MacLochlainn had been attempting to leave the scene of an attempted robbery at the time. The target of the attempt was a cash-in-transit van. Five other raiders were arrested at or near the scene. The location is known locally as the Cullenmore Bends, and is close to Ashford, in County Wicklow.

7. The raiders had parked a blue Transit van and a white Daf van at Heuston Station car park, and both were used to carry out the raid. AGS had been following one of the men, and both vans were under surveillance on the 1st May, by which time the operation had come to be known as “Operation Morrison”.

8. The 1st of May was a warm, bank holiday Friday, and was also the day of the ‘Blue Flu’, when many members of AGS did not attend for work due to an industrial dispute. That afternoon, the two vans left Heuston, followed by members of the *National Surveillance Unit* (‘NSU’). The *Emergency Response Unit* (‘ERU’) was supporting the NSU and following at a distance. The vans travelled south from Dublin, eventually stopping north of Ashford where the blue van and a third vehicle, a gold Carina, both parked, waiting for the opportunity to block the road at the Bends. When a Securicor van approached, the vehicles blocked the road and the raiders attacked. Members of the NSU and the ERU had spotted and followed the Securicor van and they arrived within seconds, confronted the raiders and prevented the robbery. Mr. MacLochlainn was shot while trying to escape in a hijacked car. Numerous civilians were trapped in the road-block set up by the gang, and were in and around the area in which shots were fired by AGS.

9. The raiders had carried out an attempt to commit this robbery a week before, on 24th April, which was abandoned when the Securicor van arrived earlier than they had expected. This is one of the factors that led to speculation that AGS knew of the plan to rob the Securicor van on 1st

May; it was presumed that AGS must have followed the raiders on the previous week also.

10. Three officers shot at Mr. MacLochlainn. The man who fired the fatal shot made a statement at the time, but is now deceased. He was then a member of the NSU. Some 30 members of the NSU were at or near the scene in Cullenmore. Only six of these made statements in 1998 which were included in the file sent to the Director of Public Prosecutions (DPP) after these events.

11. The car in which Mr. MacLochlainn tried to escape sustained damage from at least one crash, but because vehicles were moved from the scene before the forensic team arrived, it was not clear which vehicle or vehicles had been involved in the collisions.

12. The NSU deployed an airplane on the day but this was not evident from the documents prepared for subsequent criminal proceedings and for the inquest, nor was there an indication as to whether or not there was video footage of the attempted robbery or the shooting, and none is now available.

13. The *National Bureau of Criminal Investigation* ('NBCI'), a unit of AGS, was requested to undertake an investigation into the attempted robbery and the shooting. An incident room was set up in Wicklow Garda Station and the investigation took several months. It resulted in a report dated August 1998, which recommended prosecutions in relation to the attempted robbery and no prosecution in relation to the shooting. The five raiders who had been apprehended at the scene pleaded guilty to firearms and assault offences and each served a prison sentence.

14. The Coroner's inquest was adjourned on multiple occasions, finally taking place in 2009, with a small number of witnesses who had been involved in the events of 1st May and in the subsequent investigation. Against the wishes of Mr. MacLochlainn's family, the inquest went ahead in the absence of some witnesses, including the only member of the NSU who had made a deposition. The family also argued that insufficient disclosure was made to them before the inquest.

15. Civil proceedings were taken by the family of the deceased in 1999 and these proceedings are still in being.

16. In separate proceedings, Ms. Gráinne Nic Gibb, the partner and next-of-kin of the deceased, applied to the European Court of Human

Rights ('ECtHR'). She complained that the investigation into her partner's death had not satisfied the requirements of the European Convention on Human Rights ('ECHR'). To settle the case, the State offered to set up a commission of investigation and the ECtHR ruled that this was an appropriate method by which to vindicate the rights of the family and of the public. That settlement resulted in the establishment of this Commission of Investigation.

17. Ms. Nic Gibb, and the family of Ronan MacLochlainn, have been seeking an investigation into the circumstances of his death for over 17 years. The key areas of concerns they have identified are these:

- The state of knowledge of AGS prior to these events;
- The preparation for the operation, including training;
- The control of the operation;
- The events surrounding the shooting itself; and
- The investigation of the shooting.

18. The key questions that arise for consideration by the Commission may be summarised as follows:

- a) Did members of AGS know of the planned robbery and, if they did not know, should they have known?
- b) If AGS knew or should have known about the robbery, could the ERU have prevented the attempted robbery or the shooting by arresting the raiders earlier or by intercepting the security van?
- c) Was Mr. MacLochlainn unlawfully shot?
- d) Was there a conspiracy by members of AGS to conceal the circumstances of the shooting in the aftermath of these events?
- e) Was there an adequate investigation into the shooting?
and
- f) Were the relevant units adequately trained?

B. The Relevant Law and Terms of Reference

The Convention

1. Article 2 of the European Convention on Human Rights ('ECHR') protects the right to life. The relevant portions of the Article read as follows:

- 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than is absolutely necessary ... in defence of any person from unlawful violence ...*

2. The European Court of Human Rights ('ECtHR') has identified two basic obligations arising from Article 2 of relevance to this Commission of Investigation. The first is a substantive duty to safeguard the right to life and the second is a procedural duty to initiate an effective official investigation where individuals have been killed as a result of the use of force by State agents.

3. Looking first at the substantive issue, the ECtHR has considered a large volume of cases involving the use of lethal force by state agents. In those cases, it has recognised that the use of lethal force can be justified in certain, limited circumstances. Of relevance to this Commission, the use of lethal force is justified if the person using the force has an honest belief that it is necessary to defend someone from lawful violence. The ECtHR judges this subjectively. It considers the events from the viewpoint of the person using lethal force at the time when the force was used, and it considers the information available to that person at that time. The ECtHR considers that a more onerous test - based on what a detached bystander would think - would impose an unrealistic burden on the state's law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others.

4. The ECtHR has also consistently held that the force used must be proportionate to the perceived threat. Where the force used is disproportionate, the use of force is unlawful.

5. Turning to the procedural aspect of Article 2, the ECtHR has identified a number of requirements for an investigation in any circumstances where a person's life is taken by an agent of the state. The requirements are effectiveness, independence, objectivity, thoroughness, impartiality and promptitude. The central requirement of such an investigation is to examine the lethal force used in order to determine if it was absolutely necessary, and examine the police operation in order to determine if it was managed in such a way as to minimise, insofar as possible, the recourse to lethal force. The investigation should ensure, insofar as possible, that the circumstances of the death are publicly known; that there is accountability on the part of the police force; that public concerns of police wrongdoing are allayed, if they are ill-founded; that dangerous or wrongful practices are identified and corrected and, if such practices are identified, that any lessons learned from the investigation may reassure those who have a lost a relative in such circumstances to know that the recommendations may serve to prevent similar loss of life in the future.

6. Ireland was one of the first signatories of the ECHR in 1950 and ratified it soon afterwards. From then on, individuals could bring complaints to the ECtHR based on violations of the ECHR. At the time of Mr. MacLochlainn's death in 1998, remedies could not be sought before the Irish courts based on violations of the ECHR, because it did not form part of Irish law at that time. The ECHR was (at least partially) incorporated into Irish law when the *European Convention on Human Rights Act 2003* came into force on 31st December 2003. Since then, remedies can be sought by individuals in Irish courts based on violations of the ECHR.

The Constitution and the Right to life

7. Article 40.3.1° of the Constitution provides that “[t]he State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen”. Article 40.3.2° provides that “[t]he State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life ... of every citizen.” Article 40.3.2° does not indicate the circumstances in which the taking of life is permissible, nor does it cast any light on what is to be regarded as an ‘unjust attack’ on life or what measures are needed to vindicate life against any such attack. There is little authority on the question of what constitutional obligation the State has to take

appropriate steps to prevent persons being killed by agents of the State.¹ Of relevance, under the *Coroners Act 1962*, an inquest must be held where the coroner is of the opinion that a person's death may have occurred in a violent or unnatural manner or suddenly or from unknown causes.

8. The Commission is not aware of any cases involving the use of lethal force by state agents in which the constitutional right to life as expressed in Article 40.3.2° has been invoked before the courts. In fact, the right has been invoked very infrequently before the Irish courts. It was neither invoked nor mentioned at all in an Irish court until the 1960's in *Ryan v. Attorney General*,² a case in which it was not central. It has since been invoked in a number of cases, none of which is relevant to the issues before the Commission.³

Self Defence

9. Unlawful killings fall into two categories in Ireland – murder and manslaughter. Murder involves the situation where a person kills another person unlawfully. Section 4 of the *Criminal Justice Act 1964* lays down the mental element – the person must have “*intended to kill, or cause serious injury, to some person, whether the person actually killed or not*” and he is presumed to have intended the natural and probable consequences of his conduct. Manslaughter is any other unlawful killing.

10. Individuals may lawfully use lethal force in a number of situations. This includes in self-defence or in defence of others. Traditionally, self-defence was justifiable only in response to an immediate threat and only such force as was necessary and proportionate could be used. The test has evolved over time. Today, generally speaking, such force may be used against a threat as is reasonable and necessary in the circumstances as the individual believes them to be. Walsh J. summarised the position as follows in *People (AG) v. Dwyer*:-

“A homicide is not unlawful if it is committed in the execution or advancement of justice, or in reasonable self-defence of person or property, or in order to prevent the commission of an atrocious crime, or by misadventure. In the case of such self-defence, the homicide is justifiable and is therefore not unlawful. [...] the homicide is not

¹ Forde and Leonard, *Constitutional Law of Ireland* (2013, 3rd ed), Ch 14, but see the judgment of the Supreme Court in *LM v Commissioner of AGS & Ors* [2015] IESC 81, delivered on 3rd November 2015, for a discussion of the law in relation to the potential civil liability of AGS in that regard.

² [1965] 1 IR 294

³ See, generally, Hogan and Whyte (eds), *J.M. Kelly: The Irish Constitution* (2003, 4th edn), Ch. 7.

unlawful if the accused believed on reasonable grounds that his life was in danger and that the force used by him was reasonably necessary for his protection.”⁴

11. Walsh J. went on to find as follows:

“Full self-defence permits such a degree of force, up to and including the infliction of death, as may be regarded as being reasonably necessary. [...] if the accused honestly believed that the force he did use was necessary, then he is not guilty of murder.”⁵

12. Thus, there is considerable overlap between the test applicable under Irish law and the test formulated by the ECtHR.

13. The Garda Code, as it applied in 1998, set out specific guidelines to members in various scenarios in which force might be used, including as follows:

“In self defence ..., the discharge of firearms will be justified if an assailant is seen by a member pointing or discharging a gun at the member or at a member of the public, or if by reason of injuries received by felonious assault, and reasonable grounds are adduced for believing the member or other members of the public to be in peril of life and if no other weapon is at hand to make us of, or if the member is rendered incapable of making use of any such weapon by the previous violence received. The discharge of violence would not be justified merely on the suspicion that a person was in possession of firearms.”⁶

14. Thus, the administrative framework of AGS regarding the use of firearms was comparable to the legal framework, and both were of an appropriately high standard.

The Commissions of Investigation Act 2004

15. The Act presumes that an investigation will be held in private, but allows a public investigation in certain circumstances.

16. The Act requires me to prepare a written report, based on the evidence received, setting out the facts I have established in relation to the matters referred to me for investigation.

⁴ [1972] 1 IR 416, at 420

⁵ at pp. 423-424

⁶ Garda Code, Volume 1, 4th Edition (1995), Section 25.42, para. 5.

17. If for any reason (including insufficient, conflicting or inconsistent evidence) I consider that the facts relating to a particular issue have not been established, I must identify the issue, and may indicate my opinion as to the quality and weight of any evidence relating to the issue.

Burden and Standard of Proof

18. The standard of proof applicable in criminal proceedings, where facts must be proved beyond a reasonable doubt, does not generally apply to commissions of investigation. In an inquisitorial exercise, such as this one, the burden and standards of proof do not apply as they would in adversarial litigation. I must find the facts as directly established by, or to be inferred from, the evidence put before me. However, due to the gravity of the issues in this case and the jurisprudence of the ECtHR as set out below, I will indicate the degree of confidence with which findings are made and, if I can be satisfied of certain facts to the point that I have no reasonable doubt as to their accuracy, I will indicate this.

19. Where I state that findings of fact are established on the balance of probabilities, this means that I consider that, on the basis of the evidence, it is more likely to be correct than not.

20. The Commission notes the jurisprudence of the ECtHR as regards the burden and standard of proof in an Article 2 inquiry, while acknowledging that these are more flexibly applied than comparable rules in Irish criminal law, depending on the nature of the allegations made.⁷ The general standard of proof required, where an applicant alleges a substantive breach of the right to life, is proof beyond a reasonable doubt.

21. There may also be a burden on the State to show that it has not breached the requirements of the ECHR. If the State can reasonably organise an operation in such a way as to avoid killing suspects, without danger to the general population or law enforcement officials, it is under a duty to do so. To identify a violation, the ECtHR has indicated that it must be satisfied beyond a reasonable doubt that, in the light of the facts as known to the authorities at the time, such reasonable arrangements

⁷ See e.g. *Salman v. Turkey* (2002) 34 E.H.R.R. 17, at para. 100: “In assessing evidence, the general principle applied in cases has been to apply the standard of proof “beyond reasonable doubt”. However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, ..., strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”

could have been made, but were not. If that has been established, the ECtHR will find that a violation has occurred.

Terms of Reference

22. The Terms of Reference of this Commission were set by the Minister for Justice and Equality, mindful of the State's obligations under Article 2 ECHR. The Commission is tasked with undertaking thorough investigation and making a report on:-

- (i) The circumstances surrounding the fatal shooting by An Garda Síochána of Ronan MacLochlainn on 1st May 1998, in Ashford, County Wicklow; and
- (ii) All relevant Garda matters, including the policies, practices and procedures of AGS relating to the planning and control of the operation which led to the fatal shooting and relating to the training provided to personnel who were detailed for the Garda operation concerned.

23. The Commission is also required to keep Ms. Gráinne Nic Gibb involved in the investigation to the extent necessary to safeguard her legitimate interests.

This Investigation

24. Where possible, the Commission held meetings with and / or heard evidence from all surviving witnesses who were at the scene of the shooting, including civilians, members of the NSU and the ERU, other members of AGS who were involved in the 1998 investigation, and those who pleaded guilty to offences arising from the attempted robbery.

25. Informal meetings were held over a number of months between the Commission and relevant persons. A note of all relevant information received during each of those meetings was prepared and disclosed to Ms. Nic Gibb and to the Garda Commissioner, subject to minimal redactions where claims of privilege were made and sustained. This process helped to clarify the issues to be addressed at the Commission's formal hearings and to identify who was best placed to address those issues in evidence.

26. The book of evidence prepared in respect of the criminal proceedings, the file that had been presented to the DPP, the Coroner's

file from the inquest, the Chief State Pathologist's file, documents held by the Department of Justice, relevant medical records, and photographs, maps and a ballistics file prepared by members of AGS were all made available to the Commission. It emerged in March of 2015 that the Mazda in which Mr. MacLochlainn had been shot was still available and the car was then examined by expert witnesses. Experts were also able to examine the weapons, spent bullets and cartridges retrieved from the scene, and three of the official firearms surrendered by members of AGS at that time.

27. In listing the documents and exhibits that are still available, it is important to note that there are numerous items which are no longer available, including many original statements and original surveillance reports, which would have been of great assistance had they been found.

28. The Commission and Ms. Nic Gibb called expert witnesses on policing practice – Mr. Alan Bailey for the Commission and Mr. Michael Burdis for Ms. Nic Gibb. In addition, Mr. Mark Mastaglio, a ballistics expert retained by the Commission, presented a report jointly with Mr. Burdis. Their biographies are included in an Annex at the end of this report.

The Hearings

29. The Commission's formal hearings took place over 48 days between September 2015 and January 2016. More than 100 witnesses gave evidence under oath. Most evidence was heard in public and members of the press were present. The evidence that was privately heard was subsequently read into the public record, in the presence of Ms. Nic Gibb, having been redacted to a small extent due to the fact that it involved descriptions of state security measures; the omitted material was privileged and it was appropriate that it not be disclosed publicly. The evidence that was heard in private comprised, largely, of testimony from former or current surveillance gardaí. In two cases, civilians gave evidence in private with the consent of all involved: one for medical reasons, the other for logistical reasons.

30. Lawyers for Ms. Nic Gibb were present throughout all hearings, public and private, and had the opportunity to question every witness. They were informed of the name of each member of AGS who had been granted anonymity. Serving and retired members of AGS were represented in each case by the same legal team. Again, the lawyers for AGS were present for all the evidence and had the opportunity to question every witness. Some of the raiders were represented by legal

teams while they gave evidence to the Commission and were given notice of the evidence given to the Commission generally. None of the other civilian witnesses requested legal representation.

This Report

31. Requests for anonymity were made by many witnesses to the events under investigation. Having considered the views of Ms. Nic Gibb on the subject, the Commission found that, in the case of some serving and retired members of the NSU, the requests were well founded. This is because of the covert nature of the work in which they were engaged in 1998 and which some continue to do. To ensure that disclosure was made as fully as possible to Ms. Nic Gibb, the Commission created an anonymity code for the witnesses who were granted anonymity, and documents bearing their names were redacted using that code. The anonymity code is also used in this report. There are two types of code: “NSU-DS-” with a number for each Detective Sergeant and “NSU-DG-” with a number for each Detective Garda.

32. Civilian witnesses’ surnames are not used in full in this report, though they were used at all previous stages of this Commission’s investigation. The Commission acknowledges that many of them endured a very traumatic experience on 1st May 1998, which they then had to recount in meetings with the Commission and again at formal hearings which, for the most part, were held in public.

33. Suspected subversives who were the subject of surveillance by the NSU in 1998 but were not charged with any offence arising from the events of 1st May 1998 are anonymised for the purpose of the report. In particular, the report refers to *Male A* and *Male I*. These were senior dissident Republicans. Their names were disclosed to the legal representatives of Ms. Nic Gibb.

34. The ranks attributed to members of AGS who are mentioned in this report are the ranks they held in 1998. Many of them have been promoted and/or have retired since then and no longer hold the rank they held in 1998. A few garda witnesses gave evidence about their current roles and practices and, in those cases and to identify particular expertise gained since 1998, their current titles are used. This is also mentioned, where relevant, in the body of the report.

35. Finally, the structure, practices and capabilities of the various units of AGS have changed since the events the subject of this investigation; this report focuses on the situation at that time.

C. AGS: Personnel and Structure

1. An Garda Síochána ('AGS') is the national police service of Ireland. Its headquarters are in the Phoenix Park, Dublin. The force is headed by the Commissioner, who is supported by Deputy and Assistant Commissioners and (in descending order of rank), Chief Superintendents, Superintendents, Inspectors, Sergeants and Gardaí. For policing purposes, the State is divided into a number of divisions, and each division is headed by a Chief Superintendent. The divisions are divided into districts, and each district is headed by a superintendent.

2. Several units of AGS were involved in Operation Morrison and its aftermath. The *National Surveillance Unit* ('NSU') and the *Emergency Response Unit* ('ERU') had the most active roles. As a general rule, the NSU stayed in the background as an undercover unit while the ERU was called in if there was a need to intercept or interrupt potential offences, or to make arrests. In 1998, the two units worked together often. The *Intelligence Section* was also involved, insofar as all information from surveillance went to the *Intelligence Section* for analysis. The *National Bureau of Criminal Investigation* ('NBCI') was involved in the investigation of the events of 1st May, assisted by the local police force.

3. In 1998, the Chief Superintendent in charge of *Crime & Security Branch* had overall responsibility for the NSU and the *Intelligence Section*. The NSU and the *Intelligence Section* were each headed by a Detective Superintendent, supported by a Detective Inspector. A Superintendent attached to the Special Detective Unit ('SDU') was in overall charge of the ERU, and was supported by a Detective Inspector. The Inspectors were in charge of Sergeants, who in turn were in charge of teams of gardaí. The Inspectors were the day-to-day and operational commanders, who answered to their respective Superintendents, who in turn answered to the relevant Chief Superintendent.

National Surveillance Unit

4. In the early 1980's there was a small surveillance unit under the aegis of the SDU. The members of the unit all came from the SDU. Meanwhile, the Central Detective Unit, a unit which dealt with so-called "ordinary crime" (as opposed to subversive or organised crime), also had a surveillance section. In 1991-1992, these two surveillance units were transferred to *Crime & Security Branch*, based in Garda HQ. The two

surveillance units merged into a national unit: the NSU. It was expanded in 1996.

5. The NSU's offices were located near the offices of the *Intelligence Section* in Garda HQ. The commanding officer in the NSU in 1998 was Supt Philip Kelly. His equivalent in the *Intelligence Section* was Supt Peter Maguire. Their commanding officer was Chief Supt Dermot Jennings, the head of *Crime & Security Branch*, who had recently been promoted out of Supt Maguire's position. At the time of these events, Chief Supt Jennings spoke to Supt Kelly several times a day, as there were a number of ongoing surveillance operations.

6. The NSU was and remains a covert, intelligence-gathering unit. It is recruited from within AGS and it works within Garda structures but it conducts its work separate from the rest of AGS. The work of the NSU is "ringfenced", in the words of one witness. The Commission heard evidence from members of the NSU that the rest of AGS does not, and should not, know the NSU's specific targets or their daily duties, in order to protect their own anonymity and the confidentiality of their sources, and to safeguard the information gathered. Local officers of AGS were not usually told if surveillance operation was taking place in their district.

7. The work of the NSU is 99% non-confrontational and most of the time the NSU operates alone, with no need for backup. Despite this, in 1998 all NSU operatives were detectives trained in the use of firearms, and they were entitled to carry personal issue firearms. Members of the NSU operated in plainclothes and used unmarked vehicles. There was an airplane available to support the NSU, which was often used to boost communications.

NSU - Hierarchy and Command Structure

8. Most witnesses agreed that there was a command structure in AGS and that each member was required to obey their senior officer. Witnesses described the system of command in AGS as being like the military, but the evidence as regards the NSU was that they enjoyed more autonomy than most members of AGS. Members of this unit were used to acting on their own initiative and did not need specific orders in many circumstances. The nature of the work meant that the surveillance guard often worked alone and usually could not easily contact superior officers for directions, whether due to constraints of time or in order to maintain her cover. Operating on one's own initiative was very common in the NSU.

9. Detective Inspector Patrick Nyhan was the Inspector in charge of the NSU on 1st May 1998. He did not see any reason to impose or adhere to a rigid command structure. He expected each member to make up his own mind about what was appropriate and what that member should do. He did not necessarily know exactly where individual operatives were on any given day. It was their sergeants' duty to know more specifically where they were. The members were expected to stay in contact on radio or phone.

NSU - Normal Practice in 1998

10. In 1998, each team within the NSU worked under a team leader. This was usually a sergeant, if one was available. It appears that each NSU member knew all of the others, other than those who were new and not serving in the same unit. Everyone knew the other members on their own team and on another team if they had worked with that team. It does not appear that there were regular meetings for the whole unit so it could happen that members of the NSU might not know new members for some time. This is relevant because, on 1st May, some of the NSU operatives were not working with their usual unit or partners.

11. It was normal practice for the NSU to parade for duty at the start of a tour of duty. There was a duty roster which set out who was due to be on duty at a given time, but it was always possible that a member might swap a shift. Everyone knew who his supervisor was and what jobs had been allocated to himself and to his colleagues. There were usually two shifts on any one day.

12. In 1998, most NSU duties involved following suspected members of terrorist organisations. There was permanent radio contact throughout the shift. Surveillance operations were directed by superintendents and inspectors. The focus or direction of surveillance was not a matter for a garda or sergeant.

13. Even if an NSU member was not involved in a particular surveillance tour of duty, he would familiarise himself with what had happened on other tours of duty so that he would be kept fully up-to-date. As a result, if the NSU was monitoring a long-term target, all operatives were familiar with the person. NSU members kept up to date in two ways: in briefings and in private study of the ledger into which daily reports, known as "*duty reports*" (discussed below), were entered. The ledger was freely available to read. Updating was not always a formal process. The team might sit around a table with the Sergeant or

team leader, read the reports and discuss who would do what or if there was new information. If he had been off duty for a few days beforehand, an individual member was expected to read up on the target. In terms of recognising targets or having intelligence about them, new recruits were sent out with more experienced operatives.

NSU - Duty Reports

14. A number of NSU duty reports were provided to the Commission which outline some of the surveillance conducted by the NSU in April and May 1998. These were of central importance to the Commission's investigation. To assess the authenticity, comprehensiveness, accuracy and significance of these documents, the Commission heard extensive evidence about how, when and where duty reports were created, typed, stored, consulted and shared in 1998. The system has since changed.

15. When on duty, members of the NSU either noted or recorded their observations at the time of the observation. They submitted reports to their team leader either during or at the end of the shift. They sometimes radioed the information to their team leaders. Usually the team leader took notes of such information. Occasionally a member used a Dictaphone. There was no formal system: a member either presented himself at the end of the shift or was directed to meet the team leader if the latter thought that the member had something to add to the report. If a member had noted car registration numbers, for instance, the team leader decided if they were relevant for the report.

16. Each team leader wrote up a duty report as soon as he returned to the NSU office after a tour of duty. The report summarised what the unit had seen during its tour of duty, using the information taken from each individual operative. The duty report went into a ledger in the NSU's offices. This was quite a large book (larger than A3). In most cases, the report was written into the ledger by hand. Some operatives used an internal computer system to record, download and print the report upon returning to the NSU office, and it was pasted into the ledger. This was the original copy of the report and the ledger was first destination for every duty report.

17. The duty report had to be written before the team leader went home, even if the team came back to HQ in the middle of the night or on a Sunday, because it had to be there for the management team to see it the next morning. The reports were factual – they contained a review of the activities of the day. This had to be done while the events were fresh in the mind unless extraordinary circumstances made this impossible.

18. Duty reports did not necessarily set out whether the information came from a visual sighting or from electronic surveillance of some description. They did not contain details of the deployment of technical equipment. They listed all operatives who had participated in the tour of duty, but they did not specify who saw what or where they were located when the observations were made.

19. The administration sergeant attached to the NSU office created a typed version of the duty reports written or pasted into the ledger by the team leaders. The admin sergeant's typed duty reports were never a word-for-word reproduction of what had been entered in the ledger. The admin sergeant who was attached to the unit in 1998, NSU-DS-08, said he might tweak the English or add a detail. For example, he might identify the registered owner of a vehicle. However, he never omitted details from the ledger; he just added to it. He knew from experience that something which might seem irrelevant today might become relevant in time.

Intelligence Section

20. The function of the *Intelligence Section* was to analyse information and intelligence about national security issues which was received from various sources, including the NSU. National security in this context referred largely to counter-terrorism policing, or policing of any group which threatens the State. Intelligence or information could come from any source and was not limited to the results of surveillance by the NSU, although that did form a large part of the information that flowed in to the *Intelligence Section*.

21. In 1998, Detective Inspector Peter Kirwan and two Detective Sergeants were answerable to Supt Peter Maguire in the *Intelligence Section*. There was also a number of analysts of garda rank attached to that section. Their analysis was fed up to the line to their superiors in verbal or written form. If written, it was placed on the relevant intelligence files at the *Intelligence Section's* offices. In addition, some analysts created internal working documents; that kind of document might not necessarily have ended up on the intelligence file.

22. 17 years on, Peter Kirwan is now the Chief Superintendent in charge of the *Security and Intelligence Section of Crime & Security Branch*; this is today's equivalent of the *Intelligence Section* of 1998. He explained to the Commission that, in 1998, all information received was assessed and analysed by the *Intelligence Section*. Operational intelligence

involved identifying a picture. The analogy often used is that of a jigsaw; the more pieces of the jigsaw you have, the more discernible the picture. If you have only one piece it is unlikely if you will be able to say whether it is a landscape or a still life. Once that picture is complete, or even if only some pieces are available, it is disseminated to the relevant superintendents.

23. Chief Supt Kirwan explained that, at Chief Superintendent level and for his superiors, the focus is on strategic concerns; they focus on different operational outcomes and are more concerned as to where the picture might fit on the wall, or in the gallery, so to speak. They develop assessments for the Garda Commissioner, who in turn briefs the Government.

Information-Sharing between the Surveillance and Intelligence units

24. The practice in 1998 was that NSU Supt Philip Kelly reported directly to Chief Supt Jennings of *Crime & Security Branch*. He regularly sent NSU duty reports as formal documents to Chief Supt Jennings, who then passed the information on to the head of the *Intelligence Section*, Supt Peter Maguire. In turn, Supt Maguire sent the reports to the Inspectors who were working under him and they arranged for the duty reports to be compared and contrasted with materials on intelligence files. If any important information was coming in, however, Supt Maguire would hear quickly what the nub of the intelligence was. In fact, some intelligence went directly from the NSU to the *Intelligence Section* rather than first going to the Chief Superintendent, or a copy went to *Intelligence* at the same time as the original went to the Chief Supt. A batch of typed NSU duty reports were copied and delivered to the *Intelligence Section* on floppy disks at the end of each month.

25. Chief Supt Jennings said that, in 1998, Supt Kelly and Supt Maguire worked “hand in glove” together. Their offices were near one another. There were frequent meetings. Both Chief Supt Jennings and Supt Kelly described meetings between the three men, chaired by the Assistant Commissioner, every week-day morning. Other Chief Superintendents, e.g. from the Drug Squad, might be present. Once the ordinary crime had been discussed the other Superintendents left and the heads of *Crime & Security*, *Intelligence* and *Surveillance* (i.e. Jennings, Maguire and Kelly) discussed the security situation in the country. No formal notes were taken at these daily meetings, which were more like a discussion, though one or all of the Superintendents may have made notes in a personal notebook at some meetings.

26. The three main ways for the NSU to provide information to the *Intelligence Section*, therefore, were: (i) the surveillance Superintendent went to daily meetings with the intelligence Superintendent, having read the ledger containing the up-to-date duty reports; (ii) a paper copy of every type-written NSU duty report was provided to *Intelligence* shortly after it was generated; and (iii) at the end of each month, all of that month's typed duty reports were provided to *Intelligence* in a batch on a floppy disc.

27. The evidence established that, in 1998, any member from D/Garda to Assistant Commissioner who was attached to *Crime & Security Branch* had access to the intelligence files. That included members of the NSU; there was no restriction on their access to intelligence files although, sometimes, the file was reviewed before access was granted, and documents were removed. Each member of AGS who viewed intelligence files was accompanied by a member of the *Intelligence Section*, as members of the Commission were on each visit.

28. Chief Supt Jennings said that NSU operatives had access to intelligence files so that they could inform themselves as to the history of any target. This included older information on the intelligence files. There was interaction on a daily basis not just between the two Superintendents (Kelly and Maguire) and the Chief Supt, but also between the Inspectors (Peter Kirwan and Patrick Nyhan) and the intelligence analysts. Insofar as the reverse is concerned, Supt Philip Kelly said that written analyses were not generally received from the *Intelligence Section*; he recalled receiving verbal reports, usually.

29. It is noteworthy that, at an informal meeting with the Commission, Supt Peter Maguire suggested that the *Intelligence Section* had insufficient information on 1st May 1998. He indicated that, because of the way information was transmitted between NSU and the *Intelligence Section*, a lot of things he would have expected to know did not actually come to him for some time, though they may have reached his superiors at an earlier stage. However, his evidence under oath at the hearings suggested otherwise, in that he then confirmed that he had received oral reports about the results of surveillance even when written duty reports may not have been available. It is difficult to reconcile the two. I am led to the conclusion that communications between the two offices at that time were not ideal. However, at all times there was the potential for a direct flow of information, in that a surveillance officer could ring an intelligence desk to discuss a file he is dealing with, and *vice versa*. I do not take the view that matters were deliberately concealed, nor did Supt Maguire suggest this.

Emergency Response Unit

30. The *Special Detective Unit* ('SDU') was initially based in Dublin Castle but in the early 1980's it moved to Harcourt Square. It had responsibility for counter terrorist work, and in particular for carrying out inquiries about any grouping that threatened the State. In earlier days an armed *Security Task Force* had been set up within the Inquiries Section of the SDU. In 1984, the Emergency Response Unit (ERU) emerged as a separate unit under the umbrella of the SDU. They were based in Harcourt Square under the SDU Superintendent and Chief Superintendent but they had a national remit.

31. On 1st May 1998, Detective Superintendent Basil Walsh was in charge of a number of units within the SDU, including the ERU, and Detective Inspector Patrick Hogan had operational, or day to day, control of the ERU. An ERU single unit usually comprised a number of gardaí and a sergeant, the number depending on the operation. ERU members were usually easily identifiable as members of AGS, in terms of personal characteristics, equipment, clothing and vehicles; they were certainly more identifiable as guards than members of the NSU.

32. The ERU was used as a frontline or intervention unit and had a higher qualifying requirement in the use of firearms than other armed members of AGS. It was set up to combat armed crime. Many of their operations in the late 1990's were counter-terrorist operations. The unit also supported VIP and cash escorts, searches for arms and any specialist function that could assist local police who might not have the particular skills required. The ERU could be called in to assist another unit, such as the NSU, by applying to the Chief Superintendent or Detective Superintendent of SDU. A meeting then took place, and there was a briefing as to the nature of the request.

33. In 1998, the ERU was regularly on stand-by for NSU operations and not necessarily in circumstances where the details of the operation were known to the ERU in advance. The strength of the team on standby varied from operation to operation and was determined by the inspector in charge of the ERU, not the NSU. The ERU's location while on standby depended on what the operation was and where it was located.

34. The decision to call in the ERU was usually made by the NSU Superintendent - in this case, Supt Philip Kelly. It happened so regularly that, while strictly it should go through the office of the Chief

Superintendent in charge of *Crime & Security Branch*, it could happen that the Superintendent in charge of the NSU could contact the Superintendent in charge of the ERU in Harcourt Square, directly. This was not usually done in writing but by telephone. In fact, Chief Supt Jennings was out of the country on 1st May 1998 so it is likely that this is what happened on that date.

35. Insp Patrick Nyhan, who was in operational command of the NSU, had no powers to call in the ERU generally. It was his function to call on them in the middle of an operation, if they were already in support, in order to engage them. The questions of whether, on 1st May 1998, the ERU were (or should have been) called in, and whether there was (or should have been) a formal handover of control from the NSU to the ERU were among the key issues to be determined in this Commission's investigation and will be discussed later in this report.

36. The evidence established that the ERU might be on "stand-by" in support of an NSU operation for long periods without ever being called in. The normal procedure was that while surveillance was ongoing the ERU would stay away from the immediate vicinity of the target of surveillance, remaining on alert reasonably close by so as to be ready to move in, if required. The ERU had its own internal radio system which could be integrated into the NSU system for a joint operation so that the two units could communicate easily.

Information-Sharing with the SDU

37. Supt Basil Walsh, who in 1998 was attached to the SDU and based at Harcourt Square, did not attend the week-day meetings in Garda HQ between Chief Supt Jennings, Supt Maguire and Supt Kelly. The Chief Supt or Assistant Commissioner at *Crime & Security* would ring Supt Walsh if there was intelligence to be shared with the SDU, or Supt Walsh would be asked to attend at Garda Headquarters.

38. If the ERU was on standby, one or more of their members, usually an Inspector or the sergeants, came to the NSU for a briefing and was told by the NSU superintendent broadly what intelligence that unit had in relation to the operation. Members of the SDU had access to the security files held in the SDU office. However, the ERU was not shown NSU duty reports and generally did not have access to intelligence files. If an issue arose, their superintendent could seek permission to view files held by the *Intelligence Section* or the NSU. Supt Peter Maguire said that, when he was a D/Sergeant in SDU, he was never denied access to these materials.

D. Prior Knowledge

1. One of the key concerns expressed over the years by the family of Mr. MacLochlainn has been that AGS knew or ought to have known that an attempted robbery was about to take place in the Cullenmore Bends on 1st May 1998. Their representatives have submitted that factors including knowledge of IRA activities, the history of the raiders involved, and common sense, ought to have suggested this line of inquiry, even if the actual plan was not known. The state of knowledge of AGS on 1st May 1998 was, therefore, one of the key matters explored in the course of the Commission's investigation. In order to address this issue effectively, some history relating to the parties involved in the attempted robbery on the 1st May, and the events which preceded it, must be considered.

Context: Political Background and Previous Subversive Activity

2. Various factions of a group calling itself the Irish Republican Army ('IRA') have participated in terrorist actions since the 1970's, due to their opposition to British rule in Northern Ireland. The main focus of the different factions in the 1990's was on targets in Northern Ireland and other locations in the United Kingdom. Their activities included procuring weapons and explosives, training members in the use of weapons and explosives, planting and detonating bombs, and fundraising in order to continue with their activities.

3. In 1997, the *Provisional IRA* ('PIRA') declared a ceasefire and agreed to partake in a peace process. Some of the membership were opposed to this process and one group left to form the *Real IRA* ('RIRA'), sometimes called *32 County Sovereignty Movement*. The RIRA was made up largely of those who had left the PIRA. It adopted the same command structures and discipline. It established and maintained operational units in several centres in the State and Northern Ireland. It was intent on destabilising the peace process. The most serious of the incidents either attributed to, or claimed by, the RIRA was the explosion of a bomb in Omagh, Co. Tyrone on 15th August 1998, which killed 29 people.

4. By the end of 1997, AGS was developing intelligence on this new grouping. The RIRA became active in early 1998 and by mid-April had been responsible for several terrorist incidents. This was not the only subversive group operating in the State in 1998. Other groups with similar views at that time included the *Continuity IRA* (CIRA), the *Irish*

National Liberation Army (INLA) and the PIRA itself, which was a much larger organisation than the RIRA.

5. The Good Friday Agreement was signed on 10th April 1998 in Belfast and the peace process was established. A Referendum was to be held on 22nd May 1998. Chief Supt Dermot Jennings of *Crime & Security Branch* told the Commission that there was much anxiety at that time as regards the RIRA, saying: *“There was major concern within the State and even, indeed, within the IRA, who were on ceasefire, as to who was leaking to this new organisation.”*

6. As Supt Peter Maguire pointed out, the IRA was unusual in that it had a very structured organisation, like an army. It had a general headquarters staff, with several departments: finance, logistics, engineering, intelligence, publicity, general operations and procurement. *“Logistics”* was concerned with practical matters such as moving weapons from one place to another or moving materials. *“Intelligence”* involved collecting information for the use of the group. *“Engineering”* referred to the making of explosives. The factions that emerged from the IRA, including the RIRA, had similar structures. Supt Maguire commented that this embryonic group did not appear to have defined political objectives but wanted to commit *“some kind of terrorist outrage”*, as he put it, as soon as possible.

7. The result of this activity on the part of various subversive groups in the 1990’s was that in 1998 the NSU was extremely busy. They were *“off one job and straight into another”*. Holidays were cancelled, and operations followed one after the next, usually overlapping. In the aftermath of the Good Friday Agreement, in the words of one witness, *“it was manic”*.

8. There was a huge demand on resources. The resources of AGS are limited in terms of the number of persons and groups that can be monitored by the NSU at any given time so, of necessity, priorities were chosen and the unit deployed according to what was happening at any given time. The NSU worked all over the country, and had to prioritise the most urgent demands. The current Superintendent in charge of the NSU, William Johnston, gave evidence about these issues. He said that, in terms of allocating resources, a threat to the State was weighed against threats to life and public safety. He contrasted a drugs operation with a firearms operation, noting the immediacy of the latter in terms of the threat to life and safety. The Commission also received evidence about the minimum requirement to carry out effective surveillance on an individual. It is not necessary to go into detail about the methodologies

and techniques that are used; suffice it to say that surveillance is very labour intensive.

Pascal Burke

9. One of the key people targeted for surveillance in 1998 was Pascal Burke. He was a member of the IRA and he had a previous conviction for possession of explosives in 1989. He was one of a number of people being monitored by the NSU at that time and was by no means their most important target, although he did receive considerable attention. Many of the duty reports provided to the Commission describe his movements in the weeks leading up to 1st May 1998.

10. From Mr. Burke's movements and contacts, it was suspected that he had defected from the IRA to the RIRA. He had been a very active member of the IRA and the PIRA and was closely associated with other members of the PIRA, according to Chief Supt Jennings.

11. The NSU operatives who gave evidence all remembered this target. While they did not all specifically link him with the RIRA, it was clear that the NSU members involved knew that they were dealing with a member of the IRA in some form and thus, potentially, an IRA unit. Most NSU witnesses linked this man and his associates with offences involving explosives, and not offences like robbery. He was regarded as being part of the "*Engineering Department*" of the IRA.

12. The view of the NSU as events developed on 1st May 1998, given Mr. Burke's history, was that this was likely to be an active service unit of the RIRA. Most witnesses agreed that while there was a distinct possibility that such units would be armed, they would not go so far as to say it was likely; it depended on the operation. Garda witnesses pointed out that, in this case, no weapons had been seen in advance of the attempted robbery at the Cullenmore Bends.

13. Pascal Burke was also well known to the ERU, and while that unit did not have regular access to duty reports detailing his activities, they, too, knew broadly that he was a known member of a subversive group, probably in the bomb-making section.

Ronan MacLochlainn

14. The Commission viewed the documents held by the *Intelligence Section* in relation to Mr. MacLochlainn on a number of occasions. It contains no documents dating between 1st July 1997 and 2nd May 1998,

which indicates that he was not the target of surveillance during that time.

15. As regards what AGS knew about Mr. MacLochlainn before 1st May 1998, there is relatively little to outline. The intelligence files indicate that he was twice encountered by gardaí in Wicklow at IRA training camps, once at Powerscourt and a second time at Knocksink Wood. Supt Maguire described Mr. MacLochlainn as a youngster who came from a strong republican background. As a young man he was involved in Na Fianna Éireann, which was the subversive equivalent of the Boy Scouts. He then graduated into the PIRA. Members of the NSU considered it significant when Mr. MacLochlainn was associated with a van with which Mr. Burke was also associated, in April 1998. His connection with camps in Wicklow was also seen as potentially significant because Mr. Burke was followed to Wicklow on 7th April. These events are described in greater detail below.

Male A

16. A document entitled 'ERU Operational Briefing Order', dated 24th April 1998, marked the beginning of the ERU participation in this operation. The surveillance operation focussing on two vans at Heuston Station was called Operation Morrison from that date, and the briefing order indicates that 'Male A' was the target of the operation, though there is no indication that he was associated with the vans. Supt Maguire identified Male A as the head of engineering for the PIRA for at least ten years and the most important member of the PIRA in the 32 counties. He described Male A as Mr. Burke's boss. Supt Maguire noted that the Intelligence Section was not sure at the time as to whether Mr. Burke and Male A had changed allegiance from the PIRA to the RIRA.

Breatnach, Burke, Carney, Forsyth, MacLochlainn and McAlister

17. While most NSU operatives knew Pascal Burke, most of them did not know any of the other raiders before 1st May 1998, and those who did had not associated them with each other. For instance, William Johnston, then a Detective Sergeant in the NSU, did not know Mr. Forsyth, Mr. Breatnach or Mr. Carney before these events. Then a Detective Inspector attached to the *Intelligence Section*, Peter Kirwan confirmed that the NSU had information that Mr. Burke, Mr. Breatnach, Mr. Forsyth, Mr. MacLochlainn and Mr. McAlister were individually associated with the PIRA and, while it was unclear in 1998 as to who had changed allegiance to the RIRA, the only two they suspected of

having done so were Mr. Burke and Mr. McAlister. They knew Mr. Carney due to various criminal, as opposed to subversive, activities.

18. Reviewing the relevant intelligence files in this context, it is difficult to see any direct connection between the six men before 1st May 1998. Other than a small number of meetings between Pascal Burke and Ronan MacLochlainn, there was almost no other contact between them.

19. The evidence given by the raiders supports AGS evidence that they were not an identifiable group before 1st May 1998. Where they were involved in planning this particular raid, they mostly acted individually and rarely acted together. None of the raiders said he had met more than one of the others at any time before 24th April 1998.

The Relevant Duty Reports

20. A number of contemporaneous typed duty reports were furnished to the Commission, having been printed from a floppy disk. The duty reports had to be carefully scrutinised in light of the theory advanced by the family of Ronan MacLochlainn that AGS, and the NSU in particular, knew beforehand that a robbery was planned for 1st May 1998. The most relevant duty reports are examined below. In each case, the NSU officers named in the report gave evidence as to what they could now recall of the events set out therein.

21. Ideally, in order to assess the reliability of the contents of these duty reports, the Commission would have viewed them in their original format. However, the ledger in which they were first entered is no longer available. This topic will be revisited in Section M, below, but it is important to note that an examination of those ledgers would have been the most convincing reassurance that what was contained in the reports was accurate and reflected the events of 1998. In its absence, the Commission viewed and reviewed hard-copy intelligence files pertaining to all the persons concerned. This was the second destination of a duty report. Unfortunately, the most significant duty reports have not been printed and attached to the relevant intelligence files or, if they were, they are no longer there. This omission is also revisited below but, again, I note that their presence on the hard-copy intelligence files, in particular with dated annotations, would have been near-irrefutable proof of the duty reports' authenticity.

22. I viewed the file of another person of significant interest to AGS at the time, for the purposes of comparison. Further, duty reports not relevant to this investigation were viewed in order to ensure that the

chronological sequence of the reports on the floppy disk was correct and to satisfy me that there had not been any tampering with the paper files or the floppy disk in order to hide material or to alter the contents of any report. Evidence was given that the disk had not been tampered with and, insofar as a layman could tell by looking at the properties of the disk, its contents have not been altered since May 1998, when the relevant typed duty reports were saved to that disk. I am so satisfied, and, for those reasons, and due to the extensive evidence from witnesses who recall their contents, I rely on the digital record of the duty reports as being what is almost certainly an accurate record of the contents of the original reports.

Duty Report 7th April 1998

23. On 7th April, Pascal Burke drove to the Cullenmore area of Wicklow. Two NSU operatives, NSU-DG-06 and NSU-DG-10, were conducting surveillance on him that day. They followed him from his home to Ballymun, where he picked up a man who was not known to the NSU at that time but is now known to be Ronan MacLochlainn. Mr. Burke then drove south to the area of Ashford or the Cullenmore Hotel. DG-06 and DG-10 did not know Mr. MacLochlainn at that time.

24. Pascal Burke drove up and down a road parallel to and west of the Cullenmore Hotel a couple of times. One of the places visited was Killiskey. This day was memorable for both NSU operatives because they met Mr. Burke's car coming towards them at one stage "*which was a bit of a sin*" in surveillance, and was unusual on back roads. DG-10 remembers being on a road above the N11 when Mr. Burke did a u-turn and came back towards them. At DG-06's suggestion she gave "*a country wave*". Mr. Burke waved back. DG-10 remembers that he had a passenger and that it was daylight at that time.

25. DG-10 and DG-06 initially wondered if Pascal Burke and his passenger were planning to bring a bomb to the boat in Wexford. DG-10 said that, given their speculation, it seemed a bit weird that Mr. Burke was stopping around Ashford. He seemed to be circling the area but she had no idea as to why.

26. D/S Johnston recalls that it was on 16th April 1998, after he was seen in Mr. Burke's company at Heuston Station on 15th April, that Mr. MacLochlainn was identified as the passenger on the Killiskey trip.

Duty Report 8th April 1998

27. Supt Kelly sent NSU-DG-06 back to Killiskey on 8th April to try to identify any reason for Pascal Burke's trip the day before. DG-06 does not recall if he was alone or accompanied. He went to the location and drove the same roads. He was totally unfamiliar with the area but was sent there because he had been present the day before and he knew where Pascal Burke had been. He said that this trip did not give rise to a duty report because it was a one or two-man job. All he can remember is that there were very large houses on the road. That suggested a possible kidnapping or abduction to him. There was nothing to identify a particular house, or potential targets, or any other reason for Mr. Burke to be there.

28. In this context, it was suggested to the current Chief Supt of *Crime & Security*, Peter Kirwan, that there had been live concern about Mr. Burke as of 7th April; enough to justify a trip to Killiskey on 8th April. Chief Supt Kirwan refused to characterise it in this way, saying that there were other reports showing that Pascal Burke travelled further south on other dates. Also, Chief Supt Kirwan knew that the area where Mr. Burke had driven was not far, geographically, from where he was arrested in 1989 with explosives. As a result, hindsight (or the wrong association) might give the trip greater significance than it warranted at the time. Chief Supt Kirwan made the point that although Mr. Burke was followed on a trip to Killiskey in the weeks before the robbery attempt, targets under surveillance made trips and had meetings every day and this was especially so in early 1998 when a new organisation was in the gestation and development stage; the Commission's examination of the intelligence files confirms this to be true. I therefore accept that, while hindsight means we now know that Pascal Burke was scouting a parking location in Killiskey on 7th April, there was nothing to identify this trip as a significant one at that time.

15th April 1998

29. Heuston Station was first mentioned in a Duty Report on 15th April. That day, Pascal Burke met two people in the car park of Heuston Station. NSU-DG-06 watched as they stood near a white Transit van. The registration number of the van was noted. The men were not in the van, nor was it confirmed that one or any of them owned or had had driven it. One of the two men he met was Ronan MacLochlainn, who was identified by the NSU when he was followed home. Though he did not know it at the time, D/S William Johnston now thinks the third man was Stephen Carney.

Duty Report 20th April 1998

30. One of the targets of NSU surveillance on 20th April was Male I. This duty report describes a meeting in a house attended by a long list of named individuals, including Pascal Burke. None of his five associates from the raid on 1st May was present. Chief Supt Jennings, Supt Maguire, NSU-DG-45 and other witnesses agree that the people identified at the meeting were of considerable interest to the NSU – they were ‘household names’ in terms of surveillance at that time. Several NSU witnesses identified the gathering as being a leadership meeting of the emerging RIRA.

31. Chief Supt Kirwan said that news of such a high level leadership meeting of the IRA would probably have been immediately transmitted from the NSU to the *Intelligence Section*. It was pointed out to him that the next duty report relating to Pascal Burke, number 488, outlining his movements on 24th April, was not typed up until 27th April. He was asked why, given the context of the meeting on 20th April, it had taken three days for that report to be typed up. The suggestion was that the leadership meeting on 20th April ought to have created an urgency about the surveillance on Mr. Burke. He replied that Male I was at a much higher level of interest to AGS. He was not mentioned in Report 488. Further, the delay in typing up Report 488 could have been owing to the intervening weekend but in any event the information in the report could have been conveyed verbally by the NSU to the *Intelligence Section*.

24th April 1998

32. This day was of particular importance as it was the day on which the raiders claim an attempt was made to rob the Securicor van in the Cullenmore Bends but was abandoned when the van drove by earlier than expected and before the raiders could prepare for the raid.

33. One of the theories advanced on behalf of the family of Mr. MacLochlainn in the course of cross-examination is that, if Pascal Burke was being followed on 24th April *and* the vans in Heuston Station were being monitored, the NSU must have guessed that the Securicor van was the target for the raiders, as the NSU operatives must have seen it pass by the raiders in Wicklow and must have noticed their interaction with or reaction to it.

The Raiders' First Attempt

34. Mr. Burke and Mr. McAlister both said in evidence that the operation was scheduled to be carried out on 24th April. It was not a rehearsal. Everyone had the same role as they would have the following week. The vehicles were the same. The plan was the same. Mr. Burke's role was to wait at Killiskey in a white Daf van, collect the others after the raid and take them to a safe place. Saoirse Breatnach, Philip Forsyth, and Daniel McAlister were to approach the Securicor van. Stephen Carney would guard the southern end of the scene and Ronan MacLochlainn had a role in guarding the northern end of the scene. Mr. MacLochlainn was not equipped, as Mr. Carney was, with a shotgun, but had a handgun.

35. The raiders say that, on 24th April, the two vans set off from Heuston at much the same time as they did on 1st May. Philip Forsyth and Saoirse Breatnach recall getting a 46A bus to Donnybrook that day and they were collected by Ronan MacLochlainn, driving a blue Transit van. Mr. Forsyth and Mr. Breatnach were in the back and could not see out so Mr. Forsyth cannot say specifically where Mr. McAlister was picked up. Mr. Breatnach presumes they got to Wicklow about an hour or so after leaving Dublin but he had no watch (in order to be unidentifiable) so he cannot say what time he actually arrived there. Mr Burke went to park in a laneway in Killiskey.

36. Mr. Burke said that the weapons used on 1st May were also brought to the Bends on 24th April. They had been stored at a safe house in Clondalkin, taken from there and, at some point, transferred into the blue Transit van after it left Heuston. Mr. Burke did not know the details but, insofar as he was concerned, they were not in the blue Transit van while it was in Heuston; that was a dangerous place to keep them. Likewise, the weapons were not stored in the white Daf van.

37. Mr. Burke was not aware of the details of the Securicor van's deliveries and schedule but the group knew that the Securicor van was due there between 4.45 and 5.15pm. Two different accounts were given of how the group realised they were too late that day. Mr. Burke said that one of the locals communicated with the group that they had missed the van; it had already passed through the Cullenmore Bends. Mr. McAlister said they were travelling along the N11 at about 4.30pm when they saw a security van and they realised that it was early for some reason. Mr. Burke said he decided to postpone the robbery until the following Friday. It was not an immediate decision; "*The initial thing*

was to get the weapons off the scene and get the volunteers home safely, that was the most important thing”.

38. Pascal Burke drove the white Daf back to Heuston Station. Ronan MacLochlainn drove the blue Transit van back to Dublin, with the weapons still in it. Mr. McAlister was dropped off at the Silver Tassie pub on the N11. Mr. Forsyth’s recollection is that he and Saoirse Breatnach were dropped off at Loughlinstown. They knew that day that they were going back the following Friday.

39. There was also a Carina being used for the raid. Mr. Burke was not sure if the Carina went back to the train station but it was somewhere in Dublin. Given that the operation was called off at about 5.30pm, he presumed they got back to Heuston between 6 and 6.30pm. It was sensible to arrange to have the weapons immediately moved off-site after an operation so that those involved were less likely to be connected with the event. He knew the address at which they were kept - this was a safe house in Clondalkin.

40. Stephen Carney’s account of what happened on 24th April differed from the other raiders. He said he went to Wicklow, possibly three times, to check the route of the Securicor van. He knew its route and how long some of the stops were. He could not embark on the robbery and not know these things. He said he had *not* tried to carry out the raid prior to 1st May 1998. He does not remember who was in charge of the raid or who asked him to become involved in it. He does not remember one of the vans changing from white to blue. It is noted that, when he was first interviewed by AGS in 1998, he said, unprompted, in relation to Wicklow, “*I was there last week*” and, in relation to the village where he went before the raid, he said “*I was there before*”.

What the NSU Observed

41. Three separate Duty Reports are expressed to be accounts of events on 24th April. One is a straightforward description of what was observed when operatives monitored Pascal Burke and his car that day. The other two appear to be separate reports of two different but very similar incidents in Heuston Station.

42. Duty Report 475 is headed “Pascal Burke”. It was created by the team that monitored Mr. Burke that day. It was typed up that day. It is a short report stating that Pascal Burke left home at 10am and went to work. After a 40-minute trip to a location in Dublin at noon, his car

returned to his workplace for the remainder of the day and evening. He was not seen again.

43. Report 478 is headed “Ford Transit 87 D 25823 at Heuston Station”. It was typed on 27th April. It describes events in Heuston car park on 24th April from 6.10pm, and it begins by noting that the Ford Transit was coloured blue. This is the van that had previously been noted as a white van, near which Mr. Burke stood on 15th April in the same car park. Ronan MacLochlainn and another man were seen sitting in the (newly blue) van on 24th April at 6.10p.m. Both left at 6.25p.m. and walked in different directions. The report also describes the arrival of a white Toyota Carina at 7.20pm. There were three males in the Carina. It parked near the blue Ford Transit van. Mr. MacLochlainn left the Carina, removed a sports bag from the blue Ford Transit van, placed it in the white Toyota Carina and drove away.

44. Report 488 is headed “Operation Morrison”. It was typed on 30th April. It describes a very similar event on 24th April, but at 9.10pm. This time a Carina, described as beige but with the same number-plate as the Carina described in Report 478, was preceded into the car park by the white Daf van, the driver of which approached the Carina. The two vehicles parked together in the car park. Mr. MacLochlainn was said to be a passenger of the Carina. He was noted as putting on gloves before opening the side door of the blue Transit van, removing a sports bag from the Transit van, placing the bag in the Carina and driving away. Again, there were three males in the Carina.

What brought the NSU to Heuston Station?

45. The observations made by the NSU at Heuston Station on Friday, 24th April are key to the question of what they knew and expected on 1st May. As a result, it is necessary to consider the evidence received about those observations in some detail.

46. The Duty Reports created in April 1998 do not outline any observations at Heuston Station from 15th April (when the registration number of the Ford Transit van was first recorded) until after 6pm on 24th of April. D/S William Johnston of the NSU told the Commission, “*what I can definitively say is I was not involved in any monitoring of the blue van or the white van before 6:10 pm on 24th April 1998*”. He recalls driving on the quays that evening and says that he entered Heuston Station car park out of sheer nosiness. He remembers often being stuck at the lights at Guinness’s and says it was like him to decide to slip into the station at that junction. He had seen Ronan MacLochlainn meeting

Pascal Burke and another man near a van in the car park the previous week, on 15th April. As a result, he knew there was a van of interest there and, as far as he knew, it was a white Transit van. When he went in to the car park on 24th April he saw that the Transit van, which he knew had been white, was now blue. He is certain that when he first saw the van that evening, it was already parked in the car park. While other NSU members have a memory of him saying that he saw the van being driven on the quays, none is sure of how he obtained that information and D/S Johnston himself categorically refutes it, pointing out that he was the one who had actually seen the van.

47. D/S Johnston says he secreted himself and radioed for assistance. He watched as Mr. MacLochlainn and another man exited the car park on foot at 6.25pm, but he could not follow them as back up had not arrived at that stage. He remained there for about 45 minutes until NSU-DG-45 came to his aid. DG-45 recalls driving into Heuston Station but no longer remembers why. It was after a break for refreshments. If D/S Johnston says that he called him in, DG-45 does not dispute that.

48. I accept the evidence of D/S Johnston as to when he first saw that the van was blue and why he went into Heuston Station. In assessing this evidence, I am drawn to the question of why he would go to the trouble of lying about exactly where the van was and what he was doing at Heuston Station. I cannot see what would be achieved by trying to change his account in either respect unless it is to cover up a much more widespread conspiracy, which the remaining evidence in this case simply does not support. While this witness was undoubtedly reserved and unwilling to reveal tradecraft, I found his evidence to be convincing and his overall approach to the investigation was to assist, and not to frustrate it. I note, also, that his careful approach may be attributable to his consciousness of the statutory duties now applicable under the *Criminal Justice (Surveillance) Act 2009*, with which he is familiar, given his current role.

49. The apparent inconsistency of the evidence of D/S Johnston with other NSU witnesses is an example of the infirmity of hearsay evidence. One can understand how each witness thought of the quays when trying to recall how the sergeant had first noticed the newly blue van, but I prefer the evidence of the witness who saw it and remembers the context, to those who only heard his account afterwards. Whether he saw the van on the quays or not, however, his attendance at the train station was a co-incidence.

50. The vivid, detailed description given by D/S Johnston - realising that he could not leave the car park having entered it on a whim, as he could not draw attention to himself, calling for assistance which was some time in coming, parking his car so as not to make himself obvious - further reinforces the reliability of his evidence in this respect, in my view. I conclude therefore that his evidence of these events is correct and the attention of the NSU was drawn to the Transit van when it had changed colour and Mr. MacLochlainn had been seen in it. There was nothing to indicate to the NSU that the van had just returned from Wicklow. Operation Morrison began that evening.

51. Ms. Nic Gibb submits that D/S Johnston's arrival at Heuston Station just after the vans returned from Wicklow that evening was an "extraordinary coincidence" and she asks the Commission to consider this in assessing the claim made by AGS that they had no idea that the robbery was to be committed on 1st May 1998. Coincidence it may be, but the timing of his arrival matters very little as, unless he had been in Wicklow, he could not know where the vans had been nor could he have seen them interact with or react to a Securicor van in Wicklow. As far as the sergeant was concerned, what was of interest was the people with the vans, not where they had been. He was lucky in that the two men were still there and with their vehicles when he arrived. The proposition that this was a coincidence, as opposed to a fabricated account to hide any knowledge of the RIRA's plans for a robbery, is supported by other contemporaneous accounts.

52. This finding accords with the short ERU operational briefing order, which dates the beginning of the operation as 24th April, and with the ERU Rosters, which only refer to that operation by name after that date. There is no evidence that the ERU were in Wicklow on 24th April.

53. Ms. Nic Gibb asks the Commission to consider why, if his movements were being monitored, as it is claimed they were, AGS did not know that Pascal Burke travelled to Wicklow to carry out an armed robbery on 24th April. She submits that it is surprising that the NSU completely missed this journey given that he was under surveillance for the previous few months and had previously been followed to Wicklow. She draws attention to the coincidence as to the timing of the arrival of D/S William Johnston at Heuston Station, and also the fact that Mr. Burke is noted in a duty report as having been under surveillance on that particular day. In fact, the Commission heard evidence that it was his car that was under surveillance, which explains why Mr. Burke was not followed to Wicklow that day; he did not use his car. The report on Mr. Burke's movements in report 475/98 confirms that he was followed

to work on 24th April and his car did not leave that premises for the rest of the day. It seems that only his car was monitored that afternoon and Mr. Burke was not seen in person.

54. I am satisfied that the surveillance at Heuston Station on 24th April only began after the fortuitous visit of a diligent NSU operative, who immediately noted not only a person of interest present at the car park, but that the colour of the Transit van had changed. The raiders estimate that they returned to Dublin after the aborted raid at about 6pm. The first NSU duty report in time begins at 6.10pm. Thereafter, the operation began. That evening, tracking devices were fitted to the two vans.

55. One might understandably be sceptical at the suggestion that tracking devices were fitted just because a van changed colour. This alone would not have justified their deployment. There was, however, surrounding evidence which, taken together with the change of colour, explains why the vans became of much more concern on 24th April. Items being removed in a bag or bags, a connection between both vans and a person of interest with RIRA associations, and one of the vans changing colour; these things combined to suggest that the vans should be monitored.

One or Two Sports Bags?

56. An issue arose as to what exactly the NSU saw at Heuston Station on the evening of 24th April 1998. Did they observe two sports bags being taken out of the Transit van, one at 7.20pm and the second at 9.10pm, or were two duty reports created describing the same event?

57. NSU-DG-45 recalls the evening in question and retains a mental picture of it, including how the sports bag was being carried. The evidence that he gave to the Commission was far more detailed than either of the duty reports. He recalls that Mr. MacLochlainn wore gloves to handle the bag and did not seem to be under stress while carrying it or lifting it to place in on the rear seat of the Carina; it did not appear to be overly heavy. Once Mr. MacLochlainn had secured the van he removed the gloves. He handled both the bag and the Carina after he had removed the gloves. The Carina drove out of the car park. DG-45 allowed some space between him and the Carina and then proceeded after it. He lost sight of it on Wolfe Tone Quay.

58. D/S Johnston's view was that there were two trips and two bags removed at different times. It was his belief that Duty Report 488,

which described events at 9.10pm, was taken from CCTV footage which he obtained from Heuston Station. Several other witnesses suggested this explanation also. Chief Supt Kirwan went through the distinctions between Reports 478 and 488 carefully: there is an event at 7:20pm and there is a separate event at 9:10pm; there is a Daf van in the 9.10 entry, which is not mentioned in the previous one; there is no mention of gloves in Report 478. While there are similarities, there are distinct differences. NSU-DS-08 further noted that quite a number of NSU operatives were engaged in the operation in Report 478 while just three people were engaged in Report 488.

59. The raiders were asked what happened to the weapons that had been in Ashford on 24th April. Although he had no direct knowledge as to how the weapons were transported, Mr. Burke's view was that it made more sense if they were in the blue van. He rejected the suggestion that the IRA would minimise risk by collecting weapons from different vehicles or locations at the scene or on the way and said that the weapons should travel down together; there would be no reason to separate them. The men in the van should be ready with their balaclavas and weapons from when the trip begins until they reach the location. Mr. Burke said that, typically, such weapons would be kept in a holdall bag. The imitation launcher would not have fit in a holdall so only one bag would have been used. The weapons would be moved in one trip. There was no need to make two trips, he said. Making two trips to retrieve two bags from the Transit van would not make sense as it increased the risk for the operation and for them all. He could see no reason for a second bag, either. As far as he was concerned, Ronan MacLochlainn was supposed to make one trip. Philip Forsyth said that he bought a blue sports bag but he does not know if it was used to carry the guns. He recalls that on 1st May, a bag was used to carry weapons and he thinks that there might have been another bag in the van with a jacket or some clothes in it but he is not at all sure about a second bag.

60. The sum of this evidence leads me to the conclusion that there was probably only one trip, it was taped and the CCTV was watched and recorded in a separate report to that compiled by operatives who watched the removal of the same bag that same evening. I must allow for the possibility that there were two trips, one observed by NSU-DG-45 and another captured by CCTV that evening. However, whether or not there was a second trip, and thus a second sports bag, makes no difference to my conclusions on the issue of whether or not the NSU knew or should have known what was going to happen in the Cullenmore Bends on 1st May 1998. What is important is whether or not the NSU knew or should have known what was in the bag or bags.

The Contents of the Sports Bag

61. With hindsight, I can now say to a high degree of probability that the bag removed by Ronan MacLochlainn contained the weapons which had been carried to the scene that day and were to be used again on Friday, 1st May in the Cullenmore Bends. In the meantime, they were stored at a house in Clondalkin, from where they were collected on the morning of 1st May by Ronan MacLochlainn.

62. A proposition advanced by the family of Mr. MacLochlainn was that, having observed Mr. MacLochlainn remove a bag from a suspect van while wearing gloves, the NSU must have known on 24th April 1998 that the bag contained weapons.

63. Witnesses at the Commission's hearings agreed that the gloves suggested that Mr. MacLochlainn was "forensically aware" and did not want to be associated with the van, or the bag, or both, by leaving fingerprints on either of them. NSU witnesses generally agreed that, because of the observations they made on 24th April, the Transit van was now 'suspect' and, because of the level of forensic awareness displayed, the NSU had a heightened interest in the van. However, they uniformly and resolutely rejected the proposition that this necessarily meant there were weapons in the bag removed by Mr. MacLochlainn. While most accepted that might have been a possibility, in their view it was far from a probability.

64. For NSU-DG-45, the entire focus would have been on the van rather than on the sports bag. Generally, he commented that the NSU had no knowledge or understanding of what was going on with the vans; they needed to understand more before they could decide what to do next. He rejected the general proposition that the sight of a man wearing gloves would have caused him concern. Wearing gloves did not necessarily make the item Mr. MacLochlainn was carrying (i.e. the bag) suspicious or important, he said; instead, the gloves indicated that Mr. MacLochlainn was forensically aware of where he was, what he was handling, what vehicle he was using. Thus, either the van or the bag he was carrying was an item of forensic importance. Further, DG-45 recalls Mr. MacLochlainn touching both the bag and the Carina after removing his gloves. As such, the bag could potentially just have been sports gear. DG-45 wondered in 1998 if there were tools in the bag because he had experience from previous operations that vans might have to be modified in order to carry a bomb.

65. Similarly, D/S Johnston does not accept that the removal of one, or even two, sports bags necessarily bore a sinister interpretation. He repeatedly rejected the proposition that it was probable that there were weapons in the sports bag. He accepts that sightings of a man connected to the RIRA on an April evening, wearing gloves and taking a bag (or even two bags) from a stolen van would cause him to be suspicious. However, the bags having been removed, he would stay with the vans rather than follow the bags. He says that if he had known there were firearms present, he would have acted, but he did not know what was in the bag or bags. Even after he was told that the raiders confirm that they were in fact moving weapons to a better hiding place after an aborted raid, D/S Johnston did not change his view about how suspicious the bag was at the time. When he was asked to factor in the IRA's history as an armed force, he responded that this group, the RIRA, had been associated only with transporting explosives and explosive devices until that time.

66. D/S Johnston says that he had no intelligence, and there was no intelligence to suggest, that there was anything in storage in the vans under surveillance. Indeed, the only evidence as to what might be in the vans was that a bag had been *removed* from the blue van, not deposited there. As regards the bag, while it potentially contained firearms, he says the bag potentially contained "*anything*". Even as a matter of common sense, he commented, why would the IRA store explosives or weapons in a public car park? That had never happened before and there was nothing to indicate that this was the situation. He appears to have been correct in this respect in that the evidence is that no weapons were stored in the vans.

67. Likewise, Chief Supt Kirwan refutes the proposition that there were probably firearms in the sports bag. He cautions that the advice that he would give to analysts is that if you are suggesting something you need to have a solid foundation for it. In dealing with the IRA, there is always a possibility that they are going to be armed and that must be foremost in the mind of those following them, but to put it any stronger than that carries its own dangers. If the NSU send a report to the ERU saying "we believe that there are firearms in the bag", a mindset is created and the possibility is inflated to a probability.

68. I am satisfied that the NSU did not know enough about the vans, or the people involved, or their plans, to presume or speculate as to what was in the sports bag removed by Ronan MacLochlainn on 24th April from the Transit van and carried away in the Carina. The evidence indicates that he made a trip to Clondalkin on the morning of 1st May

and I now know that this was probably to retrieve these firearms, presumably from the same house. The NSU followed the van that morning but no firearm or bag was observed. While they could safely conclude that it was *possible* that the bag he removed on 24th April and collected on 1st May contained weapons, they could not conclude that it was a probability on the evidence available to the unit at that time. All relevant NSU witnesses refuted the proposition that the carrying of a bag while wearing gloves should, of itself, lead to the conclusion that the bag contained weapons, and I accept their evidence in that regard. As Chief Supt Kirwan pointed out, the fact that someone carries a bag from a van is not sufficient information to conclude what is in the bag, even if he is a known subversive and is wearing gloves in April. To say that he is forensically aware is the height of the evidence in this regard. A cautious approach is warranted; many operations would be blown if the NSU reacted every time a target carried a bag.

The Extent of the CCTV footage

69. It was suggested to various witnesses that, if it is true that they did not see the vans returning to Heuston Station, they should have sought CCTV footage showing what happened in the car park earlier that day and possibly also in previous days. The theory is that any competent policeman would have wanted to know when the suspect vehicles entered and left the car park, who had driven them, and when the Transit van had changed colour. If they had done so, they would have known that the suspect vehicles had left the car park and returned to Heuston that day and they would have known who was associated with the vans.

70. Some witnesses, who were not involved in viewing the CCTV in 1998, say that, in theory, it could be important to determine when and how a van came to change colour, though it would not necessarily be the initial focus of attention. NSU witnesses say, however, that they said they did not view any earlier footage. D/S Johnston – who viewed CCTV footage obtained from Heuston Station – says his focus was on what happened around the vans and not on what had happened earlier. He did not look at earlier footage. Similarly, NSU-DG-40 commented that he was more interested in what was going to happen in the future, rather than taking any interest in when the Transit van was sprayed blue.

71. Chief Supt Kirwan accepts that, in hindsight, it might have been best to check CCTV from the station to find out when the white van left and returned coloured blue. He also accepts that such footage might

have led to the intelligence that there were weapons in the sports bag. He points out, however, that there is no duty report in this regard. The duty reports point to the conclusion that only footage around the evening of 24th April was obtained. He also points out that different companies had different retention policies and that some are 24 hours, some longer, and that they also have “overwrite” policies.

72. Overall, the evidence in this regard overwhelmingly supports the conclusion that one short piece of footage was obtained, and that it related only to the evening of 24th April. The evidence of both D/S Johnston and NSU-DG-45 supports this conclusion. Among the many theories explored during the hearings (but not pursued in final submissions) was the suggestion that other footage was sought, viewed and the movement it revealed was not recorded in writing, and the footage was deliberately destroyed in order to hide the knowledge that AGS had about the vans. Ms. Nic Gibb submits that the Commission must be driven to conclude that the evidence of AGS with regard to the missing evidence must be viewed with the utmost circumspection, in the absence of a credible explanation for missing evidence being proffered. However, AGS had nothing to gain from deliberately destroying documents *at that time*. Any footage so viewed would invariably have been the subject of a duty report, as there could not have been any conspiracy that *pre-dated* the events of the 1st May 1998. If a conspiracy was concocted after Mr. MacLochlainn was shot, this would have necessitated the destruction of some of the relevant duty reports. This is not a plausible theory given the extensive evidence provided in the intelligence files and the set of duty reports available on disc, numerically arranged and consistent with other, unrelated files both in terms of their numbers and contents. Destruction of even one such report would affect this chronology and numerical sequence.

73. No fault attaches to members of the NSU for not obtaining CCTV footage from Heuston Station for the week between 15th and 24th April in order to discover who had removed the Transit van, when it had turned blue, or when it returned. Any surveillance unit must make decisions based on resources and effectiveness and it was a valid decision to keep the two vans under increased surveillance from 24th April so as to discover if either of them moved, where they went, what was in them and who else was associated with them, rather than backtracking to see what, if anything, had happened in the past.

Conclusion: Events of 24th April

74. Ultimately, while this was referred to in hearings as a ‘dummy run’, the actions of the raiders on 24th April in fact amounted to an attempt to rob the same Securicor van in the same spot, a week before the attempted robbery of the van actually occurred. The attempt was aborted because the Securicor van was early. All of the raiders gave evidence of this trip and, while Garda witnesses expressed scepticism about accepting the raiders’ version of events, there is no reason to doubt that the attempt occurred. The details as to what exactly happened on each occasion differ slightly but, broadly, one can conclude that this attempt was certainly made. Much as I did when assessing the garda evidence, I ask why the raiders would fabricate such an account, and indeed how they could contrive to set their fictitious robbery on the afternoon *before* the surveillance on Mr. Burke was so dramatically increased to include the two vans that the NSU now associated with him. Duty Report 475, which details the surveillance conducted on Pascal Burke for 24th April, reported that he had gone to work in his car, and that his car had remained at his workplace for the day and evening, but that he was not seen again. How could the raiders know that they were describing an event that would accord exactly with the duty report, unless it was true? In light of the raiders’ strongly-held belief on this issue, the theory that AGS knew of the planned robbery was explored in cross-examination on behalf of Ms. Nic Gibb, though in her final submissions she did not contend for a finding that the evidence supports this theory.

75. The observations made by AGS at Heuston Station on 24th April also tie in with the raiders’ account of the weapons returning to Dublin in the blue Transit van and then being removed to a safe house and this also explains the trip made by Ronan MacLochlainn to Clondalkin on the morning of 1st May. However, the fact that all relevant members of the NSU (let alone the ERU) have given compelling evidence that they did not know what was planned on 1st May 1998 as they followed two vans to the Ashford area of Wicklow strongly supports the proposition that the earlier attempt to rob the van was not discovered by AGS. I therefore conclude that the attempt did take place on 24th April but the NSU did not know about it.

24th April – ERU Operational Briefing Order

76. One of the contemporaneous documents available to the Commission is an ERU briefing order in D/S Gantly’s handwriting,

dated 24th April 1998. All witnesses agreed that this was an ERU document. It names the operation as *Operation Morrison*. The word “Van” is scribbled out and replaced by “Morrison”. There is no name or detail in the section entitled “*Command and Control*”. Under “*Plan*” the entry is “NSU”. There is no entry under “*Summary of the Operation*”, or “*General Comments*”, and the heading “*Debrief*” is likewise empty.

77. The “*Location*” is noted as Heuston Station. The headings on the template document include lists of equipment and firearms that might be required and the nearest casualty department and hospital, which was noted as “*James’ Hospital, James’ St*”. This is the closest hospital to Heuston Station. The telephone number given for “*Handling of Injured*” is a landline number for St. James’ Hospital.

78. Under the heading, “*Maps, plans, videos, aerial photos*”, it is recorded that there is a “*video of van in car park attached*”. Chief Supt Kirwan says this appears to confirm that the ERU were given a video from Heuston Station. A video-still photo of a van is attached to the document, and is probably the item to which this note refers. One additional loose page contains minimal details about the vans at Heuston, including when they were stolen.

Operation (Van) Morrison

79. It is clear from the handwritten name on this document that the initial name for the operation was Operation Van, but that this was changed to Morrison. The Commission heard evidence that, in general, both targets and operations had NSU code-names. If the NSU thought a job was sufficiently important or if they were going to be on a particular job for a while, they would call *Crime & Security Branch*, who would give a title name to the job.

80. Most, but not all, NSU witnesses had heard the name Operation Morrison, but none could explain where the name came from. The idea that the name came from the fact of it being an operation about a van was dismissed as being the source of the name Morrison, though the cover sheet of the ERU document in this regard strongly suggests otherwise. The name “Morrison” has no relevance to anyone involved and the name appears to refer to the musician, Van Morrison. In my view, this confirms that a van was the focus of the operation from 24th April. This is unfortunately ambiguous, as it could refer either to the blue van at Heuston Station or to the security van that was targeted.

What the ERU knew

39. It is clear that the ERU was on standby for Operation Morrison from 24th April, but was not called in until 1st May. Supt Kelly thinks he probably briefed the ERU on 24th April. The only contemporaneous document which might show what they were told is the short Operational Briefing Order described above. It suggests that the ERU was given minimal information about the operation.

40. Most of the ERU witnesses who were on the ground on 1st May recall that knowing this operation centred on two vans parked at Heuston Station. They knew that Pascal Burke was associated with this operation and that he was a suspected member of the RIRA. Some recall that he was associated with the engineering department, which meant that his area of expertise was in explosives. As already noted, the named target of the briefing document was not Pascal Burke but another figure involved in the RIRA, also known for his involvement in explosives, but not one of the five men arrested on that day.

81. D/S Sears' evidence as to what he recalls of the operation is typical of the evidence given by the ERU witnesses and broadly summarises what they knew on 1st May. He knew that Pascal Burke was involved, and, while he may have been told about "*other players*", it is Mr. Burke's name that stays in his mind. He knew that there were two suspect vans parked in Heuston Station. He knew that there were tracker devices fitted to the vans. He knew that the RIRA was involved but had no idea what they were planning. The ERU was speculating - based on the vehicles being vans rather than quick getaway cars and Pascal Burke being who he was - that the plan involved something heavy, like bomb-making equipment. The involvement of Pascal Burke indicated that explosives were likely to be involved.

82. When asked if there was any speculation within the ERU during the week leading up to 1st May as to what might be going on, D/G Martin Harrington said that in early 1998 there had been a number of operations and a lot of dissident activity in relation to the peace process and the Good Friday Agreement. The Referendum was coming up at the end of May 1998. Earlier in April, there had been a car bomb in Dun Laoghaire port when a ferry was boarding to the UK. Also in April, there had been another car bomb in Dundalk. It would not have been unusual for the ERU to take from that, that this was another operation against dissidents where explosives might be involved.

25th April - Tracking Devices

83. D/S Johnston said that on Friday, 24th April, some hours after he had seen that the white Transit van seen on 15th April was now blue, he returned to the car park and fitted a tracking device to that van. On the following day, 25th April, he placed a second tracking device on the white DAF van. He asked Supt Philip Kelly, who gave him permission to place the devices. He did not fill out any documentation to get this permission and if there was a written authorisation, he was not aware of it. It was not the practice at the time to put such an application in writing; things have moved on considerably since the *Criminal Justice (Surveillance) Act 2009* came into force.

84. The fact that tracking devices were fitted to the vans at Heuston Station is not reflected in any of the duty reports. It emerged in evidence that a written authorisation may have been issued by Supt Kelly when he granted permission for the devices to be fitted. However, efforts to locate that document were unsuccessful.

A Week without a Report: 25th April to 1st May

85. There are no NSU Duty Reports outlining any events at Heuston Station between Saturday, 25th April and Thursday, 30th April. D/S Johnston says this must have been because the vans did not move. He agrees, however, that the absence of movement was also a form of intelligence.

86. It has not been suggested that either of the vans on which tracking devices were placed moved during that week. However, the family of Mr. MacLochlainn is concerned about the absence of documentation relating to that period and about the truth behind the non-availability of so much evidential material. They ask the Commission to consider who stands to gain from its non-availability. They query why there were no duty reports outlining a lack of activity and pursued this line of inquiry in cross-examination. There were mixed responses to this line of inquiry. Most NSU witnesses agreed that they would expect to see some reference to the lack of activity in a duty report, such as “no activity”, because that was part of the intelligence; this is the ideal.

87. Perhaps most tellingly, NSU-DS-08, the administration sergeant who was attached to the NSU in 1998, says that a team leader might enter a handwritten duty report in the ledger with the two-word summary “no activity”, or that might be conveyed orally to DS-08,

because the management would want to know what happened each day. However, he might not necessarily have generated a typed report to that effect for the files. He saw no reason to generate a type-written report in those cases. This explains why Supt Maguire said that, as the head of the *Intelligence Section*, he would not expect to see a negative report, stating: “no activity”. It was the typed reports of DS-08 that he received and not the originals. These typed copies were the only copies available to the Commission; the originals entered in the ledger were not.

88. It may be best practice to meticulously record every event, including non-events. However, I am satisfied that the absence of duty reports - in circumstances where two vehicles were fitted with tracking devices and it is not suggested by anybody that they moved - either reflects some team leaders’ habit of not reporting a lack of activity, or more likely, the administration sergeant’s habit of not creating a typed report where the ledger contained a “no activity” report. The evidence of NSU-DG-08 was decisive in this regard.

89. It would undoubtedly have assisted the Commission had the original ledger been retained by the NSU; the continued monitoring of the vans and the absence of activity during the week in question might have been corroborated. However, AGS was unable to find the ledger. Like the documents relating to the tracking devices, the original ledger has either been destroyed or mislaid, which is a matter of considerable regret. The family has submitted that the missing documentation might have permitted the proper analysis of the proposition that AGS anticipated another operation on 1st May. Ms. Nic Gibb submits that it is inconceivable that the ledger, together with other contemporaneous documents, should, by coincidence, go missing, in the context of a fatal shooting. She asks the Commission to consider whether or not it is mere coincidence that such a volume of documentation of various types, which are particularly relevant to this issue, are missing. That theory is considered in depth in Section M, below.

The Intelligence Files

90. There is no evidence on the intelligence files viewed by the Commission that any member of AGS had prior knowledge of the events that unfolded on 1st May 1998.

91. Many of the duty reports outlined above do not in fact appear on the hard copy intelligence files where one would expect to find them. The hard copy files contain some duty reports but the system whereby one report ended up on a file and another did not is not apparent and no

witness could explain it. There is no formal register where one can see who has had access to a file or when it was accessed, if at all. This raised the question of whether the *Intelligence Section* ever received or considered the NSU duty reports which outlined the movements of Pascal Burke and his associates leading up to 1st May. The Commission received evidence that, even if hard copy duty reports were not placed on every relevant intelligence file, all duty reports were made available to the *Intelligence Section* on a floppy disc, which the Commission inspected. It is not known when the floppy disc relating to April 1998 was received, however. There is evidence that some documents on the original intelligence files inspected by the Commission were analysed by the *Intelligence Section* in the months before and after these events as there are dated comments in the margins of the reports but there is no evidence of written analysis specifically tying together the reports that the Commission has focussed upon.

92. The current Chief Superintendent, Peter Kirwan, confirmed that he researched and caused the files to be checked and understands that the only analysis on file in relation to these events was Duty Report 475/98, which outlines the events of 1st May and was created after the event. He was asked why there was no intelligence report collating and analysing the disparate pieces of information that were available from the relevant files in the NSU offices, for example the duty reports outlining the movements of Pascal Burke and his associates during April 1998. He said the people that were involved on 1st May were the subject of attention to varying degrees individually, but not as a group. The level of importance that was attached to them dictated the amount of attention that was afforded to them. There are limited resources, and competing demands for surveillance duty.

93. Chief Supt Kirwan also suggests that the lack of documentary analysis does not necessarily mean no analysis was undertaken. I understand this to mean that general investigative work, including analysis, was done which may not be noted or recorded anywhere. The result of this is that there are far more surveillance duty reports than there are analysis reports.

94. Supt Kelly says it is highly likely that Operation Morrison was discussed at the meetings held between him, Supt Maguire and Chief Supt Jennings every weekday, as they discussed what the unit's members were doing. At a meeting with the Commission, Supt Maguire said he was not aware that vehicles were under surveillance at Heuston Station and while he was aware that several operations were ongoing, he was not aware of Operation Morrison until Supt Kelly came to his office

on 1st May after Ronan MacLochlainn had been shot. Supt Maguire said in evidence that he did know about the vans being under surveillance, probably from conversations with Supt Kelly although he repeated that he had not seen some of the duty reports.

95. The Commission was told that it had been granted full access to the intelligence files sought, with no editing of the files beforehand. Given the speed at which at least one file was retrieved when sought, this appears to have been the case. Further, the Commission and counsel were careful to scrutinise dates and documents, and even the physical appearance of each file in this respect. While of course it would be impossible to tell if one or two pages had been removed, insofar as one can tell by their appearance full access to the files was granted. The current Superintendents in the NSU and the *Intelligence Section*, and Chief Supt Kirwan, were very frank with the Commission in not only answering any question that was asked, but in volunteering information about the processes of gathering and analysing intelligence. This, together with the evidence of the relevant witnesses, satisfies me that full access to the relevant files was, in fact, granted.

96. Chief Supt Kirwan assured the Commission that a literal interpretation of our requests had not been taken, and that any file which could be relevant had been shown to the Commission. He ensured that the files were considered methodically in response to the Commission's requests and he himself looked at the individual files of those involved to ensure that there was full disclosure. This witness is clearly an extremely experienced and highly trained policeman, and a careful but forthcoming witness. He explained many of the practices of AGS, and the reasons for them, in private session, and he was cross-examined at great length, presumably because everyone involved recognised that he who would not only give an honest answer, but would explain it fully. I accept his assurances in this regard.

97. In sum, there is no documentary evidence that at any time during Operation Morrison the various duty reports were analysed in order to try to predict what the target was doing or what the plan for the vans entailed. There was no specific intelligence report collating and analysing the duty reports. Chief Supt Kirwan suggests that important events, such as the leadership meeting recorded, were verbally shared with the *Intelligence Section* as they were developing. However, there is no record that this actually occurred with regard to the observations made in relation to the vans at Heuston Station. Neither Supt Peter Maguire nor then-Insp Peter Kirwan seems to have known about Operation Morrison before the events of 1st May 1998 or, if they did,

they did not know any great detail about it. I am satisfied that this operations of this sort were the subject of daily interaction between the two units, even if the operation in question was not sufficiently discussed as it developed, due to internal politics or a simple inefficiency in the sharing of certain information. This too confirms that the attempted robbery was not, in fact, predicted. The observations made by the NSU at Heuston Station were not considered sufficiently important information to have been brought to the attention of the *Intelligence Section* before the vans moved and the operation went live.

The List of Cash-In-Transit Escort Vehicles

98. After most witnesses had given evidence, the Commission reviewed the intelligence files. One contained a book of evidence and surrounding papers relating to Pascal Burke's conviction for an explosives offence in 1989. It appears from this file that when he was arrested on 22nd February 1989 in Roundwood, Wicklow, he and two other men (who escaped on the day) were associated with a blue Datsun Sunny car. Mr. Burke's prints were in the car. In that car, a jacket was found. In the jacket was a list of 15 vehicle registration numbers. Of these, 11 were garda escort vehicles for cash-in-transit vehicles. Four of the vehicles were used every day for cash escort duties.

99. Having noted this, the Commission re-called a number of senior garda witnesses to ascertain whether or not this fact was (or should have been) considered in April/May 1998. None of these garda witnesses had any memory of the list. They said that the list was not a factor in the analysis conducted leading up to or on the morning of 1st May 1998.

100. As to whether it should have been considered, senior garda witnesses all agreed that, had they been reminded in 1998 of the fact of the list of garda escort vehicles found in 1989, it would not have assisted them in predicting the robbery of an unescorted security van robbery.

101. Supt Maguire, who was then in charge of the *Intelligence Section*, says that, if he had been aware of the list of vehicles in 1998, he would not have attached much significance to it. This is because he associated Mr. Burke with the engineering and logistics departments of the IRA rather than with gathering intelligence of that sort. Supt Maguire reminded the Commission that the IRA was set up, more or less, like an army. Intelligence was not Mr. Burke's department. Supt Maguire was asked if, knowing about Mr. Burke's trip to Wicklow on 7th April 1998 and his association with a van that had changed colour, knowledge of the list found in Mr. Burke's vicinity in 1989 would have added anything

to the mix. He says that if he had read Mr. Burke's file on or about 1st May 1998, he '*would have adverted to the possibility that [Burke] was involved in a robbery*'. However, his immediate instinct, based on his knowledge of Mr. Burke and his previous activities, would have been that Mr. Burke was going to collect explosives and carry out a bombing operation. It is significant, he says, that Mr. Burke's previous association in Wicklow was in relation to explosives.

102. It happened that Dermot Jennings, the Chief Superintendent attached to *Crime & Security Branch* in May 1998, was a Detective Sergeant within the SDU at the time of the arrest in 1989 and had questioned Mr. Burke about this list. Chief Supt Jennings and Supts Kelly and Maguire gave evidence of finding similar lists in searches of various IRA personnel throughout the country, and the conclusion they drew was that making such lists was a regular part of their intelligence gathering. This could include information on various other people in society, not alone guards.

103. In 1998, D/S William Johnston was not aware of the list. He says that if he was putting together an operation today, as the Superintendent in charge of the NSU, and he had information that, ten years ago, one of the parties was potentially involved in intelligence-gathering around the garda escorts for cash in transit vehicles, that would come into his mind but he would have to look at more current intelligence about that person's activities. Today's operation would be directed by current intelligence and he would be focussed on that rather than on ten-year-old intelligence. The intelligence that was current in 1998 related to the RIRA's movement of explosive devices and that is what would have been firmly in the minds of the NSU.

Other Evidence relevant to Prior Knowledge

The NSU Members on Duty on 1st May

104. AGS was reluctant to disclose to the family of Mr. MacLochlainn the numbers of NSU members who were engaged in surveillance on 1st May or on any of the preceding dates for which duty reports were made available. While it was known from the book of evidence that members of *Crime & Security Branch* and members of the ERU were present in Ashford, the number of NSU members present and the reason for their presence was not disclosed to the family for nearly 17 years.

105. The Commission has seen evidence that on 7th April and on 24th April there were 15 or more operatives engaged in the surveillance set

out in the relevant duty reports. Well over 20 members were involved in events occurring on 20th April, which culminated in the RIRA leadership meeting referred to above. 28 members are listed on Duty Report 495/98 as being engaged in the events of 1st May and there was a small number of additional operatives involved whose details were omitted from that report, probably inadvertently. Seen in that context, the numbers on 1st May are not only comparable to those on duty on previous days when there was significant activity, but are also explained by the fact that those on duty in the earlier shift remained in pursuit of the vans as they moved south that afternoon, and were joined by a later shift who “*played catch-up*,” as it was described by witnesses.

106. The reluctance of AGS to reveal any of the names of those NSU operatives who were present on 1st May, or any of the evidence from the Duty Reports, has led to speculation that there was an inexplicably large number of AGS present at the Bends but now that the evidence has been explored, this theory can be discounted. The numbers were comparable to other days on which significant movement of vehicles or people occurred.

107. Another factor which might potentially seem conspicuous is the presence on the ground of the NSU Inspector on 1st May. The secrecy surrounding his role in these events was accentuated by his absence from the inquest, contrary to requests made by the family. However, the Commission heard evidence that, while it was unusual for an inspector to be out with the NSU operatives, the combination of Blue Flu and the fact that suspect vans under surveillance had moved, certainly explained his presence on the ground.

The ERU Members on Duty on 1st May

108. The original ledger containing the ERU Roster for the relevant period was inspected by the Commission. The Roster indicates that no ERU unit was on duty with the NSU on Friday, 24th April. From 3pm on Saturday, 25th April, four members performed duty with the NSU. An overnight shift was added from Sunday, 26th April. From 7am on Tuesday, 28th April, the description given to the duty changed from “Duty NSU” to “Operation Morrison”. Four members were on duty for that operation on a 24-hour basis for the remainder of the week.

109. The evidence is that there were 12 ERU members on the ground on 1st May. The ERU Duty Roster indicates that the members on duty for Operation Morrison on the 7am shift on 1st May increased to six. Five more ERU members are listed as having come on duty at 1pm; this

represents a departure from the normal afternoon starting time and is explained by the first movement of the blue Transit van that morning, further discussed in Section D, below. Insp Patrick Hogan does not appear on the Roster; the evidence is that he became involved in the early afternoon. Also on the ground was Supt Basil Walsh, who was a more senior man and was not quite as fit as the rest of them.

110. D/S Sears remembers ringing around the ERU on the morning of 1st May to see who was available. It was a bank holiday weekend. He managed to gather extra numbers. Anybody who could come in did come in; nobody felt they should not come in because of the countrywide 'Blue Flu' action. By the time the three suspect vehicles converged on the roadway in Ashford, there were "*far, far too few*" ERU members on the ground and the NSU would have known that the ERU was "*very thin on the ground*". The ERU had trained with other police forces and anti-terrorist units and they knew that best practice, if they were doing a three-car stop (i.e. three police cars to one suspect car) with good crime intelligence, would have involved seven to nine people taking control of the car stop. This was standard procedure to protect themselves and members of the public. In addition, while there were six RIRA members involved at the scene, the ERU knew there were probably more elsewhere – for example, scouts passing on information. Supt Basil Walsh gave evidence to the same effect; he said "*we were very, very thin on the ground, 13 versus five, that ain't on.*"

No SDU Arrest Team

111. While not a covert unit, the ERU occasionally called on the SDU to be present if arrests were planned or anticipated. The evidence is that SDU members were not on notice of this operation and it took some time for them to arrive at the scene when informed by *Command & Control* that armed assistance was required at the Cullenmore Bends. Both D/G Ryan and D/G Harrington of the ERU said that, had the ERU known when and where they were going to be making an intervention, it is possible that the unit would have had a separate SDU arrest team present. However, the absence of SDU backup is not decisive, as all operations differ and some did not require an SDU team.

112. D/S John Carney was among the first SDU members to arrive at the scene after the shooting. He was questioned at length to test the theory that he was in the Wicklow area because he had advance notice of the attempted robbery. He was part of the Eastern Division, which covered Bray, Shankill and Dún Laoghaire. His role within the SDU was in investigating subversive activity. He was working on the

morning of 1st May and was detailed along with Detective Inspector Jim Butler to carry out static protection on various diplomats and other people; court sittings; cash escorts; VIP escorts; dignitaries, etc. In addition to those duties, they answered calls in the city centre. He did not normally conduct such duties. He had no knowledge about surveillance being conducted by the NSU in relation to a number of vehicles at Heuston Station or about the ERU being called in to assist them. He happened to be in the Wicklow area after being on duty at a diplomatic residence in South County Dublin. Afterwards he and the Inspector drove on the N11 heading towards the Glen of the Downs and the Glenview, in the early evening. He thinks they were just generally patrolling when a general call from Garda Control in Dublin - he presumes in Harcourt Square - to all armed units in the area, saying that armed assistance was required in the Ashford area.

No Notice to the Army EOD

113. One of the lines of enquiry pursued by the family of Mr. MacLochlainn was whether AGS would have put the Army *Explosive Ordnance Disposal* section (EOD) on notice if they suspected that Pascal Burke and his associates were moving or planting explosives. The evidence heard by the Commission is that EOD have bases in Dublin, the Curragh and Limerick. If the ERU found anything that resembled an explosive device, they did not have the required level of expertise to deal with such material. If the ERU was tracking what was believed to be an explosives operation, and if members thought they may have to deal with a bomb, they would notify the EOD, which had a unit available. However, the evidence was that the EOD was not notified in a case where the ERU were on an operation and *might* find explosives, so as to put the EOD on standby.

No Notice to local Gardaí

114. The evidence suggests that members of AGS attached to Garda Stations in the vicinity of the Cullenmore Bends first learned about Operation Morrison after the attempted robbery and shooting had taken place. This includes Chief Superintendent Michael Murphy, who was the divisional officer for Wexford, and Superintendent Gerard Blake, who was attached to Wicklow; they were not notified that a surveillance operation was likely to travel into the area of his responsibility. Sergeant Gerard Walsh, then attached to Bray Garda Station, was most definitely not aware that there was any form of a Garda operation in that general area on 1st May 1998. This has little bearing on the issue of prior knowledge as it accords with the evidence that the general practice

of the NSU was not to alert local gardaí if there was an operation in their area and to instead put the ERU on standby to make arrests.

Flight Plans

115. In 1998, there was a fixed wing aircraft available to support the NSU and it was deployed on 1st May. The family of Mr. MacLochlainn asks the Commission to consider why this was so, in assessing the claim that AGS had no prior knowledge of the raiders' intention to carry out an armed robbery on 1st May. Ms. Nic Gibb submits that the Commission must ask itself why the Garda plane was being set up for the NSU on 1st May 1998 if they had no reason to suspect that the vans were going to leave Heuston Station that day.

116. The use of the airplane was not uncommon in 1998; this is evident from documents received from the Defence Forces. However, the airplane did not fly between 19th April and 28th April as it was in maintenance during that time, and was not deployed in support of NSU on 29th or 30th April. Ms. Nic Gibb submits that this suggests that the airplane was only put in the air for NSU on few enough occasions.

117. The primary function of the airplane was to assist with communications rather than providing technical or visual assistance. The plane acted as a repeater system to facilitate radio communications. It was not possible to make out individuals or to distinguish vehicles one from another on the ground from the altitude at which the aircraft flew. Supt Philip Kelly commented that, had he known of the plan to rob the van, he would have ensured that there was a helicopter available, which was a much better mode of pursuit in such a scenario.

118. The same NSU operative, NSU-DG-17, was on board two flights on 1st May. He does not recall being involved in surveillance on Pascal Burke before 1st May, although he was aware that Mr. Burke was a frequent target of NSU surveillance. He was usually briefed the night before an aircraft was required. To the best of his recollection, he knew he had to be there that day. He explained that the flight plan was filled in before the aircraft departed and was filed before take-off and permission was sought from the relevant air traffic control. If the flight plan changed, the change was also conveyed as it was important for other aircraft that everyone knew where the airplane was.

119. The Garda Air Support Unit (GASU) provided contemporaneous documents to the Commission with regard to the flights undertaken on 1st May. They indicate that the first flight took off at 12.15pm,

remained in the air for three hours and 15 minutes, and landed again at 3.30pm. The summary of the flight noted by GASU was “*Confidential job with NSU over sth city*” and the route was “*Bal to Sth City*”. (“Bal” refers to Casement Aerodrome, Baldonnell, on the outskirts of Dublin, where GASU is based.) The result was “*Flown as Planned*”.

120. The departure of the first flight just after midday was a matter of concern to the family of Mr. MacLochlainn since the first movement of the vans at Heuston described in the NSU duty report relating to 1st May was at 2.26pm. Ms. Nic Gibb submits that this should be a matter of concern for the Commission because it suggests that DG-17 must have been aware of his target almost three hours before the vans left Heuston Station.

121. When he met with counsel to the Commission in early 2015, NSU-DG-17 did not have a clear recollection of the reason for the first flight. Subsequent to his meeting, he “*remembered ... there may have been a movement earlier on of the vans that morning.*” That movement is not reflected in any duty report but it is described in a report prepared by Supt Kelly after the events of 1st May. That report describes how one of the vans was driven to Clondalkin in the morning, before this flight left.

122. DG-17 does not recall where the first flight went. Having been shown the GASU documents, he explained that duty in the South City could be where they were flying but keeping away from commercial traffic at Dublin Airport. The presence of the vans in Heuston could also explain the reference to the south of the city. He does not positively remember that the first flight related to Operation Morrison but he thinks it more than likely was. The first flight did not leave the city. DG-17 says the aircraft had to land to refuel between flights.

123. The GASU documents indicate that the second flight took off 3.55pm, it was “on scene” at 4pm, it flew for two hours and 45 minutes and it landed at 6.40pm. DG-17’s recollection of the second flight is that he was told that the two vans had moved and he was instructed to assist. The second flight went to Wicklow. The result of the second flight was “*Suspect(s) Located*”. It is specified that seven suspects and three vehicles were located, and the events were classified as a “*noteworthy incident*”. No such details had been entered in relation to the first flight. The summary of the flight was as follows: “*Task in support of NSU operation in the Ashford area Video of Operation handed over to [NSU-DG-17] for NSU use*”. The route was described as “*Bal to Sth East*”.

124. Jerry Kelliher of the Executive Branch of the Department of Defence explained that timing discrepancies between the documents provided by GASU and those provided by the Defence Forces can be explained by the time it takes to taxi, get air traffic control clearance and other such pre-flight steps.

Reports of Prior Knowledge after the Incident

125. After the incident, Ms. G., a civilian witness to these events, heard people at work say that the guards had known something was going to happen. The people she heard saying this were not present on 1st May 1998. She does not know why they said this and she did not ask them why. She agreed that one could call this “pub talk”.

126. A cursory search of online comments on the reports of the shooting in 1998 also reveals numerous conspiracy theories posted to various websites, to the same effect, i.e. that AGS knew what was going to happen but allowed it to unfold without taking steps to prevent it. Given that the raiders themselves knew after these events that at least one of them had been under surveillance, one can understand why they took the view that the same surveillance must have revealed the previous week’s attempt to rob the same van and, therefore, that AGS must have known about their plans. This belief no doubt led to the rumours of prior knowledge on the part of the gardaí.

127. To put such rumours into context, some of the same websites included comments to the effect that Mr. MacLochlainn was shot in the back, as he fled unarmed from the scene. It is now clear that this comment is incorrect. One can only conclude that the failure of AGS to allay such widely disseminated concerns added fuel to a fire of speculation, at a time when it would have been much easier to contradict such rumours with a full and transparent account of events, instead of stoking the flames by repeatedly insisting that the whole incident had been fully investigated.

The Garda Representation Association grants an Exemption

128. In early 2013, a retired member of AGS wrote an article in Sunday newspaper. Referring to the shooting of Mr. MacLochlainn (in what he - inaccurately - described as ‘a shoot-out between members of the ERU and a six-strong, heavily armed gang’), he wrote:

“The loss of any life is regrettable, but I for one could never have forgiven myself if it had been a Garda who was shot because he had no back-up as his colleagues were off ‘sick’. Permission had to be actually sought in advance from the [Garda Representative] Association to allow those Gardaí involved in the shoot-out to work on that particular day.”

129. The Commission explored the question of whether the exemption granted by the Garda Representative Association (‘GRA’) is evidence that AGS knew an attempted armed robbery was going to take place in the Cullenmore Bends on that day, requiring ERU presence. This is refuted by AGS.

130. Commissioner Pat Byrne gave evidence that this day was unparalleled. There was much emphasis in advance on what might happen on the streets in terms of crime and public disorder. Deputy Commissioner Conroy said that AGS tried to put every single member into uniform and get them out on the street, to try and create the impression that there was a strong garda presence. That is what happened, he added. There was little or no administration available, they were all on the streets. It was a very busy day. While there was an expectation that anarchy would reign, this was “*hyped*” and did not come to pass. Supt Farrelly, the Press Officer, did 64 press interviews that day. Supt Gerard Blake, who was then attached to the Wicklow division, recalls that the impact of the Blue Flu was that no guards were available and it was only sergeants and inspectors at work that day. There were also some probationers available for duty.

131. Individual members of the NSU and the ERU say there was no real issue about them parading for duty. They knew that there was an on-going operation, both units had been extremely busy that year, and they could be needed at any time. Anyone involved in surveillance and emergency response came in. They would not let their unit down, as NSU-DG-11 put it. The evidence is that they came to work because of the nature of their work rather than because of the nature of this operation.

132. Conflicting information was provided to the Commission with regard to the exemption sought by the ERU. A representative of the GRA said no exemption was sought and none was granted; it could not have been granted, he said. However, garda rank members of the ERU say they asked the GRA for a direction regarding the proposed industrial action. They were told by the GRA that, in the particular circumstances, an exception would be made to the rule applicable to uniformed members and plainclothes colleagues. These conversations

happened on the morning of 1st May and the matter was sorted out quickly. There seems to have been an exemption of some sort agreed, albeit informally, despite the information given to the Commission by the GRA.

What the Raiders Say

133. Daniel McAlister said that he planned the operation and had been watching the security van for two years. The location was picked because it was a radio and mobile phone black spot and there was an available escape route up the laneway. Their group needed to raise about €10,000 to fund the operation. Planning had started while they were still members of the Provisional IRA. After the split, they needed money quickly. The purpose of the robbery was to obtain funds to buy weapons and continue their efforts to secure a united Ireland.

134. The raiders had different views of the knock-on effects of the robbery. Mr. McAlister pointed to the value of such publicity in terms of what he called the group's "credibility", and influencing those who were undecided about the peace process. It had value as a publicity stunt, he said. It would have helped bring former comrades, who were sitting on the fence, along with them and would have given them credibility. However, according to Mr. Burke, there was no objective in terms of obtaining publicity or recruitment.

Advance Trips to Wicklow

135. Mr. Burke confirmed that he went to Wicklow to assess the operation. He assessed the escape route. While he could not remember the date, he did drive to the area of Killiskey to scout around the area. Mr. McAlister also said that, in the weeks before the robbery, Pascal Burke and Mr. MacLochlainn scouted the area. They knew the route of the Securicor van and the timings associated with that route. They knew that it stopped at a supermarket in Wicklow and then at a garage in Rathnew. Stephen Carney gave a similar account.

The Vehicles

136. Ronan MacLochlainn was in charge of organising transport. Pascal Burke was responsible for ensuring that they were stored safely. Mr. Burke and Mr. MacLochlainn were the only two who knew where they were going after the robbery and where the various pick-up points were to be.

137. Three vehicles were used by the raiders on 1st May 1998: a gold Toyota Carina, a Ford Transit van, and a white Daf van. The organisation borrowed money to buy the Transit van through *Buy and Sell* for £500. That van was originally white but it was sprayed blue to make it look more like a work van.

138. The Commission heard conflicting evidence as to how the Daf van was acquired. It is not necessary for the purpose of my terms of reference to resolve the conflict in the evidence. The Daf was reported stolen on 14th April, and the original key was also taken. The Carina was probably stolen on 23rd April.

The Weapons

139. Mr. Burke was responsible for organising the weapons - a .357 Magnum revolver, an AKM assault rifle and a pump action shotgun. He organised them but another person collected them. They were brought to a safe house in Dublin. Local IRA men made the imitation rocket launcher. Along with these conventional weapons, there were makeshift flamethrowers and an angle grinder. The raiders may or may not have known that the con-saw or grinder would not have cut into the specially armoured cash-in-transit van. They clearly were aware that guns were of little value in terms of penetrating the van, hence the need for a rocket launcher; it would force the employees out of the van. The containers of petrol had a similar function in terms of frightening the two men who the raiders knew would be in the van. These can be used together with an adapted fire extinguisher, to make a flamethrower. These were capable of igniting the van, unlike the rocket launcher, which was merely a convincing fake.

140. The raiders had standing orders from their leaders, according to Mr. Burke, not to engage in any battle with AGS and not to shoot at members of AGS. The objective, he said, was to obtain money to continue their efforts in what he considered to be a war, not to kill any gardaí, and the only reason to use a weapon would be to defend themselves or a comrade.

The Scouts

141. Mr. McAlister said there were volunteers involved in the operation other than the six that are known about. Mr. Burke confirmed this. Some were in the Cullenmore vicinity, but it is also likely that there was a person or persons in the area of Ashford, which

the Securicor van would pass through before driving through the Bends, acting as scouts or surveillance for the raiders. This was undoubtedly the case on both Fridays when the robbery was attempted. There may well have been scouts at other points near the Bends in order to keep watch for an obvious garda presence. If this was so, then presumably due to the manner in which the vans were followed (primarily by NSU cars), AGS vehicles were not spotted and no warning was given to the raiders that they were being so closely monitored.

What the Raiders Suspected

142. Mr. Burke was asked if he ever got the feeling that he was being watched. He replied that it was always sensible to presume you were under surveillance. There was an incident on 24th April which made him think that he was being followed. He was travelling towards Ashford in the white Daf van on the southern carriageway and passed a Pajero jeep in a layby across the carriageway on his right, facing Dublin. He noticed a couple in the car and, as he drove by, he saw a man lean over and kiss the female passenger. Because the man was wearing sunglasses, the witness thought it odd and disrespectful.

143. This incident stuck in his mind and when he was placed in a jeep at Killiskey on 1st May, Pascal Burke was sure it was the same one. He also noted part of the registration number and it was the same number, he said. He was told while giving evidence that it was an Isuzu jeep, and not a Pajero jeep, that had been at the scene and he corrected his evidence saying that it had been an Isuzu jeep he saw on the dual carriageway. When told that was an ERU jeep and would not be involved in surveillance, he did not accept that he was in error and pointed out that an ERU man had arrested him (suggesting that he too had been following him, presumably). He rejected the suggestion that it was illogical for an AGS jeep monitoring his movements to be in the opposite carriageway in a layby, where it could not immediately turn and follow him. Mr. Burke said that surveillance was done in many different ways. Since this evidence was given, the ERU roster has been checked and it indicates that the specific jeep described was in service on 24th April in a different area of the country.

144. Saoirse Breatnach heard afterwards the AGS had been staked out in the Cullenmore Hotel; he does not recall who told him this. It was possibly something he heard in prison. Some members of NSU did congregate outside the hotel before the raid, when the vans first stopped in the Bends.

145. Mr. McAlister was not aware of any form of surveillance on 24th April. He says that, had he thought that the operation was in anyway compromised he would have cancelled it.

Conclusions: Prior Knowledge

Did AGS Predict the Robbery?

146. The evidence overwhelmingly suggests that AGS had no information as to what was planned as regards the two vans, or when it might happen. They had no information that weapons had been placed in a van or removed from a van or that they had been collected from Clondalkin, which is, in all probability, what happened both on 24th April and on 1st May. The garda witnesses consistently described having suspicions of an explosives offence or a terrorist training camp, and on the day they were also concerned about a potential kidnapping, but not a robbery. There was real concern as the vans stopped at the Cullenmore Bends and concerted efforts were made to discover what they were doing; however, only when the Securicor van was spotted was it identified as the probable target.

147. Pascal Burke was well known to AGS. He had gone to the Wicklow area previously but, on the one occasion when he was followed to the Killiskey and Cullenmore areas, he did nothing specific, nor did he stop anywhere. This was on 7th April. A trip on 8th April to try to guess at his purpose for travelling there gave no assistance to the NSU. He had also been followed to several other venues and towns in and outside of Dublin in the months preceding 1st May. A leadership meeting had taken place on 20th April in another county. Mr. Burke had also engaged in anti-surveillance tactics in the past and it was not unreasonable to see his trip to Killiskey, without apparent objective, as being such a tactic.

148. The family of Mr. MacLochlainn rejects the characterisation of the attempted robbery as a 'spontaneous' or unanticipated event. Ms. Nic Gibb considers it indisputable that on 24th April, the ERU was engaged on standby potentially in response to the NSU's knowledge that vans had moved out from Heuston that day and returned after an aborted operation took place, pointing to a probable repetition. While I agree that the ERU was engaged from that day, it does not appear to me that this was a response to them or the NSU or both of them having followed the vans to Wicklow on the afternoon of 24th April. For instance, there was no NSU trip to Wicklow the following day, or on any subsequent day, to identify the aim of the trip or the route of the Securicor van. No contact appears to have been made with the Securicor

company. If the plan had been guessed, why waste time and resources monitoring the two vans if it was obvious that they could not attempt the robbery again until the next delivery day, the following Friday? Why make urgent calls to have a barely adequate ERU team assembled on 1st May? Such actions only make sense if AGS did not know what was planned, or when or where it was planned for. The increased intensity of the operation on 24th April was due to the numerous observations at Heuston Station, not just the change in colour of the Transit van, and it was not caused by the vans being spotted in Wicklow or near Ashford.

149. The number of NSU operatives employed on 1st May was comparable to other days for which duty reports have been provided, particularly when one considers that the day comprised two shifts, the early shift having stayed on the operation due to the two vans having moved. While, of course, I would prefer to have their roster, the unredacted duty reports do reveal the numbers of the NSU deployed. I have the ERU roster and, if anything, the ERU was understaffed.

150. One might also ask why, if a member of AGS knew or guessed this plan, did he not tell other members of the NSU and ERU, or put it in a duty report, or on the targets' intelligence files? Hiding this knowledge served no purpose *at the time* and would put fellow members of AGS at risk. D/G Peter Brien of the NSU gave compelling evidence about coming round the Bends and seeing the attack on the Securicor van. It is very clear that he had no idea that this was going to occur. I am satisfied that he would not have driven into the situation unarmed, had he known a robbery was planned. If NSU-DG-11 had known that there was going to be an armed raid on a Securicor van, she would not have been there. She was six months pregnant at the time of these events and would not have placed the life of her unborn baby at risk. Her evidence on this point was compelling and I accept it. The evidence of those NSU members who were present on 1st May was so clearly genuine in recounting their surprise, indeed shock, at these events that their oral testimony alone would convince me that the NSU and the *Intelligence Section* had no prior knowledge of a robbery.

151. If any member of AGS management saw evidence to suggest a robbery, for instance in CCTV footage, he successfully hid it from the record and from the vast majority of his colleagues, including all of the ERU. In order to destroy any record, he would then have had to destroy swathes of material (including several years' worth of ledgers) from the NSU offices without authorisation and presumably with the

connivance of other senior officials and successors. This appears to me to be an unlikely suggestion, and I reject it as lacking in plausibility.

152. The *Intelligence Section* was in possession of information that in 1989 Mr. Burke had been associated with a car in which a list of garda escort vehicles was found. However, the evidence confirms that this was not considered in the days leading up to 1st May.

153. The fact of ERU support does not suggest that this was an unusual operation, or that AGS knew what was planned. If anything, the number of ERU members on duty suggests that there was no such knowledge, as they were under-staffed for an intervention involving five armed raiders and two vehicles (let alone Pascal Burke in Killiskey in the Daf van). The expert evidence on the number of ERU members required for an armed intervention was clear: the minimum number needed in an emergency response team if an event is known is two operatives per suspect, in order to effect arrests and leave one officer with the detained suspect at the scene. I am satisfied that, had the armed robbery of a van by members of the RIRA been predicted, or indeed any similar violent offence in a busy public place, more ERU members would have been rostered for that day. I do not know why there were two extra ERU operatives rostered on the early shift on 1st May, but it may be because this was the day of the Blue Flu and this small increase in numbers alone does not suggest knowledge of the plan that unfolded that afternoon. The evidence of attempts to augment the ERU numbers as the vans moved south strongly supports my conclusion that there was no prior knowledge as to what would occur on 1st May 1998.

154. Detective Inspector Patrick Hogan had a map of Wicklow in his car. It was suggested to him in cross-examination that this shows he knew he would be going to Wicklow that day. However, he explained that his practice was to have ordinance survey maps in the car. He had worked in the ERU for five years and no longer knows exactly what maps he might have had in the car. This does not suggest that he knew where the operation would end up, in my view. A single county map is not sufficient to suggest prior knowledge of the raiders' plan.

155. The Commission is asked to consider why SDU personnel were in the areas of Glen of the Downs and Newtownmountkennedy, respectively, if there was no suspicion that something was about to take place. It does not follow logically, in my view, that the presence of SDU personnel in the area is necessarily indicative of such a suspicion. The first is roughly 15 kilometres from the scene, the second just under eight

kilometres away. These locations were not ideal for an SDU arrest team on a bank holiday Friday. In order to plant an SDU officer where he can make an arrest, it seems to me, he should be located in a place which ensures easy access once the robbery has begun. A general call went out for armed assistance. Two SDU units were able to respond as they were in north Wicklow. It would have been odd if there was no such unit in the county on the day of the Blue Flu, in my view.

156. Pascal Burke said that on 24th April he saw a man kiss a woman in a Pajero or Isuzu jeep on the other side of the N11 as he drove past, and that this was the same jeep in which he had been brought to Shankill Garda Station on 1st May. This is not supported by the ERU roster or by the evidence of the ERU that Operation Morrison only began on that evening and that they did not engage in surveillance. The roster for 24th April suggests that ERU members were not in duty in Wicklow or south Dublin, but in the city centre, and not in support of the NSU.

157. The airplane went up that morning, it seems to me, as a response to the trip to Clondalkin. NSU-DG-17 did not specifically confirm that he knew that he was in support of Operation Morrison that day, just that it was the practice for him to be briefed the night before. More significantly, the first flight focussed on the south of Dublin City, not on Wicklow, whereas the second flight went to the south east. Thus, again, the indication is that AGS did not know in advance where to send the airplane.

158. The fact that the EOD was not alerted to a potential bomb does not affect my conclusions in this regard. The evidence as to how and when that department was usually notified of a threat makes it clear that there would be no such notification if the ERU merely thought that there might be a bomb at a stage if they did not know, if indeed there was such a device, where it might be planted or how conveyed.

159. Given the mixed responses on the question of when a *no activity* duty report would be compiled, one cannot conclude that the absence of duty reports in this respect must have a sinister explanation. I prefer the alternative explanation, namely that, on days when nothing happened, this was noted in the ledger or orally conveyed, but those duty reports were not typed up and transferred to the *Intelligence Section*. To accept the alternative, more sinister theory, I would have to accept not only that there was deliberate removal or destruction of duty reports and / or ledgers, but that coaching of witnesses was undertaken as to what they could and could not say in this regard. If they had been coached in this way, they would be expected to give similar accounts as

what should occur; that was not the case. Most of those who gave evidence were so clearly honest and gave so much forthright evidence on this and other issues, that I can firmly reject the suggestion that there was a conspiracy that involved both management and rank and file NSU gardaí to hide duty reports and ledgers and to conceal what those missing reports would have shown.

160. I have received and considered a combination of sworn testimony, contemporaneous records and computer files which do not appear to have been edited since May 1998, all of which evidence taken together establishes to my satisfaction, and to the extent that I have no reasonable doubt on the issue, that AGS did not have prior knowledge of the plan to rob the Securicor van in Wicklow on 1st May 1998. While the intelligence established that they had two vans, there was no indication of what the targets intended to do with them, nor was there cogent evidence that either of the vans contained weapons as they left Heuston Station on the afternoon of 1st May. The evidence as to what AGS had predicted centred on Heuston Station, both in terms of the first NSU flight plan and the ERU briefing order, which named the relevant hospital as St. James' Hospital.

Should AGS have Predicted the Robbery?

161. As to whether AGS *should* have predicted the plan in advance, after much scrutiny, I must conclude in the negative. It would be to impose too high a standard on an analyst to expect, without the benefit of hindsight, that he should add nine-year old information about a list of garda escort vehicles to multiple trips around various venues and a sports bag in a suspect van, and combine these to produce a theory about an armed robbery of an unescorted security van somewhere in Ireland. Had the aborted attempt on 24th April been observed, this might have alerted AGS to a robbery plot, but otherwise a robbery was one of the least likely of the several possibilities open on 1st May.

162. It makes sense that the minds of the NSU and intelligence operatives were guided by the activities of the RIRA at the time. The most likely scenario at that time, against that background, was the movement of explosives.

163. There was a high level leadership meeting of the RIRA on 20th April. It makes sense that the *Intelligence Section* focussed on this, rather than on a few lower-level members moving in and out of vans in a car park. The leadership meeting was also far more significant than a trip by Pascal Burke to Killiskey on 7th April. Only in hindsight did that trip

become important. When one considers the daily activities of Mr. Burke, who often travelled to destinations outside Dublin, AGS cannot be faulted for failing to predict this robbery at an early stage.

164. As to whether a greater analysis would have assisted in predicting the robbery, while the information that these people had firearms would have been significant, the information that a forensically aware person removed one or two bags from a suspect vehicle did not amount to information that he had firearms. The movement of firearms would not necessarily have been confirmed by viewing earlier CCTV footage of Heuston Station been viewed.

165. The information on file as regards Pascal Burke does not change my view in this regard. Given what AGS knew of him and his associates, the fact of his having been connected to a list of garda escort vehicles nine years previously, particularly in light of the evidence about the IRA intelligence routinely collecting such information, did not suggest and should not have suggested to the NSU, the *Intelligence Section* or the ERU that they should consider an unescorted security vehicle as a target. Lengthy analysis of the list and of Mr. Burke's activities generally would also probably have led to the conclusion expressed by Supt Maguire, that the list was unlikely to be his, as *Intelligence* was not his department. Pascal Burke was in *Engineering*.

166. It is submitted on behalf of Ms. Nic Gibb that, in the words of the submission, had all the information been communicated to intelligence, the various pieces might have been put together by the analysts, perhaps to assist in formulating an operational briefing which would have allowed preparation for a number of different possibilities (including the possibility of an armed robbery or indeed, a kidnapping or assassination), rather than heading down to Wicklow with apparently no plan at all.

167. To make contingency plans is a perfectly sensible proposal and it is regrettable that this did not happen. I also accept, however, that there are resources issues for AGS and that it is difficult to prescribe how these should be resolved, and even more so to try to assess now, with the benefit of hindsight, how they should have been resolved in 1998. Therefore, while I agree that the ideal position would have been for the analysts to obtain and assess all of the information available and that there should have been a contingency plan, I cannot make any finding as to whether or not there was a culpable failure in terms of allocation of resources to this particular operation and in my view it would be unfair to AGS to criticise them on that account in light of the multiple issues

they faced at the relevant time. Nor do I accept that the information available to AGS in advance lead inexorably, or even as a matter of probability, to the conclusion that a robbery was planned.

168. The available information consisted of five factors, namely Pascal Burke's proximity to a list of garda escort vehicles in 1989, his attendance at a leadership meeting of the RIRA on 20th April, his trip to Killiskey on 7th April, the fact that the RIRA needed money, and the removal of a bag from the van in Heuston Station in a forensically aware fashion.

169. While all five undoubtedly could lead one to suspect a robbery was planned near Killiskey, one cannot ignore the fact that the *Intelligence Section* was not certain as to who exactly had defected to the RIRA, so its financial needs would not necessarily dictate events. More significantly, there were hundreds of other potential leads in the duty reports themselves, let alone in the rest of the related files, including files pertaining to other people who attended the leadership meeting, for instance. To cherry-pick the information that so clearly suggested a robbery attempt with the benefit of hindsight is to ignore the rest of the intelligence in the possession of AGS at the time, which did not point to a robbery. I have reviewed my notes of the intelligence files with this submission in mind, and the sheer volume of information there, coupled with analysis of other issues and matters, convinces me that there was no blameworthy failure of analysis on the part of AGS.

170. The submission that contingency plans might have been considered is one with which I agree, particularly in the context of the absence of any command structure having been established on the day. These issues are dealt with in more detail in Section K, below. However, it is worth repeating Mr. Alan Bailey's advice in the context of prior knowledge, as the quotation is apt. He commented that: "*it can be argued that there could have been a number of contingency plans drawn up to deal with foreseeable events. An attack on a high value load of some description would be such a possibility and deserved the preparation of a contingency plan. I am unaware if there were any contingency plans but I have not seen any documents to support that planning process, or actually any planning process.*"

171. While I conclude that AGS did not know that an armed robbery was planned, and cannot be faulted for not predicting it, I am satisfied that AGS should have identified a commander for this operation to lead a more thorough briefing in which contingency plans for various different scenarios were considered.

E. Events of 1st May, 1998

“The Blue Flu”

1. 1st May 1998 had been chosen by representative bodies of AGS as a day on which members of garda rank would not attend at work, due to an industrial dispute. Members of AGS are prohibited from taking industrial action; hence the advice given to members to claim illness and the name attached to the action, i.e. “The Blue Flu”. Supt Philip Kelly of the NSU was concerned about the numbers of operatives that would be available that day but all members of the NSU and the ERU came to work. He was in his office in the Phoenix Park that day.

2. The Blue Flu was significant because it meant that some senior members of AGS were operating in unfamiliar roles. Supt Basil Walsh of the SDU was in his office at Harcourt Square. Insp Patrick Hogan of the ERU told him that there was an operation going on and that he was on his way out. Supt Walsh decided to go with him. This was unusual as the Superintendent would normally not be on the ground with the ERU during an operation, but it was the day of the Blue Flu. This was one of the reasons he remembers the day and was also the reason he decided to go. He had never heard of Operation Morrison and knew nothing about it that morning. There was nobody in the office that day, due to the Blue Flu, and he went to show support for the ERU.

3. The Blue Flu also meant that the personnel available to respond to emergency calls was depleted. For example, Inspector John Castles was in Wicklow town Garda Station, and the station was “devastated” as regards manpower. He said that apart from Inspectors and Sergeants, he only had student gardaí in the station that day. Rank and file gardaí had not come in to work.

4. The NSU commander Inspector Patrick Nyhan also gave evidence about the unique circumstances that day due to the Blue Flu. However, he said it was not unusual for him to be on the ground with the NSU teams; it was part of his job. Such operations were occurring roughly every week or ten days at the time as such groups were quite active. NSU-DS-04 confirmed that it was not unusual for the Inspector to be on the ground.

5. At this stage, the two vans at Heuston Station had been under surveillance since 24th April at 6.10pm. The ERU had been on standby,

in support of the NSU, since that date, ready to assist the NSU if the vans moved or there was any sign that an armed unit might be needed.

The Securicor Schedule

6. Securicor employees Mr. R. and Mr. M. regularly drove to Wicklow on a Friday, collecting cash from local businesses. They were doing two different runs that day; one in the morning, one in the afternoon. Securicor vans were specially constructed to maximise the safety of the crew and cargo, in that they were effectively armoured vehicles. The driver's cabin was separate to the hold, where cash and other cargo were kept. There was a safety mechanism in the cabin to ensure that the van could be locked automatically from the inside. The vans did not have a garda escort.

7. That morning, a Securicor line manager instructed Securicor staff, including Mr. R. and Mr. M., that because it was Blue Flu day, they should be on their guard. That was all that was said. There is no suggestion that he had received any warning from AGS or anyone else as to what would happen that day.

8. Mr. M. drove the Securicor van that morning and Mr. R. went in and out of the premises they visited. They then returned to the Securicor base to reload. When they went back on the road after lunch Mr. R. drove and Mr. M. did the pick-ups. They drove to Wicklow and then began to work their way back towards Dublin. That was their usual run on a Friday afternoon. Their last stop before driving through the Cullenmore Bends was the Esso service station in Rathnew, which they were due to visit between 4.30pm and 5pm that day. At that point, the van could be expected to contain over IR£250,000 in cash.

Morning and early Afternoon

9. There was no NSU briefing on the morning of 1st May. D/S Michael Shanahan's team was covering the entrance to Heuston and the white Daf van did not leave the station that morning. The NSU teams who were on duty were divided between those watching the blue Transit van, those watching the white Daf van, and others who were drafted in when the blue van moved.

10. Six ERU members were on duty in support of Operation Morrison that morning: two sergeants and four guards. D/S Comiskey of the ERU paraded his unit that morning when everyone came in to

Harcourt Square and he detailed them on their particular duties that day. The ERU units were in radio communication with one another and with the NSU; the two units had separate systems, synchronised for the operation. None of the ERU or NSU was in uniform and none was in a marked vehicle. Members of the NSU and the ERU had personal-issue handguns. Some had red tabards or bibs with 'Garda' written on them for identification purposes; the tabard is easy to slip on. The ERU kit included an assault helmet, handcuffs and a bulletproof jacket.

11. The ERU members on duty on the morning shift were as follows:-

- D/G Mark Daly was the driver and D/S Patrick Comiskey the passenger in a two-litre Vectra CDX;
- D/G James Ryan was driving an unmarked, grey Isuzu jeep. His passenger was D/S Pádraig Sears;
- D/G Aidan McCabe was driving another Isuzu Trooper jeep with D/G Derek Duffin as his passenger.

12. Efforts to locate the NSU roster have unfortunately not been successful. Duty Report 495 lists the call signs (or codes) of 27 members of NSU (Inspector Nyhan, five sergeants and 21 guards) but it does not indicate which members were on the early shift and which were on the late shift, and the call sign of at least one member who was present on the day is not listed. The Commission heard evidence from individual NSU witnesses about their activities on the day. Most were in unmarked cars - alone, or in pairs - and one was on a motorbike.

The Trip to Clondalkin

13. One of the two vans under surveillance moved that morning. The evidence suggests that Ronan MacLochlainn drove the blue Transit van to the Clondalkin area at around 11am, he picked up the weapons that the raiders would use later that day, and he returned to Heuston Station.

14. The trip to Clondalkin is not reflected in any surveillance report. In particular, it was not mentioned in Duty Report 495, which was typed up on 5th May, and outlines observations made by the NSU on 1st May starting at 2.26pm. NSU operatives who followed the blue Transit van to Clondalkin do not know why this was not mentioned in the duty report. There is, however, a contemporaneous record of the trip in a report prepared by Supt Philip Kelly about Operation Morrison, dated 2nd June 1998. The details of the trip to Clondalkin included in that

report are not available in any other contemporaneous document. However, they are confirmed by the evidence of various witnesses, including surveillance gardaí who were at Heuston Station, and Pascal Burke.

15. Supt Kelly's report states that Ronan MacLochlainn and another man were in Heuston Station on the morning of 1st May. They got into the white Daf van, drove it to the blue Transit van, started the blue van with jump leads using the Daf van, returned the Daf van to its original parking place, and then worked on an interior partition in the white Daf van. The report states that the other man was *later* identified as Daniel McAlister, although Mr. McAlister denies that he was there. This is significant because it suggests that the other man was only identified after the fact. Thus, AGS did not know on the morning of 1st May that Mr. McAlister – a known member of the PIRA, suspected by AGS to have defected to the RIRA – was associated with the vans under surveillance; if indeed it was Mr. McAlister.

16. The report states that Mr. MacLochlainn then drove the blue van to an address in Clondalkin. The time of its departure from Heuston is not specified. While NSU operatives did not see what occurred at that address, and the report does not speculate, it is highly likely that the weapons used later that day were being stored there, and that they were collected and brought back to Heuston Station in the blue van. It is not necessary to decide whether or not Mr. McAlister was there. What is significant is that the weapons were not seen by any of the surveillance team who followed the van.

17. NSU-DS-04's evidence places the departure of the blue van from Heuston at just before 11am. He said that he heard on the radio that a van had moved at the station and he was about to leave the NSU office building when he saw Insp Patrick Nyhan. His Inspector joined him. They joined DS-04's unit at Heuston Station at around 11am. From Heuston, they followed the blue van to a housing estate in Clondalkin. DS-04 knew whose home Mr. MacLochlainn visited.

18. Insp Nyhan was unable to recall any of the events of the day without relying on his statement, made in 1998. He did not recall travelling to Wicklow or anything that occurred there. He did not recall the reason for the operation other than that the target was Pascal Burke and that there were two vans in Heuston Station. However, he testified that he was 99% sure that he was not present on the trip to Clondalkin with DS-04. Given that he did not recall anything else about

1st May, I am satisfied that DS-04 is correct in his recollection and I prefer his evidence to that of Insp Nyhan.

19. The ERU members generally did not recall knowing about the trip to Clondalkin. However, D/S Sears remembered that one of the vans moved out in the late morning and was away from Heuston Station for about half an hour. He said that, once the blue van moved, the operation escalated in importance and priority.

The First Flight

20. The Garda Air Support Unit (GASU) deployed an aircraft in support of the NSU at 12.15pm on 1st May. It seems that this occurred because Ronan MacLochlainn had driven one of the suspect vans from Heuston to Clondalkin and back again.

21. NSU-DG-17 was on the flight. He said that while the flight took off at 12.15pm, it was in preparation for at least half an hour. Its destination was the South City. DG-17 could not recall why this flight went up or where it went. He surmised that they may have gone up because the vans moved. I am satisfied that the blue van's trip to Clondalkin explains the deployment of the airplane that morning. Alternatively, it may be that the flight was redirected when already in the air and alerted to the van's trip to and from Clondalkin but either way, it is clear that the flight did not take off at 12.15pm in order to go to Wicklow.

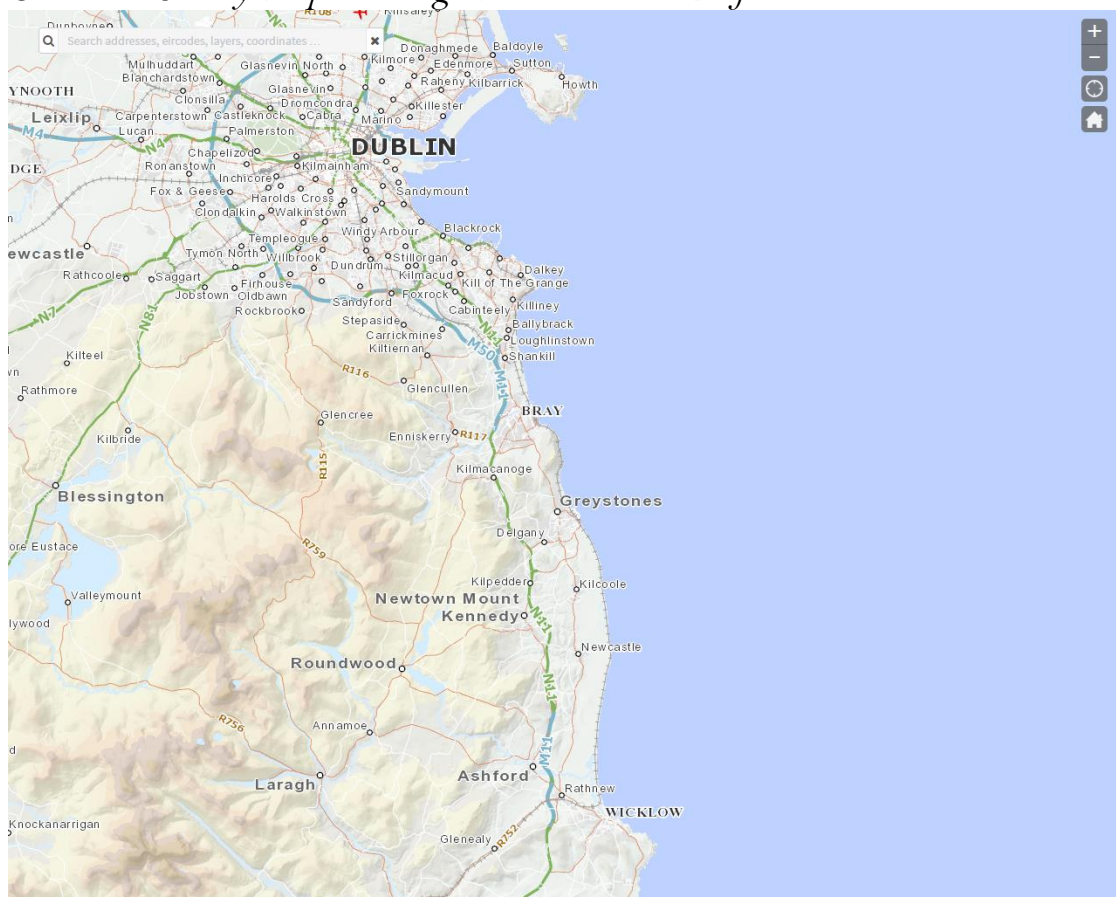
Mid-Afternoon – The Vans Move South

22. The white Daf was driven by Pascal Burke and left Heuston Station at 2.26pm. D/S Michael Shanahan of the NSU took a note of this time, which appeared in the statement he made in 1998, in Duty Report 495, and in the subsequent report of Supt Kelly. Pascal Burke initially told the Commission that he left Heuston Station for Cullenmore at 11am. However, he accepted that the vans were seen to leave after 2pm. He was not at the station long before he left; his only purpose in being at Heuston was to pick up the van.

23. From memory, D/S Shanahan thought that the Daf took a direct route by Kilmainham and along the canal, turning towards Donnybrook and then out the N11 to Wicklow. There, he thought it went as far as Rathnew and turned back into Ashford. Mr. Burke confirmed this as do Duty Report 495 and Supt Kelly's report. The general route can be identified on a map shown below.

24. At 2.30pm, Ronan MacLochlainn left Heuston Station in the blue Transit van. It, too, travelled south. This information was passed to NSU and ERU operatives. The blue van, having gone to a filling station at the Parnell Road, travelled towards the N11, and stopped at Donnybrook Church where Philip Forsyth and Saoirse Breatnach got in. Daniel McAlister was picked up further along the road, outside RTÉ. As he was getting into the van, he took some cones and signs that were near the bus stop. They were travelling to the intended location of the robbery earlier than they had done on 24th April, having missed the security van on that occasion. The traffic throughout the journey was very heavy.

Ordnance Survey Map showing N11: Dublin to Ashford



The Morning Shifts Stay Late

25. D/S Comiskey of the ERU became aware from NSU radio communications that the blue Transit van had moved. He knew then that the ERU were to become engaged in the operation and to go from standby to active. He followed the blue van. The ERU was not engaged in surveillance as they drove. They moved south as the van moved south, but at a distance so they would not blow the operation.

Many of them chose the coast road through Greystones, which again can be traced on the map, above. They were not close to the NSU vehicles or to the suspect van.

26. D/S Comiskey contacted Insp Hogan as soon as there was movement from the vans; it was normal practice to let him know if there was any movement at all. Insp Hogan and Supt Basil Walsh then became involved. As noted above, Supt Walsh described being in his office when he heard that there was an operation and decided to go with Insp Hogan. While there was no urgency apparent to Supt Walsh, they left immediately; D/S Sears was driving and Insp Hogan was on the radio. The ERU members who had been on duty that morning stayed on for the afternoon. There were other duties that day not involving Operation Morrison but once the target vans were moving, ERU members on other duties were detailed for this operation. Most did not know exactly how many operatives were engaged in monitoring the vans that day.

The Afternoon Shifts Start Early

27. Because the vans had started moving before the NSU's afternoon shift was due to start, there was no NSU parade or briefing – they were 'on the run'. Most of them were in vehicles on their own. They were sent south to support the teams who had left. For example:

- Insp Nyhan travelled in a car driven by NSU-DS-04;
- D/S Frank O'Neill received a call and was asked to attend urgently. He met NSU-DG-06 who told him there was movement. He did not know how many vehicles were involved. They were rather behind and were playing catch up for most of the journey south. DG-06 was driving, probably a red Passat. D/S O'Neill's team that day were DG-06, DG-43, DG-31, DG-10 and DG-16.
- Having followed the white Daf van, D/S Shanahan went to the Cullenmore Hotel, spending a few minutes there. He was travelling alone.
- D/S Johnston and DG-27, who were travelling together, were playing catch-up.
- D/G Peter Brien was in a red Laguna on his own, monitoring the white Daf van. He had the van in view for most of the trip south, having spotted it while still in Dublin.

- NSU-DG-02 and DG-35 were on the late shift. They were not usually paired for duty together. DG-02 was driving. They were not tasked to follow either van in particular.
- DG-08 travelled to Wicklow by himself.
- DG-11 travelled south alone. When she went into work the vans were already moving and she followed them by listening to the radio. She remembers it being a warm day and that she was in a car with no air-conditioning. She was pregnant at the time of these events.
- DG-13 was with DG-09. They did not have a line of sight to the vans, except intermittently on the N11 and in heavy traffic. They relied mainly on radio contact with the rest of the NSU.
- DG-22 saw the blue van stop in Donnybrook near the church. She saw two males get on board. She was with DG-04, who was driving.
- DG-26 and DG-03 were following the white van, DG-03 driving. DG-26 thinks they were on the afternoon shift.
- DG-30 was assigned to go on the Garda-issue motorbike. The target vans were already moving when he came on for duty and he followed his colleagues south.
- DG-32 was detailed to monitor the blue van. He was in a car on his own and followed when the van moved, using radio messages. He never had sight of the blue van.
- DG-36 also followed the blue van, travelling alone.
- DG-40 came on duty at 2 or 3pm and “*played catch up*”, heading south east after the vans and his colleagues. He heard radio messages as to where they were.
- DG-43 travelled to Wicklow by himself in an unmarked car.

28. There were radio communications about where the target vans were throughout the trip, but there was no ongoing briefing about where the NSU members were. NSU members did not transmit their exact locations over the radio. Some were stationary but a lot were moving because they did not want to draw attention to themselves by pulling in at the side of the road. Not everyone would stop if the target stopped; some would continue north and south, and one or two might turn back to see what was going on.

29. Most NSU witnesses said that, like the ERU, when they were setting out that day, they were not aware how many people were engaged in the operation, though they knew there was a late crew going out to join the early crew.

30. The evidence overwhelmingly supports the testimony of each individual operative that he did not know where the NSU was being led or what the suspects in the vans were doing. There was no organised briefing; individual members of the NSU were told broadly that the vans had moved. Most already knew that Pascal Burke was involved and that this might be connected with a subversive group. The relevant Duty Reports were available to all operatives. It is reasonable to conclude that some knew more than others in that it is likely that some were more diligent in their homework in this respect. Thus, some may have known about the removal of a bag from the car the previous week and other details.

31. Several ERU members were called into work early, at a time before the vans first moved south at 2.26pm. For instance, D/S John Gantly received a call from Supt Basil Walsh. He thought it was before 1pm that day. He met D/G James Ryan around Stephen's Green. They went in a jeep to Harcourt Square to pick up some gear. D/S Gantly's timing of this call at before 1pm is corroborated by the ERU Duty Roster, which tallies with his shift time in May 1998.

32. D/G Daniel O'Driscoll had been assigned to close protection duty at 3pm. He arrived at Harcourt Square earlier than scheduled. He was in the process of preparing for the escort when he met D/S Gantly and Insp Hogan in the corridor. That was probably at 2.20pm or 2.30pm. He was part of D/S Gantly's unit. He was told that an operation had '*obviously heated up a small bit*' and that more people were required, so they asked him to come with them. He grabbed his bullet-proof vest and his bag of equipment, which was constantly sitting ready. At that stage, the operation was going live. All he knew was that he would be going after vehicles that were, at that stage, heading in a southerly direction.

33. D/G Michael Walsh got an urgent phone call - he thought at around noon - and was asked to come in early. He was not told anything about the vehicles - details of an operation would never be discussed on such a phone call. Arrangements were constantly changing and eventually he was asked to meet his colleagues at a bus stop on the south-bound lane of the Stillorgan dual carriageway. He was collected in a jeep and they continued south, at a distance from the vans. D/G Walsh knew when he was collected in Stillorgan that they

were heading south because there was an operation on. There was an indication that there was a terrorist aspect to things but he did not know any detail about the vehicles involved or, if he did know, he does not recall them. He thinks he first discovered who the suspects might be when they were on the journey to Wicklow, or when they pulled in.

34. The evidence about who was in which ERU vehicle as they travelled south in the mid-afternoon was not entirely coherent. There was also some inconsistency about the exact time of departure. This is understandable, as this was not the most memorable part of the day, and many of them changed vehicles for subsequent legs of their journey. The combinations in which they travelled on the first leg of their journey are of little consequence. What is relevant is that they agreed that as they were travelling south, they knew the vans had travelled down the N11 and they were following but at a remove, most going via Greystones and avoiding the N11 completely.

35. The ERU stayed away from the route the vans were taking as they might more readily be identified as AGS and, if any of them were seen, this could reveal the surveillance operation to the suspects. Their role was not to monitor but to support the NSU. As was normal in operations like this, the unit members monitored communications on the radio channels and followed such directions as were given over the radio by their immediate superiors. The Sergeants were getting constant updates from their superiors in relation to what was happening. None put on his bullet proof vest at that stage and, while the operatives discussed what might be going on, they did not know any more than their colleagues in the NSU; indeed, they seem to have known considerably less, not having seen the NSU duty reports.

36. It was clear from the evidence given by the ERU members, and from their statements made in 1998, that they had no knowledge of where the suspect vans were going or when they were due to move. The ERU reacted to the movement of the vans and did not predict it. At all stages the ERU were behind the curve.

The Second Flight

37. NSU-DG-17 was in the aircraft. Having remained in the south city during the first flight it landed at 3.30pm to refuel and took off again at 3.55pm, this time flying south east. The height of the aircraft was such that he could not engage in surveillance of the vans as they moved south. He does recall seeing a blue dot moving but he was not able to specify whether it was a car or a van. It was moving on country

roads rather than on the dual-carriageway. His role was to assist in enhancing communications by acting as a repeater for the radio signals.

38. DG-17 was a memorable witness. He had never given evidence in any context before, and was not comfortable doing so. He was nonetheless articulate and did not appear to be inhibited from speaking or in any way reluctant to assist. Most strikingly, he laughed when asked about whether or not he could have seen one of the raiders in a ditch. He pointed out that he could barely see a van, let alone a person. While he could see the colour of a vehicle on a country road, it was almost impossible on the dual carriageway, and he could not follow a vehicle in traffic. He could not see anything around Cullenmore other than the shape of the bends in the road and a line of trees. He was too high to see anything else. Those in the aircraft were more likely to be keeping up by way of radio to the ground rather than by visually tracking a vehicle. Unlike a helicopter, an airplane cannot hover, so there was a constant orbiting and returning to the area. In those circumstances, events cannot be followed in the kind of narrative way which might assist an investigation.

39. A video was taken during the second flight, from the aircraft. DG-17 directed the camera man as to what to record - photography is done by a Garda member of GASU at the direction of the NSU member. DG-17 said he watched the video with Supt Kelly when he returned to the NSU offices that evening. The video contained no more than he could make out visually, which was very limited. He left the video with Supt Kelly.

40. The video is now missing. Efforts to locate it were unsuccessful. This is a matter of regret as it could have been of assistance to the Commission. This is further discussed in Section M, below. However, in light of the compelling evidence given by DG-17, I am satisfied that the video, had it been retained, could not have assisted in ascertaining what happened in the Cullenmore Bends.

The Carina leaves Dublin

41. Stephen Carney set off from Dublin, travelling alone in the Carina. He did not remember where he picked up the car; it might have been somewhere around James Street. This corresponds with what he said when he was first interviewed by AGS in 1998. He thought a shotgun with ammunition had been left in the car for him. He thought the cartridges were separate to the gun in the car and he later put one in the shotgun and the rest in his pocket. In 1998, he told AGS that the

gun was down between the driver's seat and the back seat in the grey net-type bag. He checked to see if it was loaded and it was not. There were 17 cartridges in the bag with the gun. He put the cartridges in his pocket. He said initially at interview that he had a good idea how to use the shotgun but he subsequently said that he had never used one before. He does not remember the route he took to Wicklow. He thought he had parked up in a shopping centre and got out of the car. There was a bus-stop across the road.

Radio Signals

42. It is clear from the evidence received by the Commission that, largely due to the landscape in the area, there were multiple radio blackspots and not all NSU members were able to receive radio communications at all times on 1st May. For example, NSU-DG-26, who was in Killiskey monitoring the white Daf van, had no recollection of hearing radio communications about what was happening below. On his way to Wicklow, D/S Johnston was only getting snippets of information. Once they were outside Dublin radio signals were not good and the radios moved to "back to back" communication whereby each radio acted as its own repeater. This effectively meant that they were only transmitting to those within about half a mile of their location. Further, if 20 people or more were trying to use the radios in one area, they cut one another out causing a communications deficit. There is a different communication system in place now.

43. The use of mobile phones had yet to become widespread in Ireland in 1998. Some members of AGS had analogue mobile phones at the time, but anyone could listen to it if they had a scanner and, indeed, one of the items found at the scene after the attempted robbery was a scanner. Mobile phones, while less secure, were more reliable than the radio in the countryside, depending on whether or not there were masts nearby for phone coverage. Insp Patrick Nyhan usually communicated with his immediate superior, Supt Kelly, by phone, though he did not remember doing so on 1st May. Supt Kelly recalled being in phone contact with Supt Basil Walsh, specifically. They discussed likely scenarios before the incident occurred.

44. As for the ERU, D/G Ryan said they kept their communications to a minimum to ensure they could hear what information was coming through from the NSU. He was able to travel parallel to the target vans by reference to the locations that were mentioned in the NSU communications. He said the ERU were constantly monitoring the radio, trying to pre-empt where the targets were going next. Echoing

the evidence given by D/S Johnston, he said the system used at that time was good when members were in close proximity to each other, but the quality depended on the terrain and distance. If the units were operating in hilly or mountainous areas, the quality of the communications was affected.

Late Afternoon - The Vans Stop in the Bends

45. NSU Duty Report 495, which outlines the observations made by the NSU on 1st May, described the departure of the blue Transit and white Daf vans from Heuston. It outlines how the blue van collected two males at Donnybrook and it continues as follows:

“The [blue] van then continued via the Bray by-pass to Rathnew village where it turned and drove back to Ashford and parked in the car park of the Ashford House Hotel. At 16:20 it went to the lay-by and joined the White Van. At 16:36 both vans left the lay-by and drove back in the direction of Dublin. As they drove in convoy the White Van, with one male driver on board, stopped briefly at the entrance to a small lane on the left hand side of the road approximately 600 yards on the Ashford side of the Cullenmore Hotel. It then continued past the hotel and took the next minor road to the left. As it travelled along this road it met M/Car 94-D-2083, Beige Carina. Both vehicles stopped briefly beside each other. The White Van then continued along this road for about one mile and parked up. When the Blue Van got to the point on the road where the White Van had stopped it pulled in at a right angle to the main road with the front of the van towards the ditch”

46. All the raiders and the NSU operatives confirm the broad outline of what occurred during that period, though some details differ. What is referred to above as a beige Carina was referred to by most witnesses as the gold Carina, and the place where the white van parked up was Killiskey.

What the Raiders Did

47. By late afternoon, there were about 40 members of AGS in the general Ashford area, both NSU and ERU. The white Daf van drove through the Bends and on to Rathnew before driving back through Ashford. D/G Peter Brien was going south into Rathnew when he met the white Daf van coming back towards Dublin. He recognised the driver as Pascal Burke. He turned in Rathnew and followed the van's path. He then passed the van, as it had stopped on the left side of the road in a lay-by. He transmitted messages of what he had seen by radio to the NSU team. He drove on towards Dublin, leaving the area for a

time, as he did not want to be recognised. He had to keep driving and could not pull in, as that would make him very noticeable.

48. The blue Transit van arrived from the Dublin direction and pulled into the same lay-by. Both vans stopped there for a short while. The raiders had arrived early that day, having missed the van the previous week.

49. The vans then continued on towards Ashford. NSU-DS-04 had been following the blue Transit van and continued with it, watching as it parked in Ashford briefly and then left. DS-04 noted the time it left Ashford as 16.30 and he followed shortly afterwards, leaving Ashford at 16.38 and driving towards the Bends.

50. The white van travelled a short distance towards the Bends and then stopped, just for a couple of seconds. Nobody got out. The blue van stayed just behind where the white van had stopped. The traffic had to stop behind them. The white van pulled away while the blue van stayed in the Bends. It looked as if the driver of the white van (Mr. Burke) was showing the driver of the blue van (Mr. MacLochlainn) where to pull in.

51. NSU-DG-03 continued after the white van, which went past the Cullenmore Hotel and then took a left. DG-03 watched the white van travel 20 yards and pull into the left-hand side behind a gold coloured Carina car. This was the first NSU sighting of that Carina. NSU members said that they saw Pascal Burke getting out and speaking to the driver of the Carina, though Mr. Burke denies that this happened. DG-03 called out over the radio that there was a gold Carina associated with the vans. Both vehicles took off in the same direction. They went up the road as far as a T-junction, both turned left. The Carina was leading at that stage. Mr. Burke parked the white van in a gateway to Killiskey, while the Carina continued on. The raiders claimed that the plan was that the Daf van would not move; the raiders would cross the fields on foot, and Mr. Burke would drive them away.

52. Mr. MacLochlainn had stopped the blue Transit in the Bends. DG-03 noted the time as 4.37 pm. The raiders say that, at that time, the weapons were removed from a bag. Three men got out of the van. The traffic cones and a road sign were also removed. Ronan MacLochlainn was in the driver's seat of the van watching the road. One of the raiders who had been in the back of the blue Transit van went to Stephen Carney in the car up the laneway. There is conflicting evidence about

who, if anyone, gave a weapon to Mr. Carney. It is not necessary to decide who it was, as it is not relevant to any issue in the investigation.

53. NSU-DS-04, who had stopped at the Cullenmore Hotel, knew where the white van was as he was receiving these messages on the radio. After initial radio messages that the vans were parked, the NSU messages were very short and probably something like "no change".

54. The raiders were wearing boiler-suits and gloves and they all had balaclavas, though rolled up into hats at that point. One or two of the raiders were wearing yellow bibs. There was a sign beside the blue Transit van that read, "Road Narrows". The raiders say the purpose of the traffic sign and cones was to make it look like they were council workers. According to the raiders, Ronan MacLochlainn was to cover the north end and Mr. Carney the south. Mr. McAlister had the dummy RPG7 rocket launcher. Saoirse Breatnach had the AKM assault rifle. Philip Forsyth had a lump hammer. Ronan MacLochlainn had a revolver. Stephen Carney had a sawn-off, pump-action shotgun. There was also a cutting saw.

55. The raiders had heard at that stage that the Securicor van was on the way. Stephen Carney says he beeped his horn as an alert, though Pascal Burke says that this was not the agreed warning, but did not elaborate further. The raiders were probably alerted by local scouts who were also involved in the raid but never identified. Mr. Carney reversed the Carina up the laneway. They knew they had less than ten minutes before the arrival of the Securicor van.

56. D/G Peter Brien drove back through the bends from the Dublin direction at around this time, which he thought was 4.50pm. He had heard the earlier messages about communication between the vans. He saw the blue van parked on his right, nose into the ditch and tail on the road. He saw a man taking a tool out of the van, which he later realised was an angle grinder. The man was on the inside of the van, by the ditch, looking at the traffic. There were road signs at the van, the kind of signs one would commonly see for council roadworks, and possibly road cones, though he knew they were not genuine workers. It was a two-lane road and quite wide but any traffic coming north, towards Dublin, had to veer over the white line on the road to get by them. Traffic was bumper to bumper. D/G Brien assumed that the cutting saw was cover, to make the men look like workers. He drove on and saw the Carina parked up a lane to his right. He saw that there was a driver in the car as the brake light was on, holding the car on the incline, and there was a man leaning in the window talking to the driver. The

second man was wearing a bomber jacket and a black woolly hat. He did not recognise either man.

Hunter's Hotel Car Park

57. While the NSU were monitoring the movements of the vans and the Carina in and around the Cullenmore Bends, at Ashford and in Killiskey, the ERU members gathered in the car park of Hunter's Hotel, a couple of miles to the east of the Bends. Hunter's Hotel was "*a good safe place*", a discreet place with a concealed entrance area, about 2 miles on the coastal side of Ashford. All 13 members gathered there and assembled. They stopped there for about 10 or 15 minutes. While they were there, they heard that the two vans were in Ashford.

58. Supt Basil Walsh rang Inspector John Castles, who was attached to Wicklow Garda Station, to ask if there were any wealthy farmers in the area who might be targeted if this was a kidnapping. Insp Castles replied that there were "*loads of them*". Supt Walsh commented that it did not enter the head of any person there that the gang might rob a vehicle on the road because they were not yet aware of the security van's approach. Insp Castles added that he and Supt Walsh had been involved in a couple of kidnapping incidents in the Bray or Greystones area so they were both thinking along those lines. It coloured his view at the time. Further, he would not anticipate vans being used as getaway vehicles, and the Killiskey area, where the second van stopped, was off the beaten track, so robbery was not something either Supt Walsh or Insp Castles anticipated. While there was no discussion between the two men about training camps or explosives, this is not surprising as Insp Castles had been contacted specifically for local knowledge regarding a potential kidnapping and not for his advice generally. The view was taken that there were simply too many potential targets for a kidnapping and it was not possible to select any one as the most likely target, or to take any immediate action based on that theory alone.

59. The discussion at Hunter's involved Supt Basil Walsh, Insp Patrick Hogan, and D/Sergeants John Gantly, Pádraig Sears and Patrick Comiskey. The group explored the theory that the suspects were collecting a bomb, maybe for Northern Ireland. They discussed the fact that the suspects had two vans, which were not high-speed getaway cars such one might use for a robbery. They noted that two vans could carry 2-3 tonnes of explosives. Added to this was the fact that it was Blue Flu day, so the suspects could travel to the Border without meeting a guard, and the group thought the movement of explosives was a likely plan. Insp Hogan had been involved in two

separate operations within the previous weeks that involved explosives and members of the same terrorist group.

60. The evidence was that this was “*a very tense time*” for the ERU because nobody really knew what was happening. They were depending on the NSU to provide information to them over the radio about what was happening and how the operation was developing. As time went on, they learned that a van had stopped in the Cullenmore Bends but nobody realised why it was there. They did not know if the men in the vans were armed because they had not seen any guns and they would not take it for granted that anybody was armed until they knew that they definitely were. From the radio, Insp Hogan also knew that members of the NSU were nearer the Cullenmore Bends than any members of the ERU.

61. The ERU’s insistence that it was focussing on kidnappings and explosives offences at this point, rather than on a robbery, was queried on the basis that Insp Hogan wrote a report on 4th May saying:

“From information in our possession we were aware that five or six members of a paramilitary unit were in the area of Ashford. It was not clear at the outset what they were doing, however it was believed that a robbery or kidnapping was to take place.”

62. Supt Kelly’s report after the event also stated that robbery was one of the potential offences contemplated, and it noted that the RIRA was known to be low on funds. However, the evidence has overwhelmingly been that robbery was not discussed by the ERU at Hunter’s, and each and every ERU witness strongly refuted the proposition that robbery either was or ought to have been foremost in their minds. I accept this and think it more likely to be correct than that Insp Hogan alone predicted a robbery on the day and kept this information to himself until writing a report afterwards. Not every witness remembers what occurred at the hotel car park, and one does not remember being there at all, but the majority of the ERU remember not only the surroundings, but also agree on the content of the conversations that occurred there. All agreed that it was not expected or imagined that there was going to be an armed robbery or that the suspects were going to hijack a Securicor van. There was talk of tiger kidnappings and it was mentioned that the van could have had a family in it, but robbery was not mentioned.

63. The ERU reacted when they learned that the suspects put out road signs. They knew that something was up and they could not sit at

Hunter's anymore; it did not make sense, tactically. They had all their eggs in one basket and had to make a move. Insp Hogan conferred with the D/Sergeants. They took out a map and looked at it. D/G Derek Duffin had local knowledge and suggested that he could bring himself and another unit to work the other side of the location of the van, as they were all on one side of the stopped vehicle. Insp Hogan took the decision to divide the teams up and send them in opposite directions, ensuring there was a jeep at both ends of the potential scene to stop vehicles if necessary. That was the best tactical decision they could devise. They also decided to move the southern team closer to Ashford. As D/G Harrington commented, the two ERU teams would work together and would be aware of their respective roles from training and operational experience. D/S Gantly said that the main thing to do was to contain these people, whatever they were going to do.

64. Most of the ERU got their kit ready while at Hunter's Hotel car park. They put on ballistic jackets and awaited instruction about their next move. They were not instructed to put on their gear; they just did. The atmosphere among the ERU members was quiet. There was normally a sense of focus in those situations. There was a quick briefing for the garda rank members. They were told that the suspect group had stopped on a series of bends, and the ERU leaders were not sure of what was going to happen. They were told that the team was going to be split into two groups, one going north of where the suspects had stopped and the other going south.

65. D/G Daly was trained in first aid so he made sure he had his first aid kit. The normal course of events in a situation where he did not know what was ahead was to make sure he was fully equipped with his firearm, ammunition and anything else he might need. He would try to prepare for every possible scenario. He had a Sig pistol. Because he was the driver he did not have any other weapon; that would be too complicated. He put on his bullet-proof vest and rang his wife; that was unusual on an operation like this, but he knew things were "*getting very serious*" at that particular stage.

66. Of those going north, Insp Hogan chose people who were familiar with the area and knew the back roads on the eastern side of the main road that could get them north of the Cullenmore Hotel. D/G McCabe was told to go in a northerly direction in the jeep with D/G Duffin and to lead from the front. He was told to head north of the Cullenmore Hotel. D/Gardaí Lyons and O'Driscoll travelled behind them in another car. They would be able to prevent a getaway to the north, and if they received an instruction to block the road they could confront or

interdict, depending on the circumstances. Three vehicles went south, including Insp Hogan himself. D/G McCabe and D/G Harrington both said that, apart from his being sent north and south, the plan was not specific.

67. As soon as the discussion was over and the plan to split up had been made, the ERU moved straightaway. As they left Hunter's Hotel, the men were aware that the blue Transit van and the Carina were in place in the Cullenmore Bends, and most knew that the white Daf van had stopped close by, but out of sight of the Bends. At that point this was still a surveillance operation.

ERU, North of the Cullenmore

68. D/G Duffin had good knowledge of the area and knew how to circumnavigate the main road to avoid compromising the operation. He was with D/G McCabe, who was driving an Isuzu jeep. D/Garda Lyons was in the second car, a grey Opel Vectra. D/G O'Driscoll was driving. These teams had to assess the position themselves once they got north of the scene. They were told not to encroach and to be wary of whatever was going on, because the suspects may have had other cars out there as spotters, watching out for guards and so forth. The two vehicles travelled on the main road and at one stage they pulled in to the left-hand side and stopped for a while, trying to monitor communications. They were probably there for a couple of minutes. They were waiting to see how matters progressed to see if it became apparent what was going to happen. They were also waiting for more information, in order to decide if it had become necessary to intervene. They arrived at a position north of the Cullenmore Hotel. It was somewhere in the vicinity of a junction that brought them back on to the N11. They could not recall how long they remained at their position but it was no longer than half an hour or an hour.

69. D/G O'Driscoll was told by D/S Gantly to travel south if anything happened. They could either block the suspects as they left, or move in to intervene at the location. They would be better placed, tactically, to deal with a roadway incident in that way.

The Glanbia Co-op Car Park, South of the Scene

70. Insp Hogan and Supt Basil Walsh had arrived at Hunter's in one of their own cars; there, they asked D/S Sears to join them and take up as the driver of that car. Three ERU vehicles went south – the jeep, containing D/G James Ryan (the driver), D/S Gantly and D/Gardaí

Mick Walsh and Martin Harrington; a car containing D/S Comiskey and D/G Daly; and the car now being driven by D/S Sears.

71. The jeep led the ERU vehicles at all stages. They travelled in convoy into Ashford village and then congregated in an agricultural yard. The yard was south of the Bends and north of Ashford and was on the left-hand side of the road when travelling from Ashford towards Dublin. The yard was large enough for 40-ft trucks to turn inside it with a very wide gate to allow trucks to enter. This premises was referred to by most witnesses as the *Glanbia Co-op*. One witness described it as being close in size to a football pitch. The ERU members in the car park could see the main road through the exit gate.

72. D/G Ryan said he arrived at the co-op yard at around 4.45pm. Inside the yard, the ERU vehicles were positioned well back from the road; they were certainly not close to the roadway. There was no wall, but there was a fence between the yard and the main road, and there was farm equipment in the yard. It was Friday evening so the co-op was open and members of the public were there too. D/Garda Daly remembers seeing pallets of fertilizer at the gate. He parked up behind them because they offered him cover. He went about double-checking that, as a driver, he had everything ready and had all necessary equipment at the ready so he could put his hands on everything in an instant. He always did this even though *“it could ... just as easily have petered out, like other operations had previously”*.

73. It was a remarkable feature of the evidence heard by the Commission that there were four NSU vehicles in the co-op yard carrying seven NSU operatives, which the ERU appear to have completely missed. Moreover, the NSU do not seem to have been aware of each other's presence in the yard. For example, D/S Shanahan of the NSU was in the yard; he was in a car on his own. He noted a black jeep there, which he took to be an ERU vehicle, though he could not say who was in it. He saw other vehicles but presumed they were civilians. The place was in operation and people were going about their normal business. He did not see anyone else from the NSU. If there were other AGS vehicles there, he did not notice them. However, his NSU colleagues D/S Frank O'Neill and his driver DG-06 were in the Glanbia co-op yard as well, as was DG-40, who was in a separate vehicle. Like D/S Shanahan, DG-40 saw the ERU there, but no other NSU vehicles. He did not get out of his car. D/S William Johnston of the NSU and his passenger DG-27 were also in the co-op yard in another car, as were DG-07 and DG-37 in a further car. A fifth NSU vehicle carrying an eighth NSU member - D/G Peter Brien - drove in to the co-op yard

some time later, again unseen by the ERU. The covert aspect of the operation was extremely effective.

74. D/G Ryan of the ERU was sure there were other vehicles in the yard but he did not see any of them because he was focused on his task. His ERU colleague D/S Sears does not recall seeing other vehicles, whether civilian or NSU. While he did not recall seeing any NSU vehicles, D/S Gantly suggested that, as he would have known them, they would not have aroused his suspicions so he would not have made a note of seeing them.

75. The ERU were in a position to monitor NSU radio communications in the yard; it was a beautiful day so the windows were down in the ERU vehicles. D/G Daly said he heard the NSU radio calls clearly. It was at this time that the ERU heard that a “road narrows” sign and some cones had been placed on the northbound side of the N11, to the south of where the blue van was parked in a layby in the Bends, a short distance south of the Cullenmore Hotel. D/S Gantly considered that this was just cover for the men, because they were parked up.

76. Supt Walsh remembered Insp Patrick Hogan talking to other ERU members in the yard while Supt Walsh stood on his own. Insp Hogan also recalled this conversation. He said that, as the blue van was now stopped and setting up road signs at the south and the Carina was in a lane at the north of the bends, the ERU went into overdrive. Other members recall him consulting a map on the bonnet of his car at this point. The ERU were still discussing scenarios including the collection of explosives, or the possibility that the suspects were waiting to meet somebody to go to a remote farm to mix explosives. Robbery was not mentioned. D/Sergeants Gantly, Sears and Comiskey were out of their cars and talking to Insp Hogan and Supt Walsh about these theories. The vehicles were parked close together.

77. D/S Gantly said that the fact that the road was busy did not affect the explosives theory. He had seen subversives gather in public places where nobody noticed them. Here, they were on the side of the road in boiler suits and the ERU was still considering explosives because of the group involved. Previous operations involving the same people had all related to explosives. He did not think that the ‘road narrows’ signs indicated anything other than a cover. He did not agree that the boiler suits, cones and signs made it plain that the gang intended to interfere with traffic and commit a kidnapping or a robbery. He did not think of the possibility of the gang stopping traffic generally.

78. D/S Sears said that the theory that the suspects were collecting a bomb, perhaps for Northern Ireland, remained in their heads but that notion “*got knocked somewhat*” when the suspects stopped in the roadway. He knew at that stage that road signs and cones had been put out. He took this to be designed to give the gang cover for whatever their enterprise was, to give the appearance of being Council workers so people driving by would not give a second look at whoever was coming up to them or whatever they were going to do on the side of the road.

79. D/S Sears said that when a Carina joined the vans, the ERU started to get “*really anxious*” because they did not know how many players the suspects had versus the ERU’s numbers, and they did not know what kind of arms they might have brought into the scene or what the ERU were facing in to; that was a big concern. D/S Sears then got dressed in protective equipment or gear and put on a bullet-proof vest. He said that, “*as soon as [the suspects] showed intent, as soon as they moved into the side of the road, and the third car was with them, it was time to put on the bulletproof vests then*”. He did so for his own safety because, based on the information he had at the time, he anticipated that there would be firearms deployed by the raiders. He was asked whether the activities of the raiders had led him to think it was now a hijack or an assassination. He replied, “*Did we know what they were doing at that stage? No. Could it still have been a bomb? It could.*” He said there could have been someone coming south to team up with the raiders to transfer something over; the ERU did not know.

80. D/S Gantly also said he did not know that this gang was armed. He had been on many operations involving IRA members who were not armed. He referred to operations where they might have a 1000-pound bomb, but no weapons. However, while the ERU did not know if the subversives were armed or what they were going to do, members of the unit accepted that, because of who they were, one had to keep in mind that they might be armed.

81. D/G Ryan was out of the jeep; he and the other D/Gardaí had a general discussion about what was likely to happen. They were talking amongst themselves rather than with the D/Sergeants, who were a number of metres away. They were thinking about the targets’ previous activities, thinking back over a number of months. It is apparent that the conversation between the D/Gardaí was separate and distinct from the Inspector and D/Sergeants’ conversation.

82. A list compiled after the event, when weapons were surrendered to the Ballistics Section, indicates that the ERU had signed out three

shotguns, two Uzis, and one rifle. Each of them also had his personal issue pistol. D/S Comiskey recalls being armed with a Benelli pump-action shotgun and his pistol. According to the list, an Uzi had been signed out to D/G Duffin, but he said that, as he was driving, it was impractical to have such a weapon and he did not use it on the day. He did have a shotgun, though the same list does not assign one to him.

A lane North of the Scene

83. NSU-DG-32 heard on the radio that the blue van had pulled in north of Ashford. NSU-DG-41, NSU-DS-06 and he, all travelling separately in their own cars, pulled into the same lane. This was to avoid being spotted and to wait and see how things developed. He did not recall if it was north or south of the Cullenmore Hotel but said that if you were travelling south on the main road, it was a narrow road on the left. The blue Transit van was south of his location.

84. DS-06 was in a Mazda 323 GLX saloon and DG-41 was probably in a red Seat Cordoba. DG-32 does not recall what he was driving. He and DG-41 did not recall any other car being there, although it is clear that NSU-DG-36 was farther up in the same lane, having driven past his colleagues so as not to draw any attention to them by creating a bigger pool of cars. All of these NSU operatives were aware via radio messages that the blue van had stopped and that road signs had been taken out of the back of the van.

85. Unfortunately, it has been impossible to identify this lane. DG-41 assisted the Commission by viewing maps and by travelling to the scene to try to retrace his steps, but he was unable to locate the lane. The Commission also travelled to the locus. A motorway has been built alongside the N11 and a service station has been built on the location of the old Cullenmore Hotel with various access routes. The surrounding landscape, other than the Cullenmore Bends themselves, has changed completely since 1998. It may be that the lane no longer exists, or its route from the Bends has been blocked or altered.

The Cullenmore Hotel

86. Insp Patrick Nyhan and NSU-DS-04, who were travelling together, had followed the blue Transit van north from Ashford. The blue Transit had left Ashford at 4.30pm and they drove up the Dublin road after it at 4.38pm. They passed the blue Transit van, which had parked on the left hand side of the road. They saw a 'Road Narrows' sign on the road at the rear of the van and they saw a man in a yellow fluorescent jacket standing at the side door of the van. He appeared to

be taking something out of the van. DS-04 said that until then, there was nothing to arrest the men for but he knew then that they were going to do something.

87. Insp Nyhan and DS-04 drove past the blue van and stopped at the Cullenmore Hotel. DS-04 estimates that this was at about 4.42pm. Insp Nyhan cannot remember if he was behind, in front of or beside the hotel. He recalls a lot of cross-talk on the radio but not what was said, except that the vans had stopped. DS-04 said he and the Inspector stopped just inside the Cullenmore Hotel car park entrance on the right-hand side as one drove into hotel. Their car was facing out towards the road.

88. NSU-DG-11 met Insp Nyhan at the Cullenmore Hotel. She described things as being calm. Insp Nyhan told her that they did not know what was happening. She got no sense of urgency or danger. She believes that she was told at that stage that the blue Transit van had parked at the bends. She was instructed to go to Ashford. She saw the blue van as she drove by. She recalls a sign being put out. She did not see anything suspicious.

89. NSU-DS-04 said that, after he and Insp Nyhan had passed the blue van on the side of the road and saw road signs and the activity near the van, there was a sense of urgency. No orders were given by Insp Nyhan but there was communication within the NSU to the effect that the suspects were getting ready for something. DS-04 said that *"everybody would have gone on high alert after that message went out"*. The plan was to intercept, but time did not allow for this. That proposition is discussed in greater detail in Section K of this report.

Killiskey

90. Killiskey is a rural area only five or 10 minutes' drive from the Cullenmore Bends. While it is on higher ground than the N11, the location of the attempted robbery at the Bends is not visible from there. NSU-DG-26 and NSU-DG-03, who were travelling together, followed the white Daf van to Killiskey. DG-03 described how the white van communicated with the blue van on the N11 and then turned left towards Killiskey. After turning left, the white van communicated with the Carina. Both vehicles then continued on. DG-03 saw the Carina lead the way, followed by the white Daf van, which also turned left at the same T-junction. The van travelled to a gateway in Killiskey, where it parked. Pascal Burke said that he drove there as soon as he knew the Securicor van was on the way. His role was to wait; the others would come to him after the robbery. He had a walkie-talkie but said it did not

work. The others had walkie-talkies, too. He had a phone; the others may have done also.

91. NSU-DG-03 took up foot surveillance at this stage, while DG-26 remained in their car. DG-03 had sight of the front of the white van and he could just make out a silhouette in the van. NSU-DG-08 was also involved in monitoring this van, changing his position occasionally so his NSU vehicle would not be noticed. DG-03 knew that DG-08 was somewhere in the vicinity and he knew that NSU-DG-09 was also monitoring the white Daf. DG-09 was travelling with NSU-DG-13; they were further away from the white van than the others.

92. Pascal Burke and the NSU operatives in Killiskey had no view or vantage point on the main road. They were completely blocked off from it. A hill rose between them and the main road.

The Securicor Van is Spotted

93. Stephen Carney says that he had driven the Carina into a shopping centre, waiting to see the Securicor van. In fact, its earlier stop was in Rathnew, at a petrol station. It stopped there at 4.50pm or thereabouts, and spent about ten to 15 minutes at the station. Once he saw it arrive, Mr. Carney knew the Securicor van was doing its usual route and knew how long it would take to reach the Cullenmore Bends. He then drove straight to the Bends. It is highly likely that there were other spotters in the area to alert the raiders waiting in the Bends as to the progress of the Securicor van.

94. The Securicor employees were delayed a little in Rathnew. Having spent about 15 minutes there, they continued on their journey. They both said in their statements in 1998 that they had looked at their watches when they left Rathnew; it was just after 5pm. Their next stop was to be at Druids Glen golf club. They were carrying almost IR£284,000 in cash and cheques. While they were vigilant, the Securicor employees did not see anything suspicious on their journey. They continued on through Ashford. They saw nothing there to cause them concern. As they continued on the N11 towards Dublin they were behind a black Orion, which was travelling a bit slowly. It was the Friday of a bank holiday weekend and traffic was 'busy enough'. The driver of the Securicor van said he was travelling in third or fourth gear, at speeds of up to 40 mph. Others estimated the speed of the traffic in this direction as being about 30 mph.

95. NSU-DG-11 was in Ashford. She had bought a choc ice and she was eating it in her car but she did not have time to finish it because she saw the Securicor van go past and she said to herself, “*Jesus, this could be it.*” She noticed that the Securicor van had no Garda escort. She immediately and repeatedly sent out the message that she had seen a cash-in-transit van with no Garda escort. She was very concerned that the message was not getting through until she got a reply from D/G Peter Brien, who was at that time in the Glanbia co-op yard.

96. This was not an organisational failure, but a failure in communications due to the terrain and the technology available at the time. DG-11 did all that anyone could have done in the circumstances, by following the van and transmitting the radio message repeatedly. There is no way in which garda management could have assisted this officer in transmitting the message more quickly or more widely, given the limitations of the technology available at the time.

97. The Securicor van continued on towards the Cullenmore Bends, with DG-11 following behind. By this time it was passing the Glanbia co-op, it was between 5.05pm and 5.08pm. Members of the NSU and ERU in the Glanbia co-op saw the Securicor van going by and identified it as a likely target. They had not known that the Securicor van was approaching until then; DG-11’s message had not come through. D/S Shanahan’s evidence painted a vivid picture of D/G Peter Brien driving into the yard, relaying DG-11’s radio message about the Securicor van, even as D/S Shanahan watched the van itself passing the entrance.

98. D/S Sears summed up the timing of these events. He said:-

“That van was identified coming into Ashford and it came out on the radio at the very same time as I was looking at it myself. I remember that. It isn’t a matter that we were in Ashford and the van was spotted five minutes away and we had five minutes. We hadn’t. The van ... was actually on top of us when the message was coming out that there is a van in Ashford and it is heading towards the target area”.

99. At the same moment, Supt Basil Walsh, who was standing near the entrance to the co-op, saw the Securicor van passing and said “*That’s it, that has to be it*”. D/G Michael Walsh described hearing the Superintendent saying “*Securicor van*” repeatedly, as he watched it go by. Some of the ERU moved position in the yard so as not to be seen, because if the Securicor van was the target, the suspects would have scouts watching the van. This was described as a “eureka moment” and

appeared to be the moment when most of those present in the Glanbia co-op yard realised what was going on.

Timeline

100. It is worth pausing for a moment to summarise the events leading up to the spotting of the Securicor van and the speed at which those events took place. It came as no surprise to the Commission that after 17 years, many witnesses have a memory of key events but little, if any, recollection of the precise times at which those events occurred. The timing of some key events was, however, recorded in a number of contemporaneous documents received by the Commission, including Duty Report 495, which was typed up on 5th May 1998; a report prepared by Insp Hogan on 4th May 1998; a report prepared by Supt Kelly on 2nd June 1998, and a number of statements made by some of those who were present on the day, for the purpose of the 1998 investigation. These documents are of some assistance. While the evidence was not entirely consistent on each point, what follows is the Commission's best estimation of the timing of the key events, having regard to the contemporaneous documents and the evidence received:-

- 11am Trip to Clondalkin
- 12.15pm First flight takes off and flies over the south city
- 2.26pm White Daf van leaves Heuston
- 2.30pm Blue Transit van leaves Heuston
- 3.12pm Blue van collects two males in Donnybrook
- 3.30pm Second flight takes off and flies to the south east
- 3.55pm Blue Transit passes Cullenmore Hotel going south
- 4.20pm White and blue vans stop together momentarily
Blue van moves south to Ashford, white van remains
- 4.30pm Blue van leaves Ashford, heads north, rejoins white van
- 4.36pm Both vans leave the layby and drive north
- 4.45pm Securicor van stops in Rathnew for 15 minutes
Carina leaves Rathnew, heads north
Blue van parks in layby on Bends, 45° angle
Traffic cones & 'Road Narrows' sign taken out of van
Man in fluorescent jacket seen beside blue van

- White van moved on to Killiskey
- Interaction between Carina and white van noted
- 4.50pm Man in wool cap seen beside van with industrial grinder
Carina seen parked up the laneway
ERU arrive at positions north and south
- 5pm+ Securicor van leaves Rathnew
NSU-DG-11 and DG-35 see it pass through Ashford
- 5.08pm Securicor van passes co-op.

101. What happened next is described in great detail below. It was all over within a matter of minutes, perhaps as few as *four minutes*. The statements made in 1998 indicate that, at 5.12pm, when various members of AGS drove into the scene, Ronan MacLochlainn had already been shot.

The Securicor Van is Followed

102. NSU-DG-11 left Ashford and travelled behind the Securicor van heading north on the N11.

103. NSU-DG-35 was in Ashford village when she heard a radio message – she thought from a male colleague, though it seems more likely that it was DG-11 – saying that there was a Securicor van heading north in the Dublin direction towards the location of the suspect vans. She saw the Securicor van passing by and decided to follow it. She pulled out in traffic three or four cars behind the Securicor van, which remained in her line of sight. It is not entirely clear if she was in front of her colleague DG-11 or behind but it seems likely they were in close proximity to one another, behind the Securicor van. DG-35 was the passenger in her car, and she focussed on trying to send out radio messages about the Securicor van.

104. As DG-11 approached the Glanbia co-op car park, she heard a response from her colleague D/G Peter Brien and saw him trying to pull out into the traffic ahead. She let him out in front of her and was relieved that he knew about the Securicor van. By the time he got out in traffic behind the Securicor van, there were up to 10 cars between D/G Brien and the van. He overtook when he could, although the roads had bad bends and it was hard to overtake. Traffic going north was heavy, but not as bad as the traffic going south.

105. D/S Shanahan had directed D/G Brien to follow the Securicor van. D/S Shanahan followed a moment later; he had stepped out of his car before he heard a relayed radio message from D/G Brien about the Securicor van. He did not see the Securicor van passing the co-op entrance and he never saw it ahead of him after pulling out in traffic on the N11. He was not directly behind D/G Brien; he said *"it wasn't just a matter of driving out, there was traffic"*.

106. D/S Shanahan and D/G Brien were not aware that anyone else was following the Securicor van. However, the sequence of events that followed suggests that there was at least one NSU vehicle ahead of them in the line of traffic behind the van; NSU-DG-35 was a passenger in that car, which was probably the foremost NSU vehicle. DG-02 was driving the vehicle but does not recall these events in many respects, and his evidence is discussed in more detail in Section I, below.

107. The Securicor van was nearly out of sight by the time the lead ERU vehicle, the jeep, forced its way into the traffic at Glanbia. D/G Ryan was driving the jeep; he was not trying to catch the Securicor van at that stage, as there was no guarantee that it was the target; he followed it in case it was. The other ERU vehicles followed him, in a convoy. D/S Comiskey and D/G Daly were directly behind the jeep in the second vehicle; Supt Walsh, Insp Hogan and D/S Sears were in the third vehicle. They were behind D/G Brien and the NSU cars driven by DG-02, DG-11 and D/S Shanahan were in the same line of traffic.

108. Of the remaining NSU members in the co-op yard, some left when they heard D/G Brien's relayed message, others after they saw the ERU leaving. The result was that most of those in the vicinity followed the van, the NSU to observe and the ERU to intervene if there was an attack on the van. This also meant that some of the NSU were directly behind the Securicor van. Most of the NSU operatives following could not see the van on the road. There was no order given to the NSU to leave their current location; the decision was spontaneous. Some did not know that the ERU had mobilised and were in front of, or (as in some cases) behind them.

109. While all of this was happening south of the suspect vehicles, the NSU's commanding officer Insp Patrick Nyhan was with NSU-DS-04 at the Cullenmore Hotel. As such, neither man was in immediate physical danger and could be expected to take a calm approach to the situation, in terms of taking control. Insp Nyhan said he did not issue any orders at that time and this was confirmed by NSU-DG-04.

110. As they came towards the Cullenmore Bends, the NSU operatives behind the Securicor van saw civilian traffic turning back against them. Passengers in those cars were trying to signal to oncoming cars to turn back by flashing their lights and waving at them.

111. The ERU members were not using sirens or lights so that they could still pull back. There were two roads to the left of the main road on the approach to the Bends that they could have used to slip away if the van was not the target. The ERU vehicles probably annoyed civilian drivers as they were bullish in their driving and cars were flashing at them. As they got closer, they could see the urgency of the flashing; it was as if the civilian drivers were warning them.

The Raid

112. The Securicor employees both gave vivid, memorable accounts of the attempted robbery. They described how, all of a sudden, the traffic stopped. The driver of the Securicor van, Mr. R, explained how he came around a bend and saw a man kneeling down beside a roadwork sign. He then saw a blue van on his left-hand side. As the black Orion car that had been travelling in front of the Securicor van was passing the blue van, that van did a 360° turn in the middle of the road ahead, blocking the onward passage of the Orion and of the Securicor van.

113. As the blue Transit van blocked the Securicor van from the north, Stephen Carney reversed the gold Carina down the hill to block the Securicor van from the south, trapping it in the middle. He swung his car on to the road quickly, trying to stop cars getting in the middle, but some traffic got through. He then got out of the Carina. He was wearing a balaclava and was armed with a loaded, sawn-off shotgun. He remained at the southern side of the Securicor van to manage the civilians and to stop anyone else getting into the area.

114. In order to understand what occurred next, it is helpful to have a picture of the civilian traffic now leaving, or trapped at, the scene. Much of the line of civilian traffic can be seen in the aerial shots taken from a helicopter about two hours after the event, as most civilians were instructed to leave their cars *in situ*. These are included in an Annex to this Report.

115. Moving south from the blue Transit van, in the northbound lane was a black Orion carrying a mother and daughter, Mary Ann L. and Liz L. Immediately behind them was the blue Securicor van. Breffne E. was directly behind the Securicor van, driving a silver Renault Savanna.

Behind him was Denis P., driving a beige Toyota Corolla. He had stopped quite tightly behind the Renault Savanna. Next in line in the northbound traffic was Eamonn C., who was driving in a navy/black Mazda. His colleague Gráinne M. was a passenger in his car. Behind them was Martin O. in a blue van, marked "ACE". The next car in line was the first of the NSU vehicles; this was the car driven by DG-02 in which DG-35 was a passenger. There was more traffic behind them, including several NSU and ERU vehicles.

116. Farther north in the Bends there was a line of traffic travelling south from the Cullenmore Hotel and stopped by the blockade. The blue Transit van pulled across the road, blocking the southbound carriageway such that they could not pass. The van stopped midway, on the centre line of the road. Some of these cars moved in time to get away before the raiders ran towards them. Most could not get out of the Bends. Michael S., his wife and their two sons were in the first car in this line, a green BMW. Behind this car were colleagues Pauline M. and Natasha M., who were travelling in a grey Nissan Sunny. Behind them was Michael H. in an English registered car. Next in line was a woman in a small red car, possibly a Seat Ibiza; she was travelling alone and has not been identified. Fifth in line was Tom B., who was driving a silver/grey Toyota Carina. After him were Fionnuala M. and Stephen D., with the latter driving, in a red Ford Sierra. Behind them, Patrick and Dorcas O'N., who were husband and wife, were travelling southward in a green Mazda 323F (95-D-16466). Mr. O'N. was driving.

117. Next was Ms. G., travelling southward in a white Mitsubishi Space Wagon with five children who were in her care. Her colleague, Alice M., was travelling behind them in a green Peugeot. Behind the Peugeot was a man in a jeep who managed to leave the scene. Next was Audrey D., in a green Toyota Starlet. After her was a white Hiace van with a roll of felt on its roof rack; this vehicle also left the scene and its three male occupants have not been identified. Behind the white van was a man driving an Opel Vectra.

The Securicor Van is Attacked

118. With Pascal Burke in place in Killiskey, and Stephen Carney guarding the southern end of the scene by his Carina, the other four men quickly exited the blue Transit van; all were wearing balaclavas, some were in boiler suits, others in dark clothing, Mr. McAlister was in a high-vis vest. Each of the four raiders who attacked the Securicor van had a weapon of sorts: Saoirse Breatnach an AKM assault rifle; Daniel McAlister a dummy RPG; Ronan MacLochlainn had a revolver; and Mr.

Forsyth a lump hammer and, subsequently, an angle grinder. A raider holding a handgun banged on the driver's window of the trapped black Orion and told Mary Ann L. and Liz L to get out of the car and into the ditch. They did so, crossing to the eastern side of the road and going through a gate into a field. This was probably Ronan MacLochlainn. He also waved his gun at the southbound traffic.

119. Michael S. initially thought the raiders' Transit van was being driven by council workers and he stopped. He then saw a man, probably Ronan MacLochlainn, wearing a balaclava and waving a gun at them. Michael H. (behind Michael S.) did a three-point turn, as did Pauline M. and the woman in the red car. Michael H. waved her car out first. As she passed them by heading for Dublin, the driver of the red car shouted warnings to those in vehicles which had stopped behind her to try to get out, as there was a raid or robbery ahead. Michael S. saw these manoeuvres behind him and followed suit. As he drove away, his wife rang 999 to report the incident.

120. After these cars had turned, Tom B. was left at or near the top of the southbound queue; he, too, began to turn his car. Behind him, Stephen D. and Fionnuala M. attempted to turn their car to get away from the raid but found that were effectively blocked in after Tom B.'s unsuccessful efforts to leave. They lay down in the car. Patrick O'N. also commenced a three-point turn in his green Mazda. Next in line, Ms. G. attempted to turn her SpaceWagon but was unable to do so and stopped at an angle on the road. Her colleague Alice M. managed to turn and drive back as far as the Cullenmore Hotel. Behind her, Audrey D. was unable to turn and put her head in her hands. The white Hiace van behind her turned and drove away towards Dublin. Next in line, James N. was unable to turn his car so he crouched down in the car.

121. As this was happening, the four raiders ran to and surrounded the Securicor van. Philip Forsyth went to the driver's side, with a con-saw and a lump hammer. Ronan MacLochlainn, still holding his handgun, and Saoirse Breatnach, holding an AKM assault rifle, went to the left-hand side and shouted at the Securicor employees to get out of the van. Their guns were pointed straight at the windows of the Securicor van. Daniel McAlister had an imitation rocket launcher, which he pointed at the Securicor van.

122. The Securicor employees tried to get out of the Securicor van but, after the passenger got into the 'bubble' (a section of the van which allowed the personnel to leave separately), the driver was locked into the van. He radioed to alert the company that the Securicor van was under

armed attack. There was a two-way radio system and a direct line to the Securicor base.

123. One of the raiders saw the Securicor driver giving out this message, so the driver dropped the radio. One attacker told him to get out of the van but he was trapped; the passenger had exited the van by that time, locking the driver in. He could not operate the door until it was re-operated from the outside. Daniel McAlister shouted, “*Open the door or I’ll blow the van into the ditch*”, or words to that effect.

124. Mr. McAlister pushed the Securicor passenger face down onto the ground and he was told not to move. Saoirse Breatnach pointed the AKM assault rifle at him. The raiders shouted at the two Securicor employees. One civilian witness described how the Securicor passenger was begging the man with the gun, who was shouting “*Open the fucking door, I’m going to blow his fucking head off*”. Philip Forsyth began beating the window with the lump hammer, and the con-saw was started. Meanwhile, Mr. McAlister pointed the replica rocket launcher at the Securicor driver.

125. Many of the civilians in the traffic behind the Securicor van could clearly see what was happening. Some could hear what was being shouted, including threats to kill the two Securicor men. Some saw the imitation rocket launcher and, thinking it was real, described it as terrifying. Most could see that every member of this gang was carrying a weapon of some description and some were able to identify the different firearms as handguns, a shotgun or a machine gun. The behaviour of the raiders was universally described by civilian witnesses as very aggressive. Those who were not immediately beside this attack either tried to turn their cars and leave, or crouched down and hid in their cars. Not only was this a shocking experience for the civilian witnesses at the time, but many of them were visibly shaken as they recalled the events of that day while giving evidence in 2015.

126. Meanwhile, at the southern end of the road where the Carina had blocked both lanes and all northbound traffic, Stephen Carney was pointing his shotgun at people, telling them to get back. There were civilian cars trapped between the Carina and the Securicor van. Breffne E. left his car and was making his way southward when he was told by Mr. Carney to “*get in the effing ditch or I’ll blow your head off*”, which he did. Denis P. remained in his car. He was unable to get onto the floor but lay across the front two seats of the car. Stephen Carney pointed his shotgun at Eamonn C.; he and Gráinne M. subsequently got out of their car and lay in the ditch. Stephen Carney also pointed his shotgun at

Martin O., telling him to get out of his van and to run. Martin O. ran up the laneway where the Carina had been parked but Mr. Carney stopped him. Martin O. came back and lay in the ditch.

127. NSU-DG-02 and DG-35 had been travelling in the foremost NSU vehicle behind the Securicor van. The Carina pulled out from a lane directly in front of them, coming between them and Martin O.'s blue 'ACE' van. Stephen Carney jumped out of the car and pointed a shotgun at the NSU vehicle, not realising that they were members of AGS. DG-35 got on the radio immediately to tell her colleagues what was happening. The radio was on the seat beside her and she tried to send the message both back to back and on the long range channel without picking up the radio so that it wouldn't be visible to the raider. She was in shock but got the message out that the raid had commenced. Her colleague, who was driving, did a U-turn and drove away.

Radio Signals

128. The ERU teams on the way to the scene and many of her NSU colleagues heard DG-35's radio message. ERU members recalled hearing that the blue Transit van had pulled across the road; this was a matter of minutes after they had seen the Securicor van pass by the co-op yard. Most recalled a female voice, using words to the effect that "*they are out*", meaning the suspects. D/G Walsh vividly recalls hearing over the radio, "*they are out, they are out*".

129. It was only then that the ERU knew "*with great certainty*" that this was a robbery. The ERU vehicles coming from the south then moved into the middle of the road, still in convoy but driving more aggressively to get to the scene as soon as possible. A number of cars flashed them, to warn them to turn back. Only tens of seconds passed from the time the message came through that the Securicor van had been blocked to the time the ERU arrived at the Bends.

130. The ERU team north of the scene had started to move when they heard a Securicor van had been spotted and their urgency increased when they heard the later messages from the Bends. Once the attack commenced, Insp Patrick Hogan issued a direction over the radio for the northern team to move. In fact, they had already moved but the southern ERU team did not know this for some time and there was some anxiety that the northern team was not getting the full picture as it took time to get an acknowledgement from them.

131. NSU-DG-40 was one of the last to leave the co-op yard. The ERU cars were gone. He also heard NSU-DG-35 saying, "*they are doing it*" and knew that the van was being robbed. He stopped his car short of the scene and got out. Wearing a garda tabard, he stopped traffic behind him driving up into the scene. This illustrates the limited time available to those in the car park at the Glanbia Co-op, between spotting the Securicor van and the attack in the Bends.

132. At Killiskey, radio communication was intermittent and not ideal. However, even the NSU members who were monitoring the white van at that location could follow what was going on. For example, DG-03, who was at Killiskey, recalls hearing something on the radio about the blue van putting some signs on the main road. He had also heard a radio message from D/G Peter Brien about a Securicor van coming through Ashford or approaching the scene. Those at Killiskey were therefore aware of the attempted robbery from listening to the radio. DG-13 was also at some remove from the Cullenmore Bends but he too became aware of a Securicor van at the scene in the Bends. He was aware that somebody had said on the radio that there was a person with an angle grinder at the rear of the van. The operatives at Killiskey continued to monitor the white van in which Pascal Burke was sitting. It did not move.

133. Supt Kelly, who was at Garda HQ in the Phoenix Park, said that he lost communications at around the time the NSU members were in Ashford. However, another NSU member at Garda HQ (who was not on duty in relation to this operation) overheard a radio message that there was a Securicor van heading from Ashford towards Bray.

134. Overall, the radio enabled reasonably good communications between the various members of AGS at the scene. The overall picture is of moderately good communications. The main barrier to contact was on occasions when too many members were giving out messages, for instance when the blue Transit van moved to block the road. However, the ERU knew from NSU radio messages that there was a hive of activity by the RIRA members around the blue van. Radio messages were continuous. The NSU and ERU knew within seconds that the attack had begun.

135. NSU commander Insp Patrick Nyhan, still at the Cullenmore Hotel, said he only knew a Securicor van had passed. He did not know what kind of incident had occurred and only found out when he went to the scene afterwards.

The NSU arrive from the South

136. Upon being unexpectedly confronted by an armed raider in the gold Carina, NSU-DG-35's car turned and drove south a short distance. D/G Peter Brien's red Laguna was the next NSU car to the scene. He saw Stephen Carney's Carina blocking the road ahead, with its boot towards the ditch. He too transmitted the message that the Securicor van was being attacked. As D/G Brien drove towards him, Stephen Carney walked from the front of the Carina up to the bonnet of D/G Brien's car and pointed the sawn-off shotgun at D/G Brien, shouting at him to get back. He was within three feet of the bonnet of the Laguna and was wearing a balaclava, dark jeans and a bomber jacket. D/G Brien was not armed. He kept transmitting the message that this raid was in progress. He revved his engine and stayed in first gear, and the memory of a revving red car remains with civilian witness Gráinne M. On his left D/G Brien could see people running from the scene. Some abandoned their cars in front of his.

137. D/S Shanahan was next to arrive. He entered the scene on the wrong side of the road, and saw Stephen Carney standing there, with a shotgun. He parked on D/G Brien's left. Mr. Carney was shouting and waved the gun at them both. D/G Brien could see that D/S Shanahan was getting out of his car and had his gun, so D/G Brien kept revving the Laguna and jumping it so as to distract Mr. Carney's attention from his colleague. He was concerned for D/S Shanahan's safety.

138. D/S Shanahan stood behind the door of his car. He shouted "*armed guards*" at Stephen Carney, who came towards him, holding the shotgun, and shouted at him to get back "*or I'll shoot*". D/S Shanahan shouted at him to drop his weapon. Mr. Carney turned away, went around the front of the Carina and got into the driver's seat of that car. He put his shotgun in his lap. He shouted to the other raiders that the guards were there. He then reversed and drove forward, just as D/G Brien moved forward in his Laguna, colliding with the front right of the Carina. This was deliberate on D/G Brien's part as he was trying to stop Mr. Carney from leaving the scene. As the Carina was not directly in front of him, however, the Laguna did not block the Carina but shunted it forward, hitting it on the front left. The Laguna and the Carina did not move from those positions again and were encountered by several of the AGS vehicles that approached from the south.

139. Philip Forsyth continued to beat on the window of the Securicor van with the lump hammer. Then, the raiders heard a bang like a car crashing, and one of them shouted, "*It's the Guards.*"

140. Behind their colleague D/G Peter Brien in the line of traffic was NSU-DG-06 and his passenger D/S Frank O'Neill. They met NSU-DG-35 coming against them. DG-35 told them what she had just seen. DG-06 pulled on to the wrong side of the road and continued up into the Bends on the wrong side of the road. He knew then that surveillance was finished and his actions were going to make him obvious. There was no traffic travelling south against him. Traffic was almost continuous in the northbound lane. DG-06 travelled in the hard shoulder, to the left of the cars depicted in the aerial photos, and got as close to the back of the Securicor van as he could. He stopped maybe three or four feet from the back of the Securicor van and saw a Securicor employee still being held on the ground by the raiders. It was the recollection of DG-06 that he was driving a red Passat. Sitting in her car, Gráinne M. described seeing a red car suddenly "*shooting up*" on her left-hand side and she said it "*drove straight into the raiders*".

141. Civilian witnesses caught up in the raid saw plainclothes guards arrive from the south. Most members of AGS were not wearing any identification, though a small number were in red tabards or yellow vests. Breffne E. described how he had left his car and was on his way to the ditch when he saw people running up the road from the Ashford direction, with their guns pointed. They were no more than 50 yards away, and looked very professional. They shouted "*Drop your weapons, drop your weapons*". Breffne E. knew they were guards even though they were not in uniform. A short period of time - no more than three minutes - passed between the start of the raid and the arrival of these four people. Also in the ditch, Gráinne M. saw four or five plainclothes detectives run past. She was reminded of Cagney and Lacey, as she noticed at least one or two female detectives in this group. She never got the impression that they were anything other than police officers. Not only were they not wearing balaclavas, they may have shouted 'police' and, compared with the raiders at the scene "*their whole demeanour was completely different*".

What the Raiders Did Next

142. Realising that members of AGS had arrived at the south of the scene, Daniel McAlister dumped the dummy RPG and ran up the road towards Dublin. Philip Forsyth and Saoirse Breatnach were close behind him. Saoirse Breatnach discarded the AKM assault rifle near the Securicor van; when an ERU member came across it soon afterwards, it was lying on the ground between the Securicor van and the blue Transit van, fully loaded with a full magazine / clip inside. Mr. Breatnach said

that he did not cock the AKM assault rifle and that it was kept “*on safety*”. Daniel McAlister contradicted this saying that Mr. Breatnach had told him afterwards that he had tried to fire the weapon when AGS came on the scene, but that it would not fire.

143. Saoirse Breatnach, Daniel McAlister and Philip Forsyth ran towards the blue Transit van. They heard shooting so they ran past the van and down the road. While they did not know it, Ronan MacLochlainn was behind them. The Commission received convincing evidence from various sources that Mr. MacLochlainn was carrying a revolver and at that point pointed it at gardaí, causing one of them to shoot at him; this evidence is discussed in detail below. As they ran, Saoirse Breatnach and Daniel McAlister decided to hijack a vehicle. They stopped at Tom B.’s car and Saoirse Breatnach ordered him out. Tom B. got out of his car and took shelter behind a tree. Saoirse Breatnach got in to the driver’s seat. Daniel McAlister, who was on the same side of the vehicle, mistakenly thought it was a two-door car and abandoned his attempt to get in the back of the car and he ran instead into the bushes. He shouted to Philip Forsyth to get into the field on the eastern side of the road, which he and Mr. Forsyth did. In the ditch, Mr. McAlister went northwards while trying to get rid of his florescent bib, his balaclava and his gloves.

144. In Tom B.’s car, Saoirse Breatnach started the car and drove forward and back a few times. He collided with the car behind him and the car in front of him, though the impact was minor. He was trying to turn the car but it was pinned in by traffic and he could not turn.

Civilians react to NSU Arrival

145. Locked inside the Securicor van, the driver heard a screech of cars five or ten minutes after the raiders’ van had first blocked the Securicor van’s way. He watched as the raiders ran northward up the road. He saw others arrive wearing bibs with ‘Garda’ written on them. They helped his colleague to get back into the Securicor van. He locked the door and sat in the passenger seat. The guards told them to stay there, which they did.

146. Sitting in his car, facing south, Michael H. saw a man running towards him, waving a gun. He began to turn his car. He did a three-point turn fairly easily as he had a small car. As he was driving away, he looked in his mirror and saw that the man who had been running up the road was heading towards a green Mazda hatchback with the elderly

couple. Other cars were trying to turn as he passed them. He was able to leave without difficulty.

147. Tom B. could see that, as Daniel McAlister and Saoirse Breatnach tried to hijack his car, they were being pursued by gardaí. There was about 20 to 30 yards between the raiders and guards. He heard shots before the cars in front of his turned. Having been directed to leave the car by Saoirse Breatnach, Tom B. left his engine running. He went onto the bank beside his car and behind a large tree. Two raiders ran past him into the field. Gardaí followed them into the field. Other gardaí kept running down the road past him and shouted at him to get down. He did not see any other raiders running down the road.

The ERU arrive from the South

148. By the time they arrived at the scene, the ERU had now heard over the radio that one of the raiders had a shotgun, another a Kalashnikov, another had an RPG rocket launcher, and that others were also armed and attacking the Securicor van. They also knew that the NSU had encountered a Carina. The ERU cars were not armoured or protected in 1998. D/S Sears feared that that car he was driving could become a coffin, as he put it, if the gang opened fire on them.

149. Having heard the NSU's radio messages, the lead ERU jeep drove over the white line onto the wrong side of the road, and approached the scene in convoy with the other two ERU cars. D/G Brien's red Laguna was on the left and Stephen Carney's gold Carina was on the right hand side of the road. They had just collided. Mr. Carney was still wearing a balaclava and was driving the Carina northwards when the ERU arrived. They drove towards the right of the crashed Laguna.

150. D/G Ryan in the lead vehicle, an Isuzu Trooper, knew the Carina was a suspect vehicle from the radio messages and he could see the man in the balaclava at the wheel. He drove straight at the Carina to disable and contain it. He struck the Carina behind the rear wheel on the driver's side. The Carina spun 90° and was pushed up into the grass verge, where it stopped. The jeep continued ahead with the momentum of striking the Carina and stopped south of the Transit van. The impact had not affected the jeep or those in it to any great extent.

151. Behind them, D/G Mark Daly parked the second ERU vehicle, a maroon Opal Vectra, in front of the Carina to prevent it moving again. Continuing ahead, D/G Ryan knew that, although Mr. Carney had not

been restrained, he had submitted and the Carina was blocked in and was not going anywhere, so D/G Ryan turned his attention north.

152. D/G Brien said the ERU jeep arrived within seconds of his collision with the Carina. He was giving out radio messages throughout this time. He put on his red tabard. There was an element of panic at this stage. People were running from the scene, and there were cars and a van caught between the crashed red Laguna and the raiders at the Securicor van. Some gardaí were trying to stop civilians running out of the scene.

153. Stephen Carney pointed his shotgun at the ERU Vectra. In response, D/S Comiskey got out and pointed his Benelli shotgun at Mr. Carney. D/G Daly also got out of the car. D/S Comiskey shouted "*Armed Gardaí, put your hands in the air*". Simultaneously, from his position near the Securicor van, NSU-DG-06 saw Stephen Carney point his gun and he reached for his revolver, took it out of the holster, drew it and took up a two-handed firing stance. He started shouting "*Armed gardaí, put down your weapon*" or words to that effect.

154. Mr. Carney almost instantaneously threw the shotgun back into the Carina and put his hands up. He did not get out of the car. DG-06 crossed the road, covering Mr. Carney. He maintained a firing stance. D/G Daly and D/S Comiskey came from his left. As he moved across the road DG-06 heard shots being fired north of him, to his left, up the road, in the area between the Securicor van and the Cullenmore Hotel.

155. Stephen Carney recalls seeing red dots or beams on his chest. It is possible that there was a laser sign attached to D/G Daly's pistol. Laser sights were available though few members of the ERU had them. The laser could have automatically been initiated when he grabbed the pistol grip. Indeed, the pistol of an ERU colleague, when examined by the Ballistics Section, was found to have a laser sight fitted to it, though that colleague did not recall having it.

156. D/S Comiskey pulled Stephen Carney from the Carina and placed him on the roadway, face down. D/G Daly handcuffed him. He saw a loose Eley cartridge for a shotgun on the ground. D/S Comiskey removed the balaclava from Stephen Carney's head but did not recognise him. Stephen Carney gave his name when asked. Meanwhile, D/G Daly went to attend to the shotgun in the Carina. He broke it open and removed the cartridges, thereby making it safe. He left the shotgun in the Carina, where he had found it. The ignition in the Carina was still on and it was still revving. D/G Daly switched off the engine and took

the keys. Stephen Carney was not arrested then. He was detained on the ground for about 10-15 minutes after they took him from the Carina. His balaclava was put back on backwards, to block his vision.

157. Other NSU members now arrived from the south. Among them was NSU-DG-11 who was visibly pregnant. She had abandoned her vehicle short of the scene when the traffic stopped ahead of her. She arrived at the scene on foot. She saw civilians running and she helped them to get out of the scene. She had drawn her Smith & Wesson revolver. She remained south of the Securicor van at that stage with other NSU members, evacuating people from cars and getting them to move south out of the area. They were on the hard shoulder near the gold Carina and Martin O.'s blue ACE van.

158. D/S Comiskey and D/G Daly heard firearms being discharged while they were dealing with Stephen Carney. NSU-DG-06 stayed with Stephen Carney while D/G Daly and D/S Comiskey went north. D/G Daly saw an employee of Securicor, kneeling beside the van. He was very distressed. D/G Daly told him that AGS were in control and the safest thing was to get back into the Securicor van for the moment, which he did immediately. D/G Daly saw an AKM assault rifle lying on the ground between the Securicor van and the blue Transit van. It was loaded with a full magazine inside. D/G Daly made the weapon safe by removing the clip. This was the weapon discarded by Saoirse Breatnach; D/G Daly confirmed that Mr. Breatnach had not engaged the round; he had not pulled back the clip; he had not selected automatic or single fire. When D/G Daly breached the AKM assault rifle, he expected to fire out a round, but there was nothing; the breech was clear of any rounds. Thus, if Saoirse Breatnach did tell Daniel McAlister afterwards that he tried to cock the AKM, which he has denied, he had not succeeded. Mr. Breatnach denies not only that he cocked the weapon, but that the conversation with Mr. McAlister described even took place. It is not necessary for the purposes of this investigation to decide which of these accounts is accurate.

159. D/G Daly also saw petrol containers and some wooden sticks with rags attached. The raiders probably intended to make cuts in the Securicor van and pour petrol into it, and to use the rags and sticks to ignite the petrol. Alternatively, it was a potential threat that if the Securicor employees did not comply, they would set the vehicle alight. Given that the RPG was a fake, this might have been their only opportunity to break open the van. The con-saw and rocket launcher were also between the two vans. A little further up, on the ditch, was the fake rocket launcher. The cone was a converted Nashes bottle.

160. In between the Securicor van and the blue Transit van, D/G Daly also encountered Mary Ann and Liz L. near their Ford Orion. D/G Daly reassured them that the guards had arrived and that everything was ok, but said they should stay in their vehicle until it was safe to leave. It was still a very volatile situation.

The Raiders are Chased North from the Vans

161. D/S Sears in the third ERU vehicle was satisfied that D/S Comiskey and D/G Daly had contained the driver of the Carina; he suspected that the driver was “*very shook*”. He continued driving behind the ERU jeep for the next phase of the intervention. He continued northwards, and within seconds of the collision between the Carina and the ERU jeep he had to stop and go on foot as he could not progress any further in the car. He stopped the car very close to, but short of, the blue Transit van. He ran north. He had his Sig pistol drawn. His passengers Supt Walsh, Insp Hogan and D/S Gantly jumped out when the car was coming to a halt and ran ahead of D/S Sears, passing the blue Transit van. Supt Basil Walsh was slower than Insp Hogan and D/Sergeants Sears and Gantly and he felt winded when he had run as far as the blue Transit van.

162. The lead ERU vehicle driven by D/G Ryan, the Isuzu Trooper jeep, had stopped ahead of the car driven by D/S Sears. D/G Harrington was a passenger in the jeep. He got out of the right-hand side. He was the furthest to the right of the gardaí at the scene and gave chase to Saoirse Breatnach, who was on his right.

163. Thus, as the three ERU vehicles converged on the southern end of the scene, the four men in balaclavas were running north from the Securicor van and past the blue Transit van, moving together, and all running in the same direction. There were civilians screaming and running behind cars and into ditches. Several witnesses described the roaring and revving of engines as cars tried to turn and leave the scene; it was “*an incredible situation*”, chaotic and dangerous.

164. D/S Gantly was at the front of the ERU contingent. He ran ahead, chasing the four raiders, while calling “*armed gardaí*”. He drew his firearm. He noticed one raider turning in response. This was Ronan MacLochlainn and he had a handgun. D/S Gantly described in evidence how the man turned and pointed the handgun at him. D/S Gantly and Insp Hogan were running briskly in a kind of hunched position, trying to make themselves smaller while mobile, so they would not be shot.

D/S Gantly, Insp Hogan and D/S Sears, the nearest to this event, remember it vividly and described it in detail. Nothing in the evidence suggests that their description is inaccurate and I accept their evidence on this point. D/S Gantly's response is set out below, under the title: *A Sergeant Fires at Mr. MacLochlainn*.

165. D/S Gantly, Insp Hogan and Sgt Sears did not begin to catch up with the raiders until the raiders started to pull people out of cars. The southbound traffic was lined up facing against them on the right-hand side. D/S Sears said that there were many more cars ahead of the blue Transit van than are depicted in the aerial photos taken later that evening. He described how the raiders were “bopping” off cars as they were moving. As described above, Saoirse Breatnach had run to *Tom B.*'s car, ordered him out, jumped in and was turning towards Dublin. D/G Harrington ran after him close to the right-hand ditch. He had nearly reached *Tom B.*'s car when he heard shots. His involvement with Saoirse Breatnach is discussed in detail in Section F, below.

Three NSU vehicles move in from the North

166. As previously mentioned, four NSU cars were parked in a laneway north of the Cullenmore bends. Each car had a sole occupant. Three were in one area - DS-06 was in a green Mazda 323 GLX, DG-32 was in another car and DG-41 was in a red car, probably a Seat Cordoba - and a fourth, DG-36, had travelled much further into the lane. At least two of them had been working together since morning. They had not been long in the lane when they heard on the radio that a Securicor van was moving towards Dublin. They then heard an NSU colleague, shouting over the radio “*Armed Gardaí, Armed Gardaí*” or words to that effect. It was obvious that an armed incident was occurring.

167. When the radio message came through about the raid, DG-32 was outside his car talking to his sergeant and team leader DS-06. The third car, the red Seat, was parked behind them and DG-41 was sitting in it. They knew that the situation was serious and that there was probably an armed confrontation. There was no direction to act. DG-32 asked his sergeant what they should do, and DS-06 said, “*follow me*”. All three vehicles moved at that point. They drove at about 50 or 60 mph towards the scene.

168. DS-06, the lead vehicle, stopped on the road at the Cullenmore Hotel, where DS-04 was directing traffic. DS-04 recalled that DS-06 was travelling on the wrong side of the road. He did not leave his car. He rolled down the window and said to DS-04 “*I am going down to have a*

look." At this point, the scene was active and DS-04 did not know what was happening down there. There was no evidence of a message about or from the ERU at that point. DS-04 saw at least one other NSU car travelling south with DS-06.

Two ERU vehicles move in from the North

169. The ERU team north of the Cullenmore moved south on receipt of a radio message that a Securicor van had been spotted. D/G McCabe said that once he heard a Securicor van had been attacked, "*obviously the seriousness escalated*". They did not wait for a specific instruction to move - "*That came over so we don't have to listen for instructions then, you just move straight away*". It took less than 5 minutes for the northern teams to get there. D/G McCabe was driving a jeep, the lead vehicle. They drove on the wrong side of the road and while they encountered some civilian vehicles doing U-turns on the roadway, the wrong side of the road was largely free. There were no cars driving into the scene ahead of them, and no sign of a getaway vehicle that needed to be stopped.

170. Michael S. and Michael H., having done three-point turns, were driving their cars north away from the scene when they were forced into the ditch on their left by ERU vehicles which were travelling south, in convoy and at high speed, down the northbound carriageway. The ERU vehicles did not have sirens or lights or any markings. The civilians did not know that these were garda vehicles and, at the time, Michael S. thought the jeep contained more raiders. Michael H. had no idea who they were. He saw what he thought was a large steel pipe in the windscreen. D/G Duffin said this was probably his shotgun which he carried upright during the trip south. Neither Michael S. nor Michael H. noticed any other vehicle (such as the three NSU cars) coming against them on that journey, nor does Michael S. recall a man standing in the centre of the roadway at the Cullenmore Hotel wearing a red or orange tabard, though he mentioned that man in his statement, made in 1998. This was probably NSU-DS-04. Michael S. was busy concentrating on getting out of there. He is by no means the only witness to the events of 1st May who appears to have either missed or no longer recalls seeing critical events and key players. This phenomenon is discussed in Section F, below.

171. Alice M. was also driving towards Dublin at this moment, as quickly as she could, as she was very scared. She was nearing the Cullenmore Hotel when she was stopped on the road by this ERU team, on foot. They were wearing black or navy vests or bibs over their shirts; she said in a statement in 1998 that they were wearing red bibs

with 'Garda' written on it, but she does not remember that now. They had guns and did not identify themselves so it was very frightening, as she thought they were armed raiders; One of them knocked on the driver's window of her car and he asked, "Where are they?" and Alice M. replied, "*They're back there*". She presumed they were talking about the raiders.

172. Meanwhile, NSU-DG-36 who had been in the same laneway as DS-06, DG-41 and DG-32, had also heard that there was a robbery in progress and he too responded by trying to leave the lane. He put his tabard on. However, he was much farther down the lane than his three colleagues had been and he found he could not get out once he reached the main road as traffic was too heavy at that stage. Not long after that he got a radio message from Insp Nyhan directing him to remain where he was and to stop the traffic coming into the scene.

Ronan MacLochlainn is Shot

173. It is difficult to capture the sequence of events leading up to and including the shooting of Mr. MacLochlainn in a narrative form. Multiple events happened simultaneously. Many witnesses, both civilians and members of AGS, described hearing shots being fired but few were able to offer a clear sequence of events. It is also a challenge to portray the extraordinary speed at which these events unfolded. For example, from his vantage point in the ditch, Breffne E. saw four armed plainclothes guards arrive on foot from the south and *within a few seconds* of their arrival he heard a few shots fired.

A Sergeant fires at Mr. MacLochlainn

174. To summarise the events outlined above, the arrival of the guards on the scene caused the raiders to run northwards, with Ronan MacLochlainn at the rear. Saoirse Breatnach discarded the AKM assault rifle, Philip Forsyth dropped the angle grinder, and Daniel McAlister discarded the fake RPG. Mr. MacLochlainn was the only raider who remained armed. D/S Gantly, Insp Hogan and D/S Sears, in that order, chased the raiders north, passing the blue Transit van. They spread out on the road. Each of them described in detail how they saw the rearmost raider, Ronan MacLochlainn, turn and point his handgun, a revolver, in their direction. Their NSU colleague D/S Shanahan also witnessed this.

175. D/S Gantly focussed on Ronan MacLochlainn as he turned and pointed his handgun towards him. Mr. MacLochlainn was about 20 or

30 feet away from him. Once the gun had been pointed at D/S Gantly, he became focussed and he was not aware of much else. He does not recall if he had passed the blue Transit van or not when he first fired at Mr. MacLochlainn. D/S Sears and Insp Hogan were not far behind him.

176. D/S Sears described Ronan MacLochlainn's position on the road ahead: he was on the D/S Sears' right-hand side and 15-20 metres away from him. He described Mr. MacLochlainn as "*the back marker*" of the raiders. When asked if Mr. MacLochlainn had pointed the gun, D/S Sears said, "*Absolutely, there is no question or doubt about that ... And I will always remember that*". D/S Sears gestured with his right hand to show how Mr. MacLochlainn had pointed the gun, single-handed.

177. Using his Sig pistol, D/S Gantly fired three bursts of two shots each at Mr. MacLochlainn, a total of six shots. He used both hands to hold his pistol. He stopped and may have dropped to his knee. It took less than six seconds to fire all six shots. He had a safe line of sight and could see the backdrop to the shot. There was nobody in that frame except Mr. MacLochlainn. D/S Gantly was ahead of his ERU colleagues so he was not endangering any of them by shooting. He could see the bank on the side of the road behind Mr. MacLochlainn. He stopped firing when he no longer had a clear line of sight and clear backdrop for the shot. Mr. MacLochlainn was still running and still had a gun. While Mr. MacLochlainn continued to be a threat, D/S Gantly felt it was not safe to continue shooting as there were civilians coming into the frame.

178. Insp Hogan heard the shots. The raiders kept running and two of them tried to hijack cars. The raiders began to spread out as they ran, two to the left, two to the right. Insp Hogan did not know where the shots came from though, as he saw D/S Gantly fire, he thought they came from him. Similarly, D/S Sears instinctively ducked his head when D/S Gantly fired because he did not know if any raiders were firing back. He knew that D/S Gantly had fired but he did not know if all of the shots came from him. D/S Sears could not fire because D/S Gantly was in front of him and in his line of sight. In fact, he instinctively stepped in behind D/S Gantly to avoid making himself another target for Mr. MacLochlainn.

179. Mr. MacLochlainn approached the green Mazda being driven by Patrick O'N., who was trying to turn his car on the road. As described above, Saoirse Breatnach had hijacked Tom B.'s car and was attempting to turn it to escape towards Dublin. Daniel McAlister and Philip

Forsyth, who had initially been trying to get into cars, broke off and went to the right. They jumped into the ditch on the right-hand side.

180. The ERU was “*desperately thin on the ground*”. D/S Comiskey and D/G Daly were dealing with Stephen Carney and the northern team had not yet arrived. D/S Sears decided to break away from D/S Gantly and Insp Hogan – it seemed to him that, tactically, they were two on one and had the situation under control – and to engage the two raiders who had gone right. He made that decision; no-one directed him. He went over to where the two had entered the ditch but they had disappeared. There was a heavily overgrown drain first, 10ft deep and 12ft long. There were briars, trees and brambles in it. Beyond that, there was a ditch and then a big, open field behind that.

181. D/G Michael Walsh had followed Insp Hogan and D/S Gantly at a distance, but he did not gain on the 20-30 yard gap at any stage. He was equipped with a rifle, which was not suitable for that range so he stayed back from close-quarter contact. He was trying to find a balance between neutralising a terrorist threat, protecting the public, and assisting his colleagues. From his training, he knew that he would be more vulnerable by getting involved in close-quarter contact with a rifle. He knew that it was not a good operational fit to go into that “hot zone” with a rifle, so he stopped. He does not recall exactly what he did but he probably crouched behind a car, making himself as small as possible rather than standing tall in the middle of the road. That was what he was trained to do.

The Green Mazda is Hijacked

182. The raiders were shouting as they ran up the road towards Patrick O’N. He always kept the windows of the car closed to avoid draughts. His wife Dorcas usually drove with the window closed but she had let it down earlier to look out when a passing civilian shouting a warning at them and cars ahead of them had turned. In response to that warning, Patrick O’N. tried to turn their car. Dorcas O’N. probably rolled her window back up, as she had seen what she wanted to see. Patrick O’N. had probably turned his green Mazda 323F about three quarters of the way – it was not fully turned – when a man “*sort of half jumped*” across in front of his car. At that stage, his Mazda was pointing more to the south than to the north.

183. Dorcas O’N. described how the man running to their car was carrying a small handgun in his right hand. He was wearing dark clothes, gloves and a balaclava. This was Ronan MacLochlainn. Dorcas

O'N. shouted at him that her husband had a heart condition - Mr. O'N. had had a quadruple bypass the previous year. However, the armed man went to the driver's side, opened the door, and said "*Get out of your car, get out of your car, I want your car*". He put the gun to Patrick O'N.'s head. Mr. O'N. was confused and did not know what to do. He believed the man who put the gun to his head was going to shoot him if he (Mr. O'N.) did not cooperate. The man said, again, "*Get out of your car*". Ronan MacLochlainn then pulled Mr. O'N. out of the car and pushed him to the ground. Mr. O'N. lay on the ground, face-down. Mrs. O'N. also got out of the car then. She had the presence of mind to take her handbag with her. Mr. O'N. was becoming more confused and more traumatised by then. They lay on the ground. Both had their faces down in the grass and clay on top of the ditch.

184. When D/S Gantly saw Ronan MacLochlainn take Mr. O'N. out of his car at gunpoint, he beckoned with his right hand to D/G James Ryan to come forward towards him. D/G Ryan had remained beside the ERU jeep - a vehicle can be as dangerous as a firearm at such a scene and the garda vehicles had to be manned, if possible. D/G Ryan drove the jeep up to D/S Gantly's right hand side but by this stage, Ronan MacLochlainn was in the Mazda.

185. D/G Ryan knew the route was blocked on the Ashford end so the only avenue of escape was to the north. He did not know how close to the scene the northern ERU crew was. His intention was to get past the hijacked Mazda and to block the road north to prevent escape. He drove the ERU jeep on the left-hand side of the road heading north, trying to get ahead of the Mazda. There were other vehicles in the northbound lane blocking the jeep's route, so he had to go into the ditch inside those vehicles. He drove at an angle along the ditch, along briars and gorse, to get around the Mazda. His evidence was that, when he passed it, the Mazda was in the south-bound lane, facing south, and Mr. MacLochlainn had just got into it. Thus, when the jeep passed the Mazda, it was not moving. Precisely where on the road the Mazda was at the moment when the jeep passed it was the subject of conflicting evidence and that issue is addressed further below.

186. D/G Ryan did not collide with the Mazda as he passed it but he did hit the front light of Ms. G.'s SpaceWagon and the back of Alice M.'s car. Both of those civilian vehicles were in mid-turn as the drivers tried to get out of the scene. D/G Ryan then came back out of the ditch on to the road, cut across and pulled the jeep across the road. Alice M. recalls the jeep speeding along the middle of the road towards Dublin. She continued after it and clearly got away before it blocked the road

ahead of her, driving as far as the Cullenmore Hotel. The ERU jeep's entire manoeuvre took a matter of seconds.

187. D/S Shanahan, who was running north through this scene behind Insp Hogan and D/S Gantly, watched the hijacked Mazda travelling north. He stopped briefly to reassure Patrick and Dorcas O'N.

An Inspector fires at Mr. MacLochlainn

188. Ronan MacLochlainn completed the U-turn that Patrick O'N. had commenced and began to drive north in the Mazda, towards Dublin. Insp Hogan ran up on the right hand side of the car, the driver's side, in the northbound lane as Mr. MacLochlainn turned the car. As D/S Gantly had paused momentarily to signal to D/G Ryan, he was overtaken by Insp Hogan. D/S Gantly ran behind him in the middle of the road, on Insp Hogan's right.

189. D/S Gantly did not know if D/G Ryan had or would succeed in containing the hijacked Mazda. There was a screeching of tyres and a lot of noise. Some of the civilians were out of their cars and screaming.

190. Insp Hogan and D/S Gantly kept pace with the Mazda; it was not travelling very quickly. Insp Hogan was not sprinting. He was running with his firearm out, holding it with both hands. He called, "*armed Gardaí, stop*". Ronan MacLochlainn pointed the handgun at him. Insp Hogan described its position in detail; the gun was pointed out the driver's window of the Mazda. Insp Hogan does not recall if Ronan MacLochlainn's arm was out the window; his focus was on the gun. The gun looked dark to him, rather than silver, but he was not particularly interested in the colour of it.

191. At the rear of the vehicle, also on the driver's side, D/S Gantly also saw the gun being pointed at Insp Hogan. He saw the barrel of the gun coming out of the driver's window and he knew it was the gun he had seen earlier. In a statement made by NSU-DS-06 in 1998, DS-06 also said that he had seen a gun being pointed at Insp Hogan from this car.

192. On seeing the gun pointed at him, Insp Hogan fired three shots at Ronan MacLochlainn using his Sig pistol. Insp Hogan was positioned slightly forward of the back passenger door, still on the driver's side. He was moving and the car was moving. The scene was very noisy; there were tyres screeching and there was a lot of screaming. The Mazda accelerated away from him and he continued after it. He did not

know what effect, if any, his shots had, other than to note that the car kept going. Either Insp Hogan or D/S Gantly could have touched the Mazda from where they were positioned, had they reached out. The Mazda accelerated away.

193. D/S Sears heard this further gunfire; *“it’s something you don’t forget ... And you can’t stop ducking because you don’t know who is firing.”* He took up a position on the roadway where he crouched keeping himself low, again, making himself a small target.

194. There are two bullet holes in the Mazda, both in the rear door, on the driver’s side of the car. The forensic evidence examined by the Ballistics Section in 1998 and reviewed by an independent expert on behalf of the Commission supports the contention that Insp Hogan fired at least two shots at the Mazda 323F as it travelled northwards, shattering the rear door window. Both shots had virtually identical trajectories and the close proximity of the two bullet holes to one another supports Insp Hogan’s testimony, which was that they were discharged in rapid succession. Insp Hogan was probably between two and three metres behind the hijacked car when he opened fire, no more. No evidence was found of a third shot discharged by Insp Hogan and while it is possible that there were three, it is more likely that there were only two. The possibility of three shots cannot be ruled out as, apart from the witness’s own testimony in this respect, there may have been a round in the breech of his Sig pistol, and the casing may have been carried out of the scene or into the ditch where it was not subsequently found. I do not consider his memory as to whether there were two or three shots fired to be a significant credibility issue, given the evidence as to how difficult it can be to recall, or even to note at the time, how many shots are fired at a scene such as this one.

NSU-DS-06 fires the Fatal Shot

195. Insp Hogan continued north, running after the Mazda for not more than 20 seconds. As he approached the car again, a second green Mazda came on the scene. This was a larger model than the 323F, it was a 323 GLX. It was in the middle of the road, travelling south, and was driven by NSU-DS-06.

196. DG-41, DG-32 and DS-06 had driven into the scene from the north, with DS-06 in the lead vehicle and DG-32 directly behind him. While DG-41 thinks he was directly behind DS-06, I prefer the evidence of DG-32 on this issue. Not only was his evidence very specific in relation to seeing the brake-lights of the vehicle ahead, DG-41 had

difficulty recalling other aspects of these events so long after the relevant time. Neither witness had made a statement in 1998.

197. While driving close behind, DG-32 could still see DS-06's brake lights. DG-41's red Seat Cordoba was at the rear, and on the wrong side of the road. The ERU teams from the north had yet to arrive, though they were probably only minutes behind the three NSU vehicles as they travelled south.

198. The hijacked Mazda was one of the only vehicles travelling north and the driver, Ronan MacLochlainn, was still wearing a balaclava. DG-32 could see the whites of Ronan MacLochlainn's eyes, which drew his attention to the balaclava. He also saw the ERU jeep trying to get to the north to block the hijacked Mazda.

199. Insp Hogan was in the middle of the road, near the back wheel of the hijacked Mazda. He saw the driver of the hijacked car again point the handgun, this time at the approaching larger Mazda driven by DS-06. Inspector Hogan, DS-06 and DG-41 saw this. There was nothing to indicate to Ronan MacLochlainn that the driver of the car approaching him was a policeman.

200. Two shots were fired. One bullet went through the windscreen of the hijacked Mazda, while the other was the fatal bullet; it passed through the driver's wing mirror and through the open window of the Mazda, struck Mr. MacLochlainn's chin and entered his chest.

201. There was nothing to indicate to those present who had fired the two shots. Of the two closest witnesses, Insp Hogan correctly guessed that the two shots had come from the oncoming Mazda but D/S Gantly did not know who had fired them.

202. NSU-DS-06 continued south in the larger Mazda. Insp Hogan recalls that DS-06's car passed very close to the hijacked Mazda, on the wrong side of the road. DS-06 made a statement in 1998, which was undated. In this statement he described how he had stopped his car and went to the crashed Mazda at this point but nobody recalls seeing him there. It seems likely that DS-06 remained at the scene, even if only for a short time. However, it is not necessary to decide this in order to make narrative sense of the other evidence.

203. Seconds later, the northbound hijacked Mazda collided with the southbound red car being driven by DG-41. The impact, albeit slight, was on the driver's side of the red car. The hijacked Mazda had

travelled only about 2 or 3 feet after the two shots, before this collision. Unfortunately, the red car was removed before any photograph or note was taken to show its position.

204. DG-32, who had been travelling directly behind DS-06, stopped his car. He did not see where DS-06 went next or if DS-06 stopped his car. DG-32's car stopped beside or beyond DG-41's red car. He could see the impact over his right shoulder. He stopped on the white line, next to the hijacked Mazda, on the same side of the road but facing south, just forward of the bonnet of the hijacked Mazda. There was space to open his car door.

The Hijacked Mazda and the Red Seat Cordoba

205. As is now clear, a number of events happened at great speed within a matter of seconds. Ronan MacLochlainn hijacked a Mazda, did a U-turn and drove north. He pointed a gun out the window of the Mazda at Insp Hogan who fired shots at him. DS-06, DG-32 and DG-41 entered the scene from the north in convoy. Ronan MacLochlainn turned the gun in the direction of DS-06, who fired two shots at him. DG-41 then crashed into the hijacked Mazda, stopping it.

206. Simultaneously, D/G Ryan had driven around the hijacked Mazda by mounting the ditch. As noted above, the Commission heard conflicting evidence as to whether he passed the Mazda on its passenger side or on its driver's side. At this remove, it is not possible to resolve the conflict about the exact position of the Mazda on the road when the jeep passed it. However, this is a single instance in a series of events which, while it would be ideal to know every particular, are not capable of resolution as regards every detail. A coherent and convincing narrative as to what happened to both vehicles next has been established from the facts that are known. Returning back onto the road, D/G Ryan swung the ERU jeep right and parked across the road to block the path of the northbound Mazda. His door was facing the scene as the jeep straddled the road. By that time, Mr. MacLochlainn had already been shot and the Mazda had collided with a red car. When he stopped, D/G Ryan saw a red car right in front of the green Mazda, nose-to-nose with it. He knew that the red car was a Garda vehicle because of where it was positioned. He did not perceive it to be a danger so he did not pay attention to it but focussed on the hijacked Mazda.

207. D/Garda Ryan has no recollection of seeing a green Mazda GLX or NSU-DS-06 at the scene. However, the only reasonable interpretation of the evidence is that DS-06, DG-32 and DG-41 entered

the scene from the north just before D/G Ryan swung the jeep across the road. From the timeline described by most witnesses, it is likely that DS-06's Mazda drove by as D/G Ryan was negotiating his way around in the ditch; it was certainly before the jeep stopped in its blocking position, and it is not surprising that D/G Ryan did not see the three NSU vehicles enter the fray as his first opportunity to observe what was going on outside his immediate path was after he had swung the jeep into position. This also explains why he does not recall seeing Alice M.'s car heading north; he was focussing on his path along the hard shoulder.

208. In trying to determine the sequence of events, Insp Hogan said he thought that the ERU jeep had passed the Mazda in what he described as a *forceful manoeuvre* on the ditch, *before* the Mazda collided with the red car. He did not see where the jeep ended up. He also thought that the green Mazda GLX driven by NSU-DS-06 had already passed and shots had been fired before the collision with the red car.

209. I am satisfied by the evidence of the red car's driver (DG-41), the driver directly in front of him (DG-32), Insp Hogan and D/S Gantly, all of whom witnessed this, that there was a collision, however slight, between the red car, probably a Seat, and the hijacked Mazda. It is clear that the Mazda also collided with something else at the scene, but given that a gunshot caused the death of Mr. MacLochlainn and not any injuries related to a collision, it is not necessary to determine exactly how the hijacked Mazda came to be so badly damaged. The question of whether the proper preservation of the scene followed by a rigorous investigation would have found answers to these questions is addressed in Section I, below. Their interaction is described in detail in Section F, below.

F. Reliability Issues – Time, Trauma, Trust

Perception and Memory

Time

1. One of the biggest challenges for this Commission of Investigation was to try to piece together a coherent picture of events which happened over 17 years ago. While there were numerous witnesses, many of these did not make statements at the time. The combination of the lapse of time and the apparent absence of contemporary records was daunting. Further problems identified by the policing expert engaged by the Commission, Alan Bailey, are the natural bias of the human mind and common distortions in memory, even before the effects of time have produced additional obstacles to reliable recollection.

2. Mr. Bailey explained that honest witnesses can often be incorrect. Even immediately after an event, let alone after 17 years, we can perceive events in a distorted way. A skilled interviewer will question a witness so as to minimise this effect or at least so that any factors weighing on the mind of the witness can be recognised. For this reason alone, Mr. Bailey suggested, the three garda members who fired shots should have been interviewed by investigators in 1998 rather than simply being expected to provide their own statements.

3. As a matter of common sense, the more witnesses who independently recall an event in a particular way, the more confidence one can have in the reliability of that account of any incident. An account given soon after an event is more likely to be full and accurate than one given after time has passed. While specific events can be very memorable, the recollection of details erodes over time and can be very difficult after years have passed. It is also logical to conclude that if a witness has no reason to lie - no loyalty or bias, no financial or personal conflict of interest – his account is more likely to be a reliable one, in that there are fewer distortions acting on his perception.

4. In any case where forensic evidence or real evidence, such as a photograph or exhibit, contradicts a witness, the forensic evidence is preferred as there are fewer factors which can distort such evidence. This is no reflection on any witness *per se*; real evidence is simply more reliable if there is no suggestion of tampering that might affect its objectivity, relevance or weight.

5. Many witnesses to the shooting of Mr. MacLochlainn and surrounding events on 1st May 1998 who did not recall certain events were asked at the hearings if they thought they would recall the event had it happened directly in front of them. Almost invariably, the witness replied that they would, the implication in the question being that, if they did not recall it, it probably did not happen. This is one of the most common fallacies about perception and memory and has been the subject of much scientific analysis and research. Many will be familiar, for example, with a short video released in order to draw public attention to our limitations as witnesses. Numerous studies and commentaries on the video reveal that, when asked to concentrate on the number of basketball passes made by one team in a short film, many viewers do not notice a man dressed as a gorilla who moonwalked across the screen through the players. Psychologists describe this simply as the effect of concentrating on one item or issue; the viewer can easily miss otherwise obvious events.⁸

6. The above precepts, based on logic and experience, are the premises on which my analysis of the evidence rests.

7. On many key issues it has been possible to be almost certain of the factual findings. For example, one of the most significant areas of concern to the family of Mr. MacLochlainn before the Commission's investigation began was the accuracy and comprehensiveness of the ballistics evidence. These issues have now been resolved, largely because contemporaneous notes were released which indicate that a thorough ballistics investigation was, in fact, undertaken in 1998. The resolution of these issues has been possible due to the retention of those notes and other relevant exhibits by the ballistics section of AGS.

8. As regards witness evidence, the AGS investigation in 1998 was not sufficiently rigorous, and this is discussed fully in Section I, below. For present purposes, it is sufficient to note that some key witnesses did not make statements in 1998 and those who did, whether garda or civilian witnesses, were not specifically asked about the shooting. Some of them mentioned it, in particular those who had fired shots, but none went into detail.

9. Witnesses appearing before this Commission agreed that, if they had been asked in the first week after the events of 1st May about the shooting, they would have had a lot more evidence to offer.

⁸ The video was released in 2008 by Transport for London in order to promote safer driving, in particular to highlight the importance of watching for cyclists. The video is widely available online.

10. It may assist to outline some specific examples from the evidence heard by the Commission, which reveal how difficult it can be for witnesses to recall certain events. D/G Duffin commented, for instance, that while he recalls being involved in the arrest of Pascal Burke, he now has no recollection whatsoever of the rest of that evening. This is typical of many witnesses and of the kind of thing that might be recalled: he does still recall the arrest, which was a memorable chase across a field during a very significant operation, but he does not remember the surrounding or peripheral details.

11. One of the most articulate witnesses gave insightful evidence as to how time had affected his memory of events. This was D/G Michael Walsh. He does not remember any details about where anybody was, what they were doing or the times at which events occurred. His statement, made in 1998, sets out all these details. Most interestingly, in that statement he described seeing the Securicor van and watching four men in balaclavas running from him and his colleagues, and he described seeing one of them turn and point his gun at the guards in pursuit. D/G Walsh no longer recalls any of this. However, he still had lucid sensory and visual memories of the scene and was aware of the limitations of what he could recall. For example, he specifically recalled the revving of engines and the breaking of glass at this very noisy scene. He said in evidence that *“in operations like this you are never going to see the whole picture”* and he noted that one can miss things until they are drawn to one’s attention; *“Your attention just moves quickly and swiftly from one instinctive risk to the next, and you react, as you have been trained, to the best of your ability”*. He described vividly, including atmospheric details, how he took up a position in a nearby field to make use of his weapon if necessary. The clarity of this description was in marked contrast to his inability to recall the more active and dangerous parts of his duty that day.

12. NSU-DS-04 had a Dictaphone with him on the day on which he recorded times and notes, including radio messages and conversations with others, and he made a statement on 3rd May 1998. Before giving evidence to the Commission, he had mentally reviewed a few operations that happened at around that time and his memory of the other operations was no better than his memory of Operation Morrison, though he could remember the bones or the outline of all of them.

13. D/G Peter Brien made a statement in May 1998 and he said when giving evidence to the Commission that, after reading it, he had a good recollection of these events. In a meeting with the Commission in early 2015, he described driving up through the scene and seeing the

ambulance and the body of Mr. MacLochlainn in the centre of the road with medical bags strewn around it. Despite this detailed account, in evidence some months later he confirmed that he had not driven through the scene but had probably been doing his best at the meeting to answer the questions asked. He had seen pictures of the body in the newspapers the next day, so he knew how the scene looked. He said he could not have seen much from the bend at the southern end of the scene, where he stood, so the newspaper pictures probably stayed in his mind as memories. There was no question of intentionally misleading the Commission; this situation was teased out as questions were asked and the witness himself realised that his own memory had supplied answers, albeit not from direct experience.

14. This witness was very frank about the effects of suggestion on his own recollection of events. This is a good example of a witness giving an honest account but whose memory is unreliable on certain issues. His complete frankness about these errors permits me to accept much of his evidence, particularly if supported by other accounts, but his self-confessed capacity for error is an excellent example of the pitfalls of an inquiry that takes place many years after the relevant event, and of the value of an early and careful interview with each significant witness.

Trauma

15. The Commission heard evidence that trauma affects both perception and memory; the effects of a traumatic scene are evident both at the time of the events witnessed and in the effort to recall them accurately afterwards. These recollections can be affected further by attempts to suppress memories that are naturally unpleasant. Trauma can come from a shooting event or even from just producing a firearm. Trauma can also come from a person being disarmed, from a recognised danger, or from a threat not recognised at the time but subsequently identified, leading to a sense of having unwittingly been in danger.

16. The ERU roster confirms that many members were rostered to work both on 1st and on 2nd May. The evidence was that these members would all have been expected to work on the day after the shooting. The same applied to the NSU. There was no time off to get counselling for a traumatic event; “*like casualty in a hospital*”, as D/S Gantly put it, they moved on to the next case. This was so despite the evidence that the scene at the Cullenmore Bends was one of the most dangerous in which many garda witnesses had ever been involved.

17. In terms of the effect of trauma and time on perception, Insp Hogan commented that each person's perception within a scene is different, thus he would expect each person's recollection to be different. He knew this from experience and anecdotally, and this issue is explained and discussed in ERU training scenarios also. As regards 1st May, Insp Hogan thought every garda who was at that scene was affected by it.

18. ERU witnesses said that once a scene is live, training kicks in. Most also said that in such a scene, one cannot usually say exactly where gunfire is coming from. In fact, unless you see a gun and someone is firing it as you are looking at it, it can be impossible to determine who is shooting. The natural inclination is to find cover if one hears shots being fired. In training, ERU members are trained to count their own shots and may be more alert to the number of shots fired than other members of AGS. Most civilian witnesses, on the other hand, could not say how many shots or bursts of shots they had heard. Recollections in this respect varied widely. In fact, some witnesses who were in the immediate vicinity do not recall hearing any shots at all.

19. As regards the scene as a situation of high stress, ERU witnesses confirmed that one's focus remains on the threat. The evidence confirmed that gardaí trained for armed intervention concentrated on the task in hand, whether it was a person being chased or a gun being pointed, to the exclusion of other matters which did not affect their task. Awareness of the position of their colleagues and civilians and other threats at the scene was part of that task. Many ERU witnesses were able to describe with impressive accuracy roughly where other operatives were during this very short incident, as this informed what actions they took and where they directed their attention.

20. D/G Daniel O'Driscoll described the body's physiological response to danger in terms of fight or flight: the impulse is to keep out of danger or to get away as quickly as possible. To a greater or lesser extent, he explained, everyone who is facing a traumatic situation will experience perceptual distortion, which can have a variety of permutations such as tunnel vision. D/S Sears described his memory of countless operations by using the same phrase: tunnel vision. D/G O'Driscoll's view was that training helps to control a person's reactions to a certain extent but that most people will still tend to focus on the immediate threat to them; that is the natural physiological response.

21. These factors explain how, as described in Section E, D/G James Ryan was driving past the hijacked Mazda in his jeep and yet he did not

see Mr. MacLochlainn turn the Mazda to face north, did not see it travelling some distance, did not see him being shot, and did not witness a collision. Further, it explains why he does not remember seeing DS-06's green Mazda parked near the hijacked Mazda from which Ronan MacLochlainn was taken, and why he does not know where the red car, which he saw in a stopped position having collided with the hijacked Mazda, came from. It was suggested to him on behalf of Ms. Nic Gibb that his inability to recall these matters was peculiar. He was steadfast in his reply - he did not see these things since he was focussing on the miscellaneous things he was doing as he drove along the ditch at the scene. I do not consider his inability to recall these things and events to be peculiar, nor is it likely to be a memory problem. It has more of the features of the perceptual distortion described by his ERU colleagues as occurring at a live scene.

22. As mentioned above, D/G Michael Walsh gave very cogent evidence on memory issues, as one of a number of witnesses who had very few memories of the main features of these events when they came to give evidence. The traumatic nature of the scene was clearly a factor in his loss of specific memories. When asked how it could be that he no longer recalls seeing anyone pointing a gun at him or at his colleagues, D/G Walsh said *"I suppose memory gets fragmented, it greys and from my own experience recalling these things is a process that over time doesn't serve me any purpose ... In terms of moving on from situations like that"*. Over the course of 17 years, he had pushed away the events of 1st May. There was no suggestion at hearing that he was not present on 1st May or that he did not see the events described in his statement made in 1998. He described the process whereby those memories were no longer available to him, partly it appears as a result of a process of deliberately distancing himself from the memories, particularly since his retirement from AGS.

23. NSU-DG-06 told the Commission that this was the first operation on which he was confronted by armed men. He commented that it was like his worst nightmare. He described how retrieving memories of these events has been like attempting to unlock a box in the back of his head where he has stored the memories. He now wonders how functional he was for a period of time after these events, including whether he was in a fit condition to drive back to Dublin that evening; he does not remember what route he took or the conversation he had in the car. NSU-DG-35 also found the incident very distressing. She attributed her inability to remember a meeting at Garda HQ on 2nd May to her shock. In particular, she mentioned the fact that she was not wearing a bullet proof vest while a firearm was pointed at her as a

traumatic event which caused difficulties in her memory of surrounding events. Like D/G Walsh, she described how she has actively tried to leave such memories behind since retiring from AGS.

24. NSU-DG-11 confirmed that she is still affected by the events of that day, and this was visibly apparent. When asked if she had made a statement after the event, she said, *“I don't know how I felt after 1st May. I don't how or what I was thinking...”*. As with the statement, she has no recollection of whether or not she took civilians' names at the scene.

25. Many of the civilian witnesses also suffered greatly from the effects of what they saw. In particular, those who were personally threatened during the attempted robbery and subsequent hijacking continue to feel the effects of what was a terrifying ordeal. Even those who were not directly threatened were very shocked by what they experienced. Some described feeling quite angry about various aspects of the day, after the event. In terms of their perception and memory of events, they described similar distortions to those often experienced by the ERU witnesses. Many were quite unable to describe what happened later that evening, or how they got home from the scene. Some had given verifiable detail in a contemporaneous statement but now had no memory whatsoever of the details in the statement. This applied not only to peripheral details but to events that one would have said were key, memorable events that one would imagine a witness was not likely to forget. The three examples set out below suffice to illustrate this.

26. In 1998 Denis P. described two vehicles travelling at speed on the wrong side of the road from Ashford to Dublin and then colliding with another vehicle. This was an accurate account of events at the southern end of the scene. However, he retains no memory of that now. His statement remains reliable, and is supported by multiple witness accounts, including the drivers of the cars involved.

27. Patrick O'N. was unable, either in 1998 or in 2015, to describe the physical appearance of the man who hijacked his car or any of the other raiders he saw. He could not say anything about the accent of the man who ordered him out of the car. At the Chester Beatty pub, he was not in a position to answer any questions and he does not remember anything of what occurred there. His recollection is one of general confusion and disorientation.

28. Gráinne M. recalls that for many, many months after 1st May 1998 she was very scared about going through the Cullenmore Bends because the attack was so aggressive. She stressed that the raiders were

“particularly vicious”. She was in a state of shock that evening and has no recollection of leaving the scene and arriving in Ashford; her memory is completely blank in that regard.

Trust

29. Three members of AGS fired shots at Ronan MacLochlainn, and all three made statements in which they asserted that he had been carrying a gun, which he had pointed at them. The family of the deceased was very concerned by the fact that there appeared to be no adequate inquiry in 1998 into the circumstances of this man’s death, beyond accepting the statements of the three gardaí in question. In order to fully understand the position of AGS, repeated in the submissions made on their behalf and inherent in the evidence of many garda witnesses (indeed, explicit in some cases), it is important to realise that many (if not all) of those present at the Cullenmore Bends assumed that the shooting of Ronan MacLochlainn was fully justified. This was without necessarily having witnessed it, but because other members of AGS said that Mr. MacLochlainn had a gun, which he had pointed at them. This was the almost universal garda reaction to the account of what had occurred which appeared in the garda file.

30. Perhaps the position is best explained by contrasting what occurred with what undoubtedly would have occurred had a member of the public shot Mr. MacLochlainn. What if a local farmer was travelling from his home to his farm with a licensed shotgun in his car, and was among the civilian traffic caught up in the raid? Let us say that, after he hijacked the Mazda but before DS-06 arrived, Mr. MacLochlainn pointed a gun out the window of the Mazda in the farmer’s direction and, fearing for his life, the farmer took out his gun and shot Mr. MacLochlainn. In such a scenario, there is no question but that AGS would have ensured that both the weapon pointed by Mr. MacLochlainn and the farmer’s shotgun remained where they came to rest. No vehicle would have been moved. The position of the two vehicles – Mr. MacLochlainn’s and the farmer’s – would have been carefully noted and preserved. The farmer would have been interviewed at a Garda Station, most likely under caution, as soon as practicable. Most fundamentally, in my view, an independent investigator would not have been satisfied by the first few accounts received on the basis that they were consistent with each other and with the ballistics evidence. The investigator would have ensured that the full picture was obtained, if possible, and that would at the very least have included identifying all the witnesses to the event and obtaining statements from them. Ideally, the witnesses closest to the shooting would have been interviewed instead of being

asked to write out an account themselves, as a better way of ensuring that the best evidence was obtained. It is inconceivable that, even if three or four witnesses agreed on what they had seen, no other witnesses would have been sought if there were far more witnesses to the shooting, all of whom could be asked questions about how it had occurred. If, in this imagined scenario, Mr. MacLochlainn's car had crashed into an oncoming NSU vehicle as it did in 1998, it seems highly unlikely that the investigator would have prioritised the continued secrecy of the NSU member's presence over a proper investigation into the farmer's actions. The situation ought not to have been any different because the fatal shot was a member of AGS rather than a civilian, but it was.

31. One of the submissions made by legal representatives of Ms. Nic Gibb touches on issues of trust and the general approach of AGS in the eyes of the family of Mr. MacLochlainn. This is an issue relating to Supt Basil Walsh's evidence about the meaning of the word 'footwell'. I will return to that particular evidence in Section G, below. For present purposes, I note that the family's concern, more broadly, is that his evidence is symptomatic of a general belief within AGS that they are beyond investigation and immune from prosecution. The persistence on the part of the Garda Commissioner that this fatality was properly investigated, it is submitted, reinforces a public concern that An Garda Síochána believe themselves to be both above and beyond the law. The family maintains that this view is informed by their experience of the past, when allegations of misconduct were not investigated with proper scrutiny.

32. I have considerable sympathy with Ms. Nic Gibb's submission even though I disagree with its final conclusion; I do not consider that members of the police force in general believe themselves to be above the law. There is, however, some force to the argument that members of AGS expect to be believed. This is partly because so many of them are honest witnesses and it would be wrong not to note this. However, I agree that they may not expect their actions to be robustly investigated by their colleagues, whether misconduct or not, because experience teaches that a police force treats its own members differently to any other class of suspect; this is why GSOC was established.

33. Had I spent 17 years pressing for answers to a question only to be repeatedly told that the question had already been answered, when I knew it had not, I too would be frustrated and mistrustful of AGS. While I do not accept that every member of AGS believes himself to be above the law, the members of AGS do not appear to see the need for an

independent investigation into any allegations made against them, which is a different matter.

34. Most garda witnesses have repeatedly shown that they are unaware of the bias they quite naturally show in favour of their colleagues and against suspected criminals, and they are equally unaware that this bias is the very reason to insist that another body examine allegations against its members. I use the word “bias” in this context without any pejorative connotation. Every one of us has more than one bias; in favour of our families, our friends, our colleagues. We are conscious of some and oblivious to others. Gender bias is one such example. What must be recognised that it is so difficult to counteract such a natural preference, that in some situations we must bow out of a decision-making process. To act otherwise might allow wrongdoing to go unchallenged and might indeed facilitate further wrongdoing or abuse of power in portraying the force as immune from rigorous investigation, reducing any challenge to misbehaviour and thus generally lowering standards of accountability such that standards of behaviour fall accordingly.

35. The implication arising from this submission is a mixture of two factors, one of which is the inherent bias outlined above. An inherent bias is a human failing. Once recognised, it may be remedied. The other factor is another common human failing which arises from such a bias and it is a tendency to lie or sidestep the truth when it suits us, including to show inappropriate loyalty to colleagues and friends. It is important to note that this failing does not affect all of us at all times; it affects some of us more than others, and it must be rare for witnesses to lie without any reason whatsoever. Moreover, if one witness is found to have lied, this does not mean every witness in a similar position has done so, or even that this one witness therefore lied repeatedly.

36. Bearing in mind these general comments, which apply to all witnesses, garda, civilian and raider alike, the following section deals with an issue of fact which arises on the evidence and illustrates some of the points made above.

The Striking of Saoirse Breatnach

37. Saoirse Breatnach claims that he was assaulted by a member of AGS at the Cullenmore Bends on 1st May 1998. D/Garda Martin Harrington was asked in detail about this claim, as it is clear that he was in a good position to witness the assault, if an assault occurred. It could be argued that it is not, strictly speaking, necessary for me to

definitively make a finding of fact in this regard but I will do so for two reasons. First, it would be unfair to those involved to simply ignore the issue now that it has been raised publicly. Secondly and more importantly, the submissions on behalf of Ms. Nic Gibb, referred to above, make it clear that her lack of trust in the organisation that is AGS is not merely informed by her own dealings with its members in litigation, but is also influenced by incidents such as this. Incidents such as this must colour her view of other claims made by members of AGS. Even as I reiterate that all members must not be tarred with the same brush, I recognise how difficult that may be for a person in Ms. Nic Gibb's position.

38. The Commission heard evidence that D/G Harrington pursued Mr. Breatnach as the latter ran from the Securicor van, and apprehended him as he tried to hijack a car. D/G Harrington recalled the following: Mr. Breatnach has just sat into a grey car. He shouted that he was an armed guard. This had no effect; Mr. Breatnach did not move. D/G Harrington reached into the car but Mr. Breatnach resisted being taken out of the car. There was a struggle between them, which ended up out on the road. D/G Harrington had two weapons - a pistol that was holstered and a shotgun that was slung but free. He used force to ensure that Mr. Breatnach did not obtain either weapon. A number of blows were exchanged between him and Mr. Breatnach. He was pushed and punched, and he responded likewise. He tried to pull Mr. Breatnach out of the car and they both ended up on the ground, where the struggle continued; it did not last for a long time but it was a violent struggle. He subdued Mr. Breatnach. Then, Supt Basil Walsh arrived and assisted D/G Harrington to handcuff Mr. Breatnach. Supt Walsh confirmed that D/G Harrington was struggling with a raider who was wearing a mask. Supt Walsh was there for a very short time; once he saw that the raider was secure, he left.

39. D/G Harrington says he put Mr. Breatnach lying flat, face-down, on the ground parallel to the car from which he had been removed. It is his recollection is that he stayed with Mr. Breatnach, who was still wearing his balaclava and was compliant at that stage. He gave his name and address when asked. D/G Harrington stood beside Mr. Breatnach and 'covered' him with the shotgun but he was not restrained, whether by kneeling on him or in any other way. D/G Harrington said Mr. Breatnach did not get a boot to the head, either in the process of trying to subdue him or afterwards. He concluded: *"Once he was subdued and handcuffed I stood guard over him, that was it."*

40. Mr. Breatnach's account is wholly different. He says that he saw a male Garda or Gardaí coming towards him. At that point he got out of the car, stood up, "*walk[ed] maybe 10 yards, or so, hands up, lay on the ground, spread-eagled and then the Gardaí arrived*". He had walked straight across the road towards the middle of the road, for plain view, he said. He lay face down, about 10 yards from the driver's door of the car. He was still wearing his balaclava. A male garda who was carrying a shotgun then "*stomped*" on the back of his head with his boot. This caused his face to hit the road. The guard proceeded to kneel on his head and at some point he switched to Mr. Breatnach's back, to restrain him. He did this continuously. He had the shotgun to Mr. Breatnach's back. The guard tried to pull Mr. Breatnach's balaclava to the side to obscure his vision. Mr. Breatnach was then detained on the road for about 20 minutes. He does not recall anyone saying anything along the lines of "*Did you think I was sick?*" He was told while giving evidence that two civilians had given an account whereby one guard had kicked him but another guard stood over him; he then said it was "*quite possible*" that one guard stayed and another guard left – he recalls movement but he cannot say who stayed and who left.

41. The civilian witnesses, Ms. Fionnuala M. and Mr. Stephen D., were in a car immediately behind the car in which Mr. Breatnach attempted to escape. Fionnuala M. described a lot of roaring and shouting and scuffling. After some time, someone approached the driver's window of Stephen D.'s car. Ms. M. heard someone shouting in the window, "*Give me the key; give me the f***ing keys; don't move*". She initially thought the person was one of the raiders and was going to take their car as a get-away car. She looked up and saw that the person had put a gun through the window of the car. She then discovered that he was a plainclothes Garda. She described him as "*totally hyper*", and surmised that he must have panicked, perhaps thinking that she and Mr. D. were with the raiders. A second garda came over and led him away. Mr. D. has given a similar account up to this point, though he says he only "*sort of half*" remembers this.

42. Ms. M. says that, after some time, she got out of the passenger side and came around the back of her car to the driver's side. She saw a masked man handcuffed on the ground lying face-down near the driver's wheel of her car. He was wearing a balaclava and was clearly a raider. There were at least two or three people standing around him, perhaps more. There was a plainclothes guard standing over him, pointing a big gun. The man on the ground was fully restrained. A second guard (i.e. not the guard with the big gun), wearing a bib, came over and kicked the man on the ground in the face, and said "*Did you think I was f***ing sick?*"

Ms. M. later thought this must have been a reference to the Blue Flu. After the man on the ground was kicked he started gurgling as if he were gasping for breath. There was blood on his face and on the road after he had been kicked. When asked if the first guard (with the big gun), who was standing over the man, would have seen this, Ms. M. pointed out that the first guard was standing right there. Ms. M. was shown a sketch map of the scene showing blood on the roadway on the front side of her car and she confirmed that was roughly the place where the man on the ground had been kicked.

43. Stephen D. was in the same car as Ms. M. He recalls seeing a man handcuffed on the ground and at least two guards standing over him. When asked he remembered a guard saying “*Did you think I was sick?*”, he confirmed that he did. He thinks now that this was directed at the man on the ground, but at the time he had not yet seen the man on the ground. When the guard said these words, the man on the ground got a kick to the face, he said. He was not 100% sure if the man who had spoken to him through the window was the same man who administered the kick to Mr. Breatnach.

44. Three shotguns were surrendered by the ERU for forensic examination after 1st May and contemporaneous documents link them to individual ERU members. The only one of those three ERU members who had any involvement with Mr. Breatnach was D/G Harrington, according to the records. In any event, D/G Harrington accepts that he was there and that he did not leave another guard watching over Mr. Breatnach at any stage; he stayed with him for the entire time. When asked to comment on Ms. M.’s account of another guard kicking Mr. Breatnach after he had been subdued, D/G Harrington said “*No, nobody, nobody came near, nobody did that while I was standing guard over Saoirse Breatnach.*” There was no other raider on the ground in the vicinity, as far as he can recall; Mr. Breatnach was the only one.

45. This issue involves assessing several different accounts, mostly inconsistent one with another. If true, three accounts point to at least one serious assault by a member of AGS. The medical records in relation to Mr. Breatnach are consistent with any of the accounts and do not assist me in terms of who caused his injuries. His injuries were medically examined that evening. It is not disputed that he received injuries, the question is how.

46. Insofar as there may be a motive to say anything, the most reliable witnesses are Ms. Fionnuala M. and Mr. Stephen D. who did not know any of the parties involved. Ms. M. was so shocked by what she

saw a plainclothes guard doing in 1998 that she discussed it in a meeting with counsel and in her sworn evidence, in 2015. She commented that, although she could not condone anything the raiders did, this was not right. I can find no reason to disbelieve her consistent accounts of this incident. She recalls discussing it with the guard at Wicklow town Garda Station who took her statement on the night of the shooting. She also raised with him a separate complaint about the fact that a guard had pointed a gun into their car window. While this last incident is mentioned in the 1998 statement, her account of a garda kicking a man while he lay on the ground is not.

47. The question of whether or not Mr. Breatnach was assaulted is not directly relevant to the shooting of Mr. MacLochlainn but it may illustrate the kind of scene that faced gardaí and civilians on the day and the kind of loyalty that might lead a garda witness to withhold evidence about wrongdoing on his colleague's part. Insofar as it is necessary for me to decide the issue, I conclude that Mr. Breatnach was kicked by a member of AGS while restrained on the ground, just as Ms. M. and Mr. D. described. Other civilian descriptions of at least one garda operative panicking at the scene also support Ms. M's evidence on this issue so that I can have no reasonable doubt in this regard.

48. Mr. Breatnach's position on the road, as indicated by civilian witnesses, and the position of the blood-staining evident in the photographs and map, is not consistent with Mr. Breatnach's description of what occurred, however. The blood-staining is beside and behind the car he was in, and it is consistent with the garda evidence about where he was detained. Having regard to this discrepancy and his conduct in trying to flee the scene by hijacking a civilian's car upon seeing the guards arrive from the south, I think it unlikely that this witness surrendered and do not accept that he walked across the road and lay down as he described. During the assaults he describes, he says he had a balaclava on and was face down, yet he describes his assailants and the shotgun his main attacker carried. If his account is correct, his assailants were led by D/G Harrington, and the assaults were numerous and sustained, none of which propositions appears likely to me and none of which was witnessed by the watching civilians. As soon as it was suggested that it might have been a separate guard who kicked him, after the first had left, the witness abandoned his first version of events, which was that the first guard kicked him. Quite apart from the physical evidence and the conflicting eye-witness accounts, from the demeanour of this witness it is difficult to accept that he gave himself up without a struggle. I prefer the evidence of Fionnuala M. and D/Garda Harrington in this regard.

49. I believe that D/G Harrington struggled to restrain Mr. Breatnach, as D/G Harrington described. He then probably knelt on him for some of the time that he was held on the ground, even though he denies this. One of the factors that informs my view in this regard is that D/G Harrington first restrained Mr. Breatnach at a time when his colleagues were actively chasing other raiders and he and his colleagues all knew that their numbers were very limited. Further, there had been a struggle to apprehend Mr. Breatnach and, finally, Mr. Stephen D. described this man as being pinned down, and Mr. Tom B. thought that the garda who had the man spread-eagled on the road was kneeling on him. I must also record that Tom B. did not see any other officer having any interaction with this prisoner or any assault occurring, but that is unsurprising as he was also directed to get back into his car, probably by D/G Harrington, while Mr. Breatnach was still on the ground.

50. I conclude that D/G Harrington cuffed and contained Mr. Breatnach as efficiently and quickly as possible. This probably did include kneeling on him, however briefly. Only Mr. Breatnach suggests that D/G Harrington was his assailant insofar as the kick to his face is concerned, and he accepts that it may have been another guard. Ms. M describes the incident much as D/G Harrington does up until the point at which another garda approaches.

51. It is clear to me that D/G Harrington himself did not inflict the gratuitous kick described, but in my view such a kick was delivered and he must have witnessed it or its aftermath. That is the most likely narrative of this event, in my view. Of course, it is possible that that D/G Harrington was looking away at the crucial moment when the kick was delivered, but it is not reasonably possible that he was ignorant of the entire event. He must have heard the words that two civilian witnesses heard and it could not have escaped his notice that his prisoner had been assaulted and that another colleague had to lead the assailant away. It is likely that there were at least two garda witnesses to this assault; D/G Harrington and the garda who led the assailant away. Neither the assailant nor that second garda witness has been identified. I am satisfied beyond a reasonable doubt that D/G Harrington was aware that his prisoner had been assaulted.

52. D/G Harrington denied this knowledge and, by doing so, effectively tried to conceal this assault. Other members of AGS must also have colluded in doing the same. Not only did no garda witness come forward to support the complaint of Ms. M., but her account of the assault, provided verbally to a member of AGS in Wicklow town Garda

Station that evening, was not recorded. It is not just disappointing that this was not dealt with by AGS, or the NBCI specifically, as a formal complaint, but those who knew are just as culpable as the unidentified assailant, in my view. While nothing justifies gratuitous aggression, Mr. Breatnach's actions that day did not inspire respect and his assailant was in a life-threatening and terrifying scene. It is a moment's loss of control to assault a prisoner who might be seen as responsible for such a situation. Such violence damages the whole police force and the population it serves, no matter who the victim is. It is a different matter not only to decide not to report such an assault, as D/G Harrington did, but to allow the outcome that followed. A citizen witnessed a garda kicking a prisoner in the face and alerted the NBCI to it. Her complaint was never recorded. Her first statement was her last on the events of the day and she was never asked any question about it, nor was she called to give evidence at the inquest. This inevitably leads to the suspicion that it was not only D/G Harrington who was aware of the assault but that others were also aware of Ms. M.'s complaint and the potential that she might repeat it in evidence.

53. This was one of the most disappointing incidents in a dangerous and disturbing series of events, made very sinister by the subsequent attempts to ignore it and cover it up. It is important that such a complaint is treated seriously and not ignored or minimized, due to misplaced loyalty. The wider repercussions of implicit trust in a colleague, to the extent of refusing to bear witness against him, can be seen in this incident and are replicated in the history between the two main parties appearing before this Commission and the proliferation of conspiracy theories that followed these events. It is not surprising, in the light of this incident, that there is a lack of trust between the family of Mr. MacLochlainn and AGS. Such an incident might damage any citizen's faith in the members of AGS in terms of their integrity.

54. As to the wider repercussions of this finding for the Commission's investigation, the fact that more than one garda witness was involved in either assaulting a suspect or concealing that assault is not a finding that can logically affect my conclusions on other factual issues arising. I note the phenomenon that an armed unit must necessarily trust in its members and how that trust can be distorted so as to protect the whole unit. I am conscious of that bias. Throughout this report I have detailed how I think that inherent bias informed the approach to the 1998 investigation. I reiterate that I use the word in most instances to describe the natural preferences that we all harbour. Recognising that bias may play a part in certain accounts of events does not justify a conclusion that garda witnesses have invented or concealed other

accounts of what occurred that day on a much wider scale. Invention would not only be far beyond loyalty, but would be far more difficult to achieve on the scale alleged and would have no obvious purpose, in light of my strong views on prior knowledge of these events. Nor does this finding necessarily affect the credibility of individual witnesses, many of whom gave strikingly direct and impressive evidence. It would be illogical to allow such a finding to affect the credibility of all other garda witnesses without a connecting or rational link to enable such an inference to be made.

G. The Lawfulness of the Fatal Shooting

1. The test applied by the European Court of Human Rights in determining whether the use of lethal force was justified was expressed as follows in *McCann v. United Kingdom* (1996) 21 EHRR 97, at para. 200:

“[T]he use of force by agents of the State in pursuit of one of the aims delineated in Article 2(2) of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.”

2. The existence of ‘good reasons’ should be determined subjectively rather than against an objective standard of reasonableness.

3. The aims delineated in Article 2(2) are: the use of force in defence of any persons from unlawful violence; the use of force in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or the use of force in action lawfully taken for the purpose of quelling a riot or insurrection. The use of force in pursuit of those aims must be ‘*no more than absolutely necessary*’.

4. Only the first of those aims arises in this case. Accordingly, there are three issues that must be resolved:

- (i) *When he fired the fatal shot, did NSU-DS-06 honestly and genuinely believe that Ronan MacLochlainn was pointing a gun at him and/or at others?*
- (ii) *If the answer is yes, did he have good reasons for that belief?*
- (iii) *If yes, was it was absolutely necessary for him to shoot at Ronan MacLochlainn in defence of any person from unlawful violence?*

5. In assessing this question, in accordance with the case-law of the European Court of Human Rights, the Commission must bear in mind that it is detached from the events at issue. The Commission cannot substitute its own assessment of the situation for an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others. Rather, the Commission must consider the events from the point of view of the person who fired the shots. The Commission must not adopt the standpoint of a detached observer; instead, it must try to put itself in the

position of NSU-DS-06, both in determining whether he had the requisite belief and in assessing the necessity of the degree of force used.⁹

Belief of NSU-DS-06

6. Evidence on the belief of NSU-DS-06 is contained in a statement made in 1998, and can be inferred from his actions before and after the shooting. In assessing his state of mind I have also considered the evidence of the witnesses as to fact and what they saw, and the forensic evidence. Finally, I have also looked at the evidence of the other garda witnesses who knew DS-06.

The Statement

7. An undated statement attributed to NSU-DS-06 was included in the file that was sent to the Director of Public Prosecutions regarding the case against the raiders. The statement says:

“On the 1st May, 1998 I was on duty in the Ashford area of Co. Wicklow. At approximately 5.05pm I became aware that an armed robbery was taking place on a security van north of Ashford and close to the Cullenmore Hotel. I went immediately to the scene from the Dublin side. I was wearing a Garda tabard. I saw that the driver of a green Mazda 323F, registered number 95-D-16466, who was wearing a balaclava, had a handgun pointed at Detective Inspector Pat Hogan of the Special Detective Unit. I heard shots being discharged and the green Mazda headed in my direction. As it approached me the driver pointed his gun at me. I had my personal issue revolver drawn. In fear for my life and the lives other Gardaí at the scene, I discharged two shots at the driver as he came past me. I stopped my car and assisted in removing the driver from the Mazda whom I knew to be Ronan McLoughlin [...]”.

8. The statement goes on to describe how NSU-DS-06 assisted in removing Mr. MacLochlainn from the Mazda and later went to assist in the arrest of Pascal Burke at Killiskey. It concludes “*This statement is correct*” and the copy in the Garda File and Books of Evidence is stated to have been signed by the author, though an original signed copy has not been recovered.

9. As NSU-DS-06 has since passed away, this statement is the only evidence before the Commission about his statement of mind at the time when he fired the fatal shot. While it is not dated, it was clearly made at

⁹ See *Da Silva v. United Kingdom* (judgment of 30th March 2016, para. 245).

a time relatively close to these events. It was included in the garda file, which was submitted to the DPP in August 1998. There has been no suggestion that this statement was made by anyone other than DS-06. Conscious that we cannot test or assess the matters therein, however, where possible I have looked for supporting evidence. If there is none, that will be made clear.

What did DS-06 know in advance?

10. We cannot know exactly what NSU-DS-06 knew in advance of the shooting. It is likely, however, that he knew as much as the other Detective Sergeants attached to the NSU at that time. His call sign is listed on several of the Duty Reports provided to the Commission; it is clear that he was engaged in surveillance on members of the RIRA including Male A and Pascal Burke, in the weeks coming up to 1st May. Even if his call sign was listed in error on some of these reports, which is highly unlikely to have occurred more than once in light of the evidence of their general accuracy, it is likely that he read up on his colleagues' duty reports in the ledger in the NSU offices, as was the practice of the NSU at that time.

Driving Towards the Bends

11. Attempts were made at the Commission's hearings to ascertain whether DS-06 could have known what was going on at the scene while he was driving to it. I agree with Ms. Nic Gibb's submission that it is unfortunate that various issues were not explored with DS-06 at the time, including where he came from, why he entered the scene as he did, why he had his firearm drawn as he was driving to the scene, what vehicles were behind him, and miscellaneous other matters.

12. While it is true that DS-06 could not have known exactly what he would face at the scene, in that it was an armed robbery and hijacking, it is clear from the evidence of the two NSU operatives who were with him in the laneway north of the scene (NSU-DG-32 and NSU-DG-41) that they knew they were driving into an armed incident of some description which justified having a personal issue firearm ready for deployment if necessary. They had heard on the radio that a Securicor van was moving towards Dublin and they had heard an NSU colleague shouting "*Armed Gardai*", or words to that effect. DG-32's evidence was "*we knew something was happening. We knew that something was going down and we were just going in to see what we could do to help at that stage, to see if we could help.*"

13. The next tranche of evidence on this issue is in the testimony of the direct witnesses. Ms. Nic Gibb submits that, at this stage, it is not possible for the Commission to make a finding that Ronan MacLochlainn was pointing a gun at DS-06 when he was shot and, as a result, that the Commission cannot arrive at a conclusion as to whether the shooting was justified or otherwise. I disagree. While it is true that the description of the gun in DS-06's statement is very brief and, as Ms. Nic Gibb points out, cannot be tested by cross-examination, it is fully supported by eyewitnesses who have been cross-examined at length on what they saw and they all give very similar accounts, as follows:

- Insp Hogan saw one of the four raiders running ahead of him point a small handgun at D/S Gantly and, subsequently, at the head of a man whose car was hijacked. After that raider had commenced driving the hijacked car, Insp Hogan saw the man point the same gun, a black handgun, at him, out the driver's window of that car. The man's arm was extended out the window of the car. Insp Hogan was in no doubt that the gun was pointed at him. Insp Hogan saw a second green car approaching and he "*saw the driver again point the revolver up the road*". He said, "*the green car approached me from the northside as I was running up, and the driver of the hijacked Mazda pointed his gun at this car and I heard two shots from the green Mazda.*"
- D/S Gantly described seeing Ronan MacLochlainn turn towards him and point a gun; "*he turned and deliberately pointed his weapon towards me ... he pointed it at me*". He said he feared for his own life and for the lives of his colleagues and members of the public. He subsequently saw a gun being pointed towards Insp Hogan from the hijacked car. He could see the barrel of the gun at the driver's window but he did not see an arm coming out the window. His view of the gun was partial and dictated by his position on the road. This is not inconsistent with the account given by other witnesses and is supported by the fact that the window in the Mazda was rolled down completely.
- D/S Sears also saw that the raider who turned had a handgun; he specifically said it was a revolver. The raider with the gun was the 'back marker' of the four northbound raiders. He "*faced*" or pointed the gun down the road towards D/S Sears, Insp Hogan and D/S Gantly. D/S Sears did not fire because D/S Gantly was in front of him and would have been in danger but D/S Sears feels

that if his colleague had not been there and he had a clear shot, he would have fired at the raider.

- Behind Insp Hogan, D/S Gantly and D/S Sears, D/S Shanahan also saw Ronan MacLochlainn holding a handgun in his right hand; he stopped and pointed the gun down the road before going to a green car and pulling a man out of it, all the while with the gun in one hand. D/S Shanahan did not know if it was a revolver or a pistol.
 - DG-41 was driving behind DS-06 when he saw a car coming north against them. He said *“I then saw as we were coming closer the individual driving the car was wearing a balaclava and then I saw that he had a gun out the window and he was coming towards me, he was driving towards me”*. He clarified that the man was holding the gun in his right hand out the driver’s window. He demonstrated how the man was leaning forward in the driver’s seat with his right arm stretched out.
14. The evidence of the civilians was largely consistent in identifying one of the raiders as carrying a handgun:-
- Michael H. saw a man running towards the first car in his line of traffic. The man was holding a pistol, which he was waving with his right hand.
 - The Securicor driver, Mr. R, described five raiders running towards the Securicor van at the start of the attack. He said one had a small gun, a handgun, and he also described an AKM assault rifle, a rocket launcher, a weapon like a shotgun and a lump hammer.
 - Michael S. told the Commission that he saw a man come north from the Transit van brandishing what looked like a machine gun or a sub-machine gun. He was reminded that in his statement made in 1998 he had described the weapon as a revolver and he said his memory is now hazy but the man certainly had a gun.
 - Alice M. described a man pointing a gun into a green Mazda.
 - Dorcas O’N. said the man running to their car was carrying a small handgun in his right hand; it may have been silvery or grey at the barrel (*“the point where the bullets would come out”*).
 - Patrick O’N. described how the raider put a small handgun to his head.

Evidence of DS-06's Reaction

15. There was also evidence from those who considered themselves good friends of DS-06 and who discussed this incident with him, however briefly. This illustrates the extent to which they discussed these events afterwards and what, if anything, he said about these events. For example, D/S Gantly said he knew DS-06 well and he knew that the shooting did not sit well with him and that DS-06 was troubled by the event. However, he did not discuss the shooting with him at any length as it was not something they would discuss in those terms. There were no big discussions going on about how it happened. NSU witnesses agreed that the mechanics of the shooting were not discussed openly afterwards, out of respect for DS-06. For instance, NSU-DS-08 said it was not openly discussed within the NSU in due deference to DS-06 as it was a traumatic thing to be involved in.

16. This evidence leads me to the view that DS-06 had been troubled by the events of that day, as described, in a way that was natural in circumstances where a man had lost his life. What was notably absent was any evidence that he had agonised over whether or not he was right to shoot or whether or not he had really seen a gun. The certainty of the investigators that there was no wrongdoing and nothing to be investigated probably emanated from the view of the actor himself that there was a genuine risk and that he had to act for his own safety. The general view appears to have been that the shooting had been regrettable, but necessary. It did not appear from any witness that there was an alternative view that the shooting had been unlawful. Nobody at the scene appeared to consider this possible, having either seen the shooting itself or the events that led to it. Nobody who spoke to him afterwards appeared to notice any hint that DS-06 was concerned that he had been wrong, or even mistaken.

The Forensic Evidence

17. The fatal shot was fired by a Smith & Wesson .38 revolver. Its serial number was 6D66502. The forensic examination confirmed that the spent bullet extracted from Mr. MacLochlainn's chest during the post-mortem examination was fired from that revolver.

18. The original NSU Firearms Register was shown to the Commission. This outlines the dates on which NSU members were inspected by their Inspector. The procedure was that each member produced his weapon to the Inspector, emptied it of ammunition, and presented it to be inspected. The Register indicates that NSU-DS-06

had been issued with a personal-issue revolver with a 2" barrel bearing the serial number 6D66502. The date on which the weapon issued to him is not stated but the weapon was inspected by an Inspector on 10th April 1998. In other words, there is very strong, contemporaneous evidence that the weapon bearing this number was in the possession of DS-06 in April 1998. On 25th October 1998, DS-06 was inspected again and his weapon had a different serial number; thus, he was no longer in possession of the weapon bearing serial number 6D66502, which by then was in the possession of the ballistics team who examined it in the aftermath of the shooting, and retained it.

19. Supt William Johnston said normal procedure would be to issue DS-06 with a new gun after his was surrendered in May 1998, but it is not apparent from the Register when the new gun was issued to him. The revolver is still available and was examined by the experts in this investigation together with the spent bullet recovered from Mr. MacLochlainn's body. The examination resulted in a joint report, which confirms the results of the ballistics examination conducted in 1998.

20. The details of the forensic investigations are outlined in Section I, below. It is sufficient to note at this stage that the State Pathologist reached the conclusion that the injuries sustained by Mr. MacLochlainn were consistent with him being bent forward and hunched over the steering wheel, his neck flexed, with his head down. It is likely that this was because Mr. MacLochlainn was a bigger person than Patrick O'N. and the driver's seat was pushed quite far forward. Once Patrick O'N. had been taken out of the car there had been no time for Mr. MacLochlainn to adjust the seat to better suit his height. The seat was still in this position when examined by experts in 2015. The trajectory of the bullet traced by reference to his chin and the wound created, suggest that not only was his head down, but it was turned to the right, as if looking through the driver's window, not the windscreen. This is consistent with the accounts given by those who saw him pointing a gun out of the driver's window of the Mazda.

The Course of Conduct of Ronan MacLochlainn

21. While it is likely that his role in the attempted robbery involved Ronan MacLochlainn keeping civilians under control at the northern end of the scene, it is also clear that he lent his support to the attack on the van. This was a violent, aggressive attack designed to terrify the Securicor employees. Witnesses also described how Ronan MacLochlainn waved a gun over his head at oncoming civilian traffic, turned to deliberately point his gun at members of AGS pursuing him,

hijacked a car from an older couple at gunpoint, dragged a man with a heart condition out of the car, turned the car to point towards his intended escape route, and pointed a gun out the window of the car at Inspector Hogan. There is no evidence to undermine the proposition that, intent on escaping arrest, Mr. MacLochlainn continued in this course of conduct and pointed his gun at DS-06 also.

The Evidence of NSU-DG-32

22. NSU-DG-32, who was approaching from the north behind DS-06, did not see a gun out the window of the hijacked Mazda. However, I am satisfied that he explained this by noting that his attention was drawn to the driver's balaclava, DS-06's brake lights and the ERU jeep on the ditch all at the one time. In terms of seeing a gun, DS-06's car also hindered his view.

23. There was some doubt as to what exactly DG-32 saw. When he first met counsel to the Commission, he was asked where the raider's hands had been, and he said they were on the wheel. However, when he was asked to confirm the accuracy of a note taken at the meeting, he acknowledged that he had said that both of the driver's hands were on the wheel but, upon reflection, he was not sure if that was correct. When this was brought to my attention, I was concerned that the change may have occurred when DG-32 was alerted to the fact that his evidence might prove awkward for a conclusion about the justification of the shooting. However, I found his sworn evidence at the Commission's hearings to be compelling. As a result, his earlier equivocation on this point does not raise a doubt in my mind about what occurred in the hijacked Mazda on 1st May.

24. In arriving at this conclusion, I note that DG-32 did not make a statement in 1998. The initial meeting with the Commission was the first time he had addressed the issue, and at that meeting the witness had also said he did not have a clear mental image of much more than the balaclava. His response at the meeting it is likely to have been made both without thinking about it carefully, and wanting to be helpful. In most situations, when asked where a driver's hands were, the impulsive answer is "*on the wheel*". Many witnesses who in fact do not know, because they were not looking at his hands, will say that the driver's hands were on the wheel without thinking too much about it. This is not a question of honesty but of care and reflection about one's answers.

25. If his first statement was correct, and Mr. MacLochlainn was driving with both hands on the steering wheel, then either DG-32

glanced at his hands at a time before Mr. MacLochlainn picked up and pointed his gun, or all of the other relevant witnesses were wrong and continue in their error. The latter is not only highly unlikely but it also requires that his colleagues, in the immediate aftermath of a highly dangerous and volatile operation (before arrests had even been made and as medical treatment was being administered), made an identical error in which they have persisted for 17 years. It is even less likely, in my view, that the accounts given were deliberately false. Again, I look at the opportunity to confer, which was minimal, the sheer length of time involved, the demeanour of the witnesses and the fact that the window of the hijacked Mazda was rolled fully down. I do not think any one of the other explanations for DG-32's evidence in this regard is reasonably possible.

26. It has been submitted that DG-32's failure to see the gun is a difficulty, compounded by the fact that the 1998 statements are in extraordinarily truncated and abbreviated form, that they made *patently questionable assertions*, and that they were never subject to any proper independent scrutiny. I agree that an adequate and effective investigation would have involved asking questions of other witnesses arising from the statements made by DS-06, Insp Hogan and D/S Gantly. As the European Court of Human Rights has held, "*Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible*".¹⁰ The statements were indeed truncated and were not subjected at that time to any scrutiny. However, I do not accept that matters in the statements of 1998 were "*patently questionable*", as submitted by Ms. Nic Gibb. The sum of the evidence includes not only all the witnesses' testimony, but also the physical and forensic evidence from the scene, and the 1998 statement of DS-06. These establish, beyond a reasonable doubt in my view, that a gun was pointed out the window of the hijacked Mazda. The fact that DG-32 did not see it does not detract from the evidence of those who did.

The Evidence of NSU-DG-41

27. Ms. Nic Gibb also calls into question the reliability of DG-41's evidence. She submits that although DG-41 gave evidence that he saw that Ronan MacLochlainn had a gun out the window as he was coming towards DG-41, the latter also said that DS-06 was ahead of him but apparently did not see DS-06 firing any shots at Ronan MacLochlainn.

¹⁰ *Da Silva v. United Kingdom* (judgment of 30th March 2016), para. 234.

28. I do not see any inconsistency in the evidence of DG-41 when he says that he could see the gun in Mr. MacLochlainn's hand, pointed at NSU-DS-06, and he also says that he did not see DS-06 fire the shots at the hijacked Mazda. It is much easier to see something coming towards you than to see the actions of a man sitting in a car in front of you. More significantly, the expert evidence heard by the Commission and indeed the Commission's own experience at the AGS firing range indicates that it is very difficult to know if someone has fired a shot, particularly if one is behind the person with the gun, or, if one does hear a shot being fired, it is next to impossible to know where the sound is coming from. This must be especially problematic if one is driving a car. An illustration of this difficulty can be found in the evidence of D/S Sears who, while standing directly behind D/S Gantly on the road, could not be sure if he had fired or if some of the shots were returned by the raiders.

29. When it comes to general credibility I am more concerned by the evidence given by NSU-DG-41 as to his having removed Ronan MacLochlainn from the Mazda. That evidence has been contradicted by several other witnesses. However, this witness appears to honestly recall his sole involvement at the car at that point. He had never been asked about this incident before and was giving his version of events many years later. I am confident that he is wrong about this aspect of the day because so many witnesses disagree with him. However, this shows that he is not simply towing the party line, so to speak. He has given an account that is in accordance with his memory, albeit that many people disagree. He has also described Mr. MacLochlainn pointing a gun out of the window of the Mazda, and other witnesses saw the same thing.

The Evidence of a Nearby Civilian

30. For completeness, it is appropriate to mention the evidence of Tom B. He was in an elevated position throughout these events and could be expected to have a view of all that occurred. He did not see Mr. MacLochlainn hijack the Mazda, which happened only yards from him. He did not see Mr. MacLochlainn point a gun at Insp Hogan. He did not see the second green Mazda arrive or go past him, although it must have done. He had little memory of the hijacked green Mazda. He did not see Mr. MacLochlainn point a gun at DS-06. He also has no recollection of seeing a red car in front of what he referred to as a 'stalled' car. He added that his focus was on the police and on keeping himself safe. This is a good example of the difficulty with eye-witness evidence, particularly in traumatic scenes, which is discussed in greater

detail elsewhere. A witness with a good vantage point may not see anything of value to an investigation, as was the case here. The focus of Tom B.'s attention, as one can see in his description of the three policemen running after the car, was entirely on one group, and he completely missed all the other action in the scene.

The "Disappearance" of DS-06

31. As noted above, NSU-DS-06 said in his statement that, immediately after the shooting he stopped his car and assisted in removing Mr. MacLochlainn from the Mazda. His statement continued as follows:

"I went to the assistance of D/I Hogan and D/Sgt. Gantly who were attempting to remove the driver from the Mazda car. He was resisting violently and at this point I heard a shot being discharged. The prisoner was forced to the ground still struggling and handcuffs were placed on him. I sought medical assistance for McLoughlin. It was then discovered that he was shot. I then assisted Detective Inspector Hogan and other members in containing the situation. At this stage there were a number of persons arrested at or close to the scene. I remained in the area until about 6p.m."

32. Many witnesses who gave evidence to the Commission were asked if they recalled seeing NSU-DS-06 in the vicinity of the green Mazda while Mr. MacLochlainn was taken from the car or while CPR was being administered to him. None could recall his presence during that time. In light of this evidence, the following submission is made on behalf of Ms. Nic Gibb:

This disappearance of the man who apparently fired the fatal shot is of huge concern, especially in light of his own statement, which places him with the deceased. It doesn't appear at this stage that the Commission can give any weight at all to this statement, where essential elements (such as what he did directly after the shooting) appear to be contradicted by other evidence. Why can no officer remember DS06 being present right after the shooting? It has to be suggested if they were likely to remember any particular person's presence seventeen years after the fact it would be the person that they believe to have shot the fatal bullet.

33. It is submitted, in particular, that it is unusual that neither Insp Hogan nor D/S Gantly recalls NSU-DS-06 assisting them in the manner described in his statement. I note at this point that at that time,

most witnesses did not know, and could not have known, that DS-06 had fired the fatal shot.

34. I disagree with two aspects of Ms. Nic Gibb's submission. First, the fact that essential elements of a statement may be contradicted does not necessarily lead to a rejection of the entirety of the statement. This is particularly so where, as here, other essential elements are substantiated. Secondly, it is not the case that essential elements of the statement are contradicted. The example that is given is what DS-06 did after the shooting. That is not contradicted; it is simply that, 17 years later, other witnesses cannot recall it. However, his actions in Killiskey have been fully corroborated, as has his account of arriving at the scene and firing two shots at the oncoming Mazda.

35. As to the evidence about what occurred immediately after the shooting, it is not unusual for witnesses not to recall exactly who was where during at an event 17 years earlier. Their focus was on what was directly in front of them: removing a suspect from a car, discovering that he had been shot and dealing with his injuries. It was not a priority for them to look around and note who was there and what they were doing. In a scene such as this one, with the noise and the action as described above, it would be impossible to observe and remember each and every event. For those who were watching one raider, it is highly unlikely that they saw much else, particularly if that raider was Ronan MacLochlainn, who pointed his gun at four different people at the scene within the space of about two minutes.

36. The absence of any detail in the statements made in 1998 is more of a reflection on the adequacy of the investigation conducted by AGS than a contradiction of the statement made by DS-06. As is clear from the relevant sections of this report, I consider that the investigation of this shooting by AGS was incomplete and poorly executed. Had the investigation been thorough and effective, these witnesses might have been asked to put in writing the exact details relating to the shooting and they would have been able to volunteer a lot more information in 1998 than they could recall in 2015. However, nobody was specifically asked in 1998 about the movements of NSU-DS-06 on that evening, and in particular, no investigator teased out the events surrounding and immediately following the shooting. In the circumstances, it does not surprise me that when they are asked 17 years later to account for his movements, some garda witnesses cannot remember DS-06 being there at all. Equally, none of the civilian witnesses was concentrating on observing or noting any of these events. It is normal that most give slightly different accounts of what they saw, inconsistent with each

other, and sometimes with their own earlier accounts. By and large, the truth can be deduced from a combination of their evidence and the contemporaneous material that is still available to us but there are of course gaps in the collective memory of these events. These should not, and do not, lead to doubts about evidence that is otherwise well-supported.

37. It is also argued that DS-06 made no reference to a red car in his unsigned statement, though that car must have been just behind him. However, we now know that DS-06 travelled from north of the scene with two other operatives, and he does not mention that either. In fact, he does not refer to any other NSU operatives and he does not even describe himself as a member of the NSU. This is in line with the other statements made by members of AGS and appears to be following a general policy of keeping the fact of the NSU involvement hidden. All of the other witnesses' statements made no more than minimal references to NSU operatives and cars at the scene. The red car in question was an NSU vehicle. It was mentioned only in the statements of ERU members, who probably did not know that it was an NSU vehicle. This leads me to the conclusion that the absence of any reference to the red car in DS-06's statement was a deliberate omission. It does not affect the reliability of the statement, in my view.

38. There was a similar issue about the disappearance of DS-06 in the context of his arrival at the scene from the north. Michael S. and Michael H. both recall meeting ERU vehicles coming against them to the scene after they had turned to escape the raid. However, they do not remember meeting any of the three NSU vehicles which had set off in the direction of the scene from a lane north of the Cullenmore Hotel. Michael S. equally forgets seeing a man in the bib on the road at the Cullenmore Hotel, which he described in his statement in 1998. It is suggested that, if DS-06 travelled south with his two colleagues, ahead of their ERU colleagues, Alice M., Michael H. and Michael S. must have seen them as all three civilians recall the ERU.

39. Here is another opportunity to deal with suggestions that a witness *must have seen* what was in front of him, and to comment on the investigation of these events.

40. There is no doubt in my mind that NSU-DS-06 came from a northerly direction in a green Mazda and that he was there before the ERU team came from the north. It is patently clear that he was at the scene, and that he ended up in Killiskey. There are two direct NSU witnesses to the fact of his journey, and a statement which DS-06 made

at the time. Moreover, Insp Hogan described in detail his recollection of DS-06's southbound green Mazda and, most objectively, a bullet fired from DS-06's revolver was extracted from Mr. MacLochlainn's chest.

41. Some time was expended on this gap in the evidence during the oral hearings. There are many likely reasons for the civilians' failure to either see or recall the three NSU vehicles. In the first instance, these events occurred with great speed and in traumatic circumstances many years ago. Alice M. described a man pointing a gun into a green Mazda. She turned her car and drove north, away from the scene. She was the witness who directed the ERU team from the north into the scene so that gives an idea of their time of arrival when considering the intervention of DS-06, who was clearly there only a few minutes – if not seconds – before them.

42. What has been called a disappearance is no mystery other than the workings of the human brain and the fallibility of human memory. It is not a conspiracy, as that would be more likely to involve garda witnesses confirming DS-06's account rather than professing a lack of memory. The civilians suffer from exactly the same memory loss and there has not been any suggestion that they are part of the conspiracy. This phenomenon is discussed in greater length in Section F, above.

43. Further, it is not necessarily the case that civilian witnesses *must* have seen DS-06 and his two colleagues and, as a matter of fact, it was not so although he certainly was there. The NSU cars were, after all, more normal than the ERU vehicles in terms of their size, and even the manner in which they were being driven was less aggressive. One of the theories tested in cross-examination was the possibility that the NSU probably arrived *after* the ERU at the northern end of the scene. Every piece of evidence in this regard contradicts this suggestion. The fact that they were not noticed or were not remembered by the civilians has no bearing on the timing of their arrival.

44. Unless a person is asked to give a contemporaneous account of events (and sometimes even despite doing so), he is unlikely to recall every detail about an incident. Some witnesses are much better at recalling and describing events than others, some recall more detail and some recall things very convincingly but quite inaccurately. The best way in which to test a witness's account is by comparing the account to undeniable physical phenomena, memorably termed the "*islands of fact*"

by the late Mr. Justice Hardiman.¹¹ This is done below in Section I, below, in the section describing the ballistics investigation.

45. Finally, it is not correct to say that nobody remembers seeing DS-06 at the scene after the shooting. D/S John Carney of the SDU saw DS-06 coming against him in his car as D/S Carney drove into the scene. He came into the scene using the route DS-06 had to take to get to Killiskey, and at around the same time. While D/S Carney said at his meeting with the Commission that he thought that DS-06 was standing on the side of the road, he said when he was giving evidence that he thought this unlikely. He was on his way to an armed scene and DS-06 must have been in a car, he thought. There is no evidence as to what DS-06 did, exactly, in the relatively short time between the shooting and the arrest of Pascal Burke at Killiskey but common sense dictates the following: this was a public place and the man was in a car during most of these events. There were people everywhere, including members of AGS who knew him well. Had he done anything unusual or inappropriate, in my view, he would then have been noticed. If, as D/S Carney thought at one stage, he was standing on the main road north of the scene, there could be any number of reasons for this – it is possible that he took a phone call or was seeking better radio reception, or took a walk to come to terms what had just occurred, before going on to Killiskey. We do not know and we will never know. However, the issue does not have any particular bearing on what has to be decided. It does not mean he was somewhere he should not have been, nor does it affect the credibility of D/S Carney as this is an event from over 17 years ago. The gap in knowledge illustrates, yet again, that a properly conducted interview with DS-06 and D/S Carney in 1998 could have spared all of those involved having to revisit these events so many years later.

The Position of the Handgun in the Hijacked Mazda

46. A photograph taken by AGS photographer D/G Martin Allen on the evening of 1st May shows a silver revolver on the passenger seat of the hijacked Mazda, jutting out over the edge of the seat, across the handbrake. This is said to be the revolver which Ronan MacLochlainn used to hijack the Mazda and subsequently pointed out the window at Insp Hogan and DS-06.

47. The Commission received inconsistent evidence from witnesses who saw the gun before it was removed from the Mazda by the ballistics team. This gave rise to a suspicion on the part of the family of Mr.

¹¹ See, e.g., *P. O'C. v. DPP* [2000] 3 I.R. 87, at p. 118.

MacLochlainn that the revolver had been deliberately moved – in effect, planted - in the Mazda after the event. The theory prompted by these inconsistent accounts was that it was not originally in the position in which it was later photographed. It was also tentatively suggested to various witnesses in cross-examination, but is untenable in my view, that there was never a gun in the car. It is noted that Ms. Nic Gibb does not contend for a finding of that nature in her final written submissions. Rather, she contends that the conflicting evidence received in respect of the location of the handgun must lead to a doubt as to where it was located when it was dropped by Mr. MacLochlainn and she asks the Commission to consider whether it was moved. She suggests that if there was a concern as to whether Mr. MacLochlainn had indeed been pointing his gun out of the driver's window at the time of his shooting, that might explain the movement of the gun.

48. The key discrepancies which gave rise to that theory arose as follows. In a statement made in 1998, Supt Basil Walsh said *"In a green Mazda car I saw a handgun lying between two seats"*. However, when he attended a meeting with counsel to the Commission in March 2015, he said there was a gun in the "footwell" of the Mazda. When he attended to give sworn evidence in September 2015, he was questioned at length about the apparent discrepancy. He then said that the gun may have been in the footwell, but that he was not sure. He explained that by "footwell" he did not mean the area for one's feet but the area around the handbrake. He told the Commission that he had never before heard the word used for the area around the clutch and brake and would not have known what to call that area. He confirmed that he had not seen the gun on the passenger seat, as it was later photographed, but in between the seats, although he added that he could be wrong. Neither could he identify the gun in the photograph taken by D/Garda Allen.

49. A further apparent discrepancy occurred in the evidence of D/S Comiskey. In a statement made in 1998, he listed several items that he had seen at the scene and pointed out to D/S Carney of the SDU, who had been given initial responsibility for preserving the scene that evening. Towards the end of that list was a *"Smith & Wesson .357 Magnum"*, i.e. the revolver. D/S Comiskey did not specify in his statement where he had seen any of the items listed. At his first meeting with the Commission in February 2015, he was asked where he had seen the revolver and he said it was on the roadway; he could not be precise but he thought it was in the vicinity of the Securicor van. He also said he had never been near the green Mazda.

50. The discrepancy was pointed out by Ms. Nic Gibb's representatives at a pre-hearing conference in June 2015, and a note of the matters discussed at that conference was circulated among various garda witnesses, including D/S Comiskey. In September 2015 he prepared a statement saying that some of the items he had shown to D/S Carney were near the Securicor van and others were on the northern side and, upon reflection, that was where the revolver was. When he attended to give sworn evidence, he was questioned at length about these issues. He said that he had listed the items in his statement in the order in which he saw them, south to north. He said he had reflected long and hard on the subject and now distinctly remembered walking north with D/S Carney to the area where Ronan MacLochlainn had been lying, in order to point out the Smith & Wesson. However, D/S Comiskey no longer has a clear mental image of the surrounding area. He has no recollection of the green Mazda or of being beside it and he does not remember the revolver being in the green Mazda or in any car; in fact, he could not say where the Smith & Wesson was in relation to the body; he could only say that it was at the scene. He could not say if it was on the roadway or in the ditch or on the ground.

51. The Commission also received the following evidence about the revolver:

- Sergeant Gerry Walsh was attached to Bray Garda Station in 1998 and was called to assist at the scene after the shooting. He recalls a silver coloured revolver on the floor of the Mazda at the driver's feet in the foot-well of the car. He is certain that it is the same gun as that depicted in the photograph taken that evening. He was not aware of any controversy in relation to the gun and nobody ever discussed it with him. He did not attend any meetings with other garda witnesses and their legal representatives in advance of the Commission's hearings and this evidence was therefore untainted, however innocently, by suggestions from anyone else;
- Insp Castles, then attached to Wicklow town Garda Station, was asked about the damage to the Mazda and spontaneously recalled, before being asked that there had been "a firearm in the well, you know, on the floor". It was a handgun, he said. He was shown the photograph of the gun in the car and said his recollection was that it was on the floor or footwell on the driver's side. However, the gun in the photograph did tie in with his memory of it.
- NSU-DG-11 saw the handgun between the two front seats beside the handbrake. She was retrieving a wallet for the couple who

owned the car. She was shown the photo of the handgun in the car; this is not where she remembers it. She remembers it as being down between the seats, which I took to mean the floor of the car, at the front, as it would not be visible if tucked in between the seats. The butt was facing the front of the car and the muzzle pointing towards the back.

- Insp Hogan saw the gun between the two seats in the front of the car, in the area of the handbrake. He could not say if the photograph shows exactly where the gun had been but he did recall it being between the seats. He had not seen the gun as Mr. MacLochlainn was being taken out of the car. He went south of the scene to assist there after removing Mr. MacLochlainn from the car, and saw the revolver when he came back. Insp Hogan said the firearm was not immediately seized on arrest; the practice was to secure the man first, make sure he has no firearm, handcuff him and then look for guns.
- D/S Gantly also remembered seeing the handgun between the seats, resting there and clearly visible. He identified the gun the photograph as the gun that he had seen and said it was roughly in the same position. He knew that there had been some issue with the position of the gun but he was sure it was in that car as he recalled saying to a student guard who arrived at the scene to be careful as there was a gun in the car. He had not moved it.
- One of the ambulance men James C. described seeing a silver, Western-type gun and said it was on the handbrake, pointing forward in the car. He thinks the photograph shows about where he saw the gun. It was definitely not in the footwell. While he thought the door of the car was closed, he is certain he could see the gun and suggested that the window might have been smashed or open when he looked at it. He saw this after he had finished working on Mr. MacLochlainn at 5.50pm or later. Before giving evidence, he had never been shown photos of the car, other than aerial shots.
- D/S Carney also saw the revolver. When giving evidence, he first said he saw it *“in and around the footwell seat area”* in the Mazda. He later clarified that it was not on the seat; it was in the driver’s footwell. He does not recall if it was to one side or to the other or if it was centrally placed or under the pedals or up near the seat; he just remembers seeing it. He does not recall it being in that position shown the photograph.

- Two members of the Garda Technical Bureau made statements in 1998 in which they said they saw the revolver on the driver's seat with the muzzle facing the door, as seen in the photograph. One of them made it safe and removed it for examination.

52. Having considered the multiplicity of different accounts as to the position of the revolver, I conclude that the gun was probably moved by someone who is now unwilling to admit this, and the gun was later seen by other witnesses, including the photographer, in its position as photographed. We know it was not moved to make it safe as that was done by the ballistics section, who did not begin work until after the photograph was taken. It may even have been moved from the footwell to the handbrake area and again to the seat but this is less likely, simply due to the logistics of moving evidence at a scene full of people. I cannot rule it out, however, such was the approach to the evidence at this part of the scene. It is impossible to tell at this stage if the gun was moved twice.

53. There may, however, be a more innocent explanation, namely that many witnesses are understandably mistaken due to the length of time since they saw the gun.

54. My inability to resolve this issue with any degree of conviction is strongly linked with my conclusion, upon which further detail will follow, that the scene was not properly preserved on 1st May 1998.

55. While I deplore the moving of evidence and all subsequent comments in relation to the preservation of a scene generally apply here, this particular issue is not one that affects my views of the facts in this case other than to comment that better command structures and scene preservation should have avoided this becoming an issue in the first place. Hypothetically, had there been a shooting by Mr. MacLochlainn (or by our hypothetical farmer) and had this been the suspect gun, it is inconceivable that it would have been moved and any guard foolish enough to do so would be severely reprimanded. To interfere with evidence in that way is self-evidently wrong and could jeopardise a whole investigation. In this case, another wholly avoidable conspiracy theory was quite understandably raised by this issue.

56. Returning to the revolver, the crucial evidence, it seems to me, is that the handgun seen by D/S Gantly, Insp Hogan, D/S Sears, D/S Shanahan, Patrick and Dorcas O., Alice M., Michael H., NSU-DG-41 and NSU-DS-06 – in more or less that order – in the right hand of

Ronan MacLochlainn, was found in the car in which he had been shot. It was in the front of the car, where he had been sitting.

57. Although it is unnecessary to be sure of its exact position, in my view the gun probably came to rest at some stage after the shooting in the driver's footwell at one point, near the handbrake. By footwell, I mean the area of the car in which feet usually rest. NSU-DG-11 and D/S Carney remember it on the floor - she in between the seats, he in the footwell. Most tellingly, Sgt Walsh recalls it being in the footwell also, albeit with some reservation as to whether it might alternatively have been beside the car. Ms. Nic Gibb submits that at an informal meeting with counsel Sgt Walsh suggested that the revolver might have been on the ground. In fact, he said at that meeting that "*There was a handgun either in the foot-well of the car or on the ground beside the car*". Any honest and careful witness will of course admit of the possibility that he may be incorrect. My strong impression of his sworn evidence was that he recalled that it was in the car and he had started his evidence with the detail that it was on the floor, at the driver's feet.

58. With regard to the evidence of D/S Comiskey, he agreed that his recollection had changed after he had been told following his meeting with the Commission that the Smith & Wesson was in the car and not near the Securicor van. He said that, when he received material which specifically contradicted the recollection he expressed at the meeting, he realised the importance of his error and sought to correct it. He is adamant that he was at the northern end of the scene and that the order in which he noted the items makes it clear that he saw the gun in the vicinity of the Mazda and not near the Securicor van at the southern end of the Bends. I note in support of this claim that the order of the exhibits listed in his statement does reflect the order of items marked on a map prepared by the garda mapper in 1998, south to north. I do not consider D/S Comiskey's evidence to be a pointed refusal to place the gun in the car, as has been submitted on behalf of Ms. Nic Gibb. His evidence was not that of someone who was now lying but unwilling to go that extra mile. The witness was hugely embarrassed and appeared very earnest. He could not recall the exact location and would not say it was in a car when he could not specifically picture that. My impression of his evidence was that he was acutely aware of how his mistake had given air to a new theory of the case for the first time since 1998, and he was not going to say anything else of which he was not absolutely certain.

59. In fact, the error was less important than he realised, given the numerous people who confirmed that the handgun was indeed in the

hijacked Mazda. The gun was seen there by many of the witnesses, noted above, before D/S Comiskey was anywhere near the Mazda. One of these witnesses was D/S Carney, to whom D/S Comiskey was pointing out these items. He too was certain that the gun was in the footwell of the car. A lengthy submission has been made on behalf of Ms. Nic Gibb about the nature of D/S Carney's evidence. I find that, while not a particularly forthcoming witness, this was after lengthy cross-examination. The witness's somewhat guarded attitude is perhaps owing more to the dynamic of the cross-examination than any attempt to lie, in my view. The same witness preferred not to reveal to the Commission what he was doing prior to being called to the scene, neither did he want to reveal his diary or details of his meetings as he could not see their relevance to the question of whether or not he was somehow coaching D/S Comiskey. I do not mean, by these comments, to suggest that I found D/S Carney to be unhelpful generally but to highlight that he was not a particularly compliant individual by nature. This is not a criticism. I do not believe that he coached D/S Comiskey. I am satisfied that D/S Comiskey made an understandable error in his first discussion of these events in 17 years.

60. I am sure that the gun shown in the photograph, whatever its original position in the car, was the same gun that had been used by Ronan MacLochlainn that day. The evidence of his associates confirms that his weapon was a revolver, both directly and by a process of elimination. It was the only revolver used by the raiders, and he had it. The evidence of numerous witnesses was that he had a gun and there was no other gun at the scene which could be attributed to him. This was not a garda issue weapon, as the evidence made clear; AGS use regulation weapons of particular makes and calibres.

61. The alternatives are that somebody not only predicted the robbery, but also the shooting, and he took the precaution of bringing a spare gun to plant at the scene. This scenario is obviously implausible. In fairness to the parties, nobody has suggested such a thing. I merely point it out as the logical conclusion if the evidence in fact raised a doubt as to whether there was a second gun at the Securicor van. It does not raise such a doubt, in my view.

62. As noted above, Ms. Nic Gibb has suggested in her final submissions that there might have been concern as to whether the gun was pointing out the window of the Mazda, thus leading to a deliberate repositioning of the gun. That would have been an entirely unnecessary course of action as it is equally plausible that a gun would land in the footwell as on the seat or between the two seats or on the handbrake,

following a scuffle. It is inconsistent to suggest that, on the one hand, the gun was carefully repositioned to support a particular narrative, while the vehicle into which the Mazda had crashed (a fact mentioned as part of that narrative) was removed. The only reasonable conclusion from the evidence is that the handgun was either in or beside the Mazda. Either is consistent with Mr. MacLochlainn having possession of it and pointing it out the window.

“The Footwell”

63. In coming to my conclusion about the position of the revolver in the Mazda, I have left aside Supt Basil Walsh’s evidence about the footwell of the Mazda as I find it hard to decide what to make of it. There did not appear to be any reason for Supt Walsh to change or conceal anything in his evidence; after all, he did not pretend he had seen the gun as photographed.

64. As noted in Section F, it has been submitted on behalf of Ms. Nic Gibb that the evidence of Supt Walsh as to the position of the handgun in the Mazda, and the meaning of the word “footwell”, illustrates that he and his colleagues believe that they are immune from investigation in relation to these events, and that any explanation tendered, no matter how improbable, will not be probed and will be accepted at face value.

65. I take the view that the Superintendent’s evidence can only affect my view of *his* approach and not that of his colleagues. His vocabulary in giving evidence was such that it is difficult to believe that he does not know what the word “footwell” means, although I do not share the view expressed on behalf of Ms. Nic Gibb that the word is in very common usage. By its nature, however, it is not difficult to figure out its meaning and it is unlikely to mean the area around the handbrake. It is also too much of a coincidence for me that he uses the wrong word to describe what he means, in a case where that mistaken word, as it happens, is an exact description of where other witnesses say the gun was. This would be such a pointless lie that, while I find his evidence on the issue unconvincing and probably inaccurate, it is better characterised as a careless throwaway than a deliberate lie, in my view. I must consider the likelihood that he made an error, having heard others using the word, and I conclude that he was not sufficiently careful as a witness to be clear about what he meant.

Was it Necessary to Shoot?

66. One theory tested in cross-examination (though not adopted in final submissions) was that as Ronan MacLochlainn was known to AGS, and as he had no way out of the scene on the day, it was not necessary to shoot him. Chief Supt Kirwan disagreed. He said that since Mr. MacLochlainn had hijacked a vehicle, AGS was not in control. I find his argument convincing. Apart from any question of containment, DS-06 was not required to allow Mr. MacLochlainn to shoot him because there might be a jeep blocking his path further up the road. DS-06 was entitled to defend himself by shooting at the man who appeared to be about to shoot him.

67. A further line of questioning pursued in cross-examination (again, not contended for in final submissions) was that Mr. MacLochlainn should have been allowed to make good his escape as he could be arrested subsequently, when circumstances could be controlled. This theory is untenable. This was a man who had engaged in subversive activity of a particularly violent and criminal nature, who had pointed his gun at several people. He failed to stop when called upon to do so by armed guards. He failed to stop when an armed guard shot at the vehicle in which he was travelling. He was heading in the direction of civilian traffic. It was not simply a question of letting him drive out of the scene with his revolver. This does not strike me as a sensible or safe option. Clearly, Mr. MacLochlainn had to be apprehended at the scene or there would be further risk to the public. It is not fair or rational to expect DS-06 or a police officer in his position to reason that this gunman probably would not shoot just because he had not shot at Insp Hogan or D/S Gantly seconds beforehand. Ronan MacLochlainn did not have to be shot until he aimed his gun at the driver opposite him. This action on his part not only justified the action of DS-06 but made it necessary.

Compliance with the Garda Code

68. It is submitted on behalf of Ms. Nic Gibb as follows:

The Garda Code refers to the discharge of firearms being justified “if an assailant is seen by a member pointing or discharging a gun at the member or at a member of the public”. It is therefore not surprising that DS06’s statement needed to state that Ronan MacLochlainn’s gun was pointing at him when he discharged shots. However, is it submitted that at this stage it is not possible for the Commission to make a finding that Ronan MacLochlainn was so pointing the gun.

69. This submission illustrates that the approach taken on behalf of Ms. Nic Gibb has been steered by a bias of its own. This bias is entirely understandable as it arises, in my view, from the approach taken by AGS to her queries and allegations over 17 years. In effect, she does not accept the evidence that Mr. MacLochlainn pointed a gun at a garda sergeant, as her experience has been that AGS as an organisation is not trustworthy. Numerous witnesses disappeared and there was no explanation that she could see for AGS to wait until a dangerous armed attack had begun before intervening in a fashion that appeared chaotic. Her submission, informed by this distrust, ignores the possibility that DS-06 says a gun was pointed at him *because it was*, favouring instead the theory that he would say so even if it was not true, because the Code outlines this as a reason to justify the discharge of his firearm.

70. Contrary to what has been submitted, it is, in fact, possible to make a finding that Ronan MacLochlainn was pointing a gun as described. The Commission has established the facts as follows. Insp Hogan and D/S Gantly were chasing the hijacked Mazda as D/G Ryan drove up to block it. D/G Ryan was still completing this manoeuvre when the three NSU cars arrived from the north. The hijacked Mazda had just moved off when Mr. MacLochlainn pointed his gun at Insp Hogan and the Inspector shot at the hijacked Mazda. Mr. MacLochlainn accelerated forward. Seconds later, Mr. MacLochlainn pointed his gun again, this time at the oncoming unmarked Mazda driven by DS-06. Two more shots were fired by DS-06 and the hijacked Mazda collided with a car coming against it, stopping in the position where it was later photographed. The incident developed with extraordinary speed. Many of these events were almost simultaneous.

Conclusion: Necessary and Justified Shooting

71. I am satisfied beyond a reasonable doubt that Ronan MacLochlainn had a gun and was pointing it at the driver of the oncoming Mazda when DS-06 fired at him. There are numerous surviving eye witnesses to this fact and it is in line with the behaviour of Mr. MacLochlainn in the preceding minutes when he had pointed the same gun at two other officers who were chasing him, and had forced an elderly civilian from his car, while holding the same gun to his head. The gun was found in the hijacked car. It was loaded. Mr. MacLochlainn showed a determination to flee the scene; even the pleas of an older woman to spare her infirm husband fell on deaf ears. Pointing a gun at the driver of the car driving towards him was consistent with Mr. MacLochlainn's conduct throughout this episode.

Whether confronted by a garda or civilian obstacle, his reaction was the same; to threaten their lives with a loaded weapon.

72. As noted, the driver's window of the Mazda had been rolled down by Mr. MacLochlainn. The window was intact even after the bullet came through the wing mirror, through the open window of the car, and into his chest, so it was certainly rolled down as he was driving. There is no question of this having been done afterwards to aid a conspiracy. Patrick O'N. habitually drove with his windows up and did not recall rolling it down. The most likely reason for the window to be rolled down completely, as it was, was to enable Mr. MacLochlainn to point his gun out of it, so as to ensure that he was not opposed by oncoming traffic, civilian or otherwise. Further support for this is found in the position of Mr. MacLochlainn's head when he was shot, in that he was looking to the right and out his driver's window, in other words, towards his gun, not out the front windscreen directly ahead.

73. All of the factual matters set out in DS-06's statement regarding the shooting have been confirmed, insofar as that has been possible, by the ballistics evidence. His presence there has been corroborated, both by witness testimony and by the forensic evidence, in that the fatal bullet came from the personal issue firearm assigned to him. That evidence has been tested by the experts, one from the Commission and one retained by the family, who agree that the description given by DS-06 of how the shots were fired is accurate. In those circumstances, I am confident that the contents of the statement are reliable.

74. It is certain that Ronan MacLochlainn was carrying a revolver, not only by a process of elimination (we know what the other raiders were carrying) but also by assessing the other evidence of what occurred, including events at the Mazda.

75. All of these matters - the 1998 statement, the witnesses who corroborate it and the physical evidence regarding the window of the Mazda, and the surrounding evidence as to how DS-06 and his colleagues viewed the incident - convince me beyond a reasonable doubt that DS-06 believed that he was in mortal danger.

76. In those circumstances, it appears to me that DS-06 had an honest belief that his life was in immediate danger. He held that belief for good reasons, and his use of force was proportionate and necessary.

H. The Immediate Aftermath

1. The Commission is required by its Terms of Reference to establish all of the circumstances surrounding the shooting of Mr. MacLochlainn. The Commission therefore heard an abundance of evidence about what happened *after* the shooting on the evening of 1st May. This evidence has no bearing on the Commission's assessment of the lawfulness of the shooting itself, but it is important as a backdrop to the later AGS investigation.

Establishment of the Facts

2. Lawyers on behalf of Ms. Nic Gibb expressed concern about discrepancies in the evidence about what happened immediately after the shooting. It is submitted that:

The conflicts in these accounts demonstrate how it is nearly impossible to disentangle the sequence of events at this remove. Who removed Ronan MacLochlainn from the car? Was he left sitting unattended on the side of the road? Who performed CPR? Was he moved?

3. It is further submitted that it is now impossible, with faded memories, for any definitive conclusions to be arrived at and that, because of the original failures of investigation, it would now be unsafe to conclude precisely what happened at the scene and accordingly unsafe to conclude that the shooting of Ronan MacLochlainn was either justified or unjustified.

4. I agree that there are some conflicts in the evidence. However, these do not so completely hinder this Commission as to make factual findings impossible. In fact, the evidence on most of these issues was very strong and included contemporaneous and forensic evidence such that I can be very confident of my findings. Each of them is considered in detail below. The conflicts which caused such concern derive largely from the fact that the investigation conducted in 1998 did not focus on the shooting, thus it did not establish who was present at the time of the shooting and exactly who did what at that stage. These omissions expose the scant investigation but they are not inconsistencies that lead to a difficulty in establishing what occurred, even at this remove.

Mr. MacLochlainn is removed from the Mazda

5. After DS-06 had fired the fatal shot and the hijacked Mazda collided with DG-41's red car, Insp Hogan reached the door of the hijacked Mazda first, with D/S Gantly behind him. He did not have to get out of the way of DS-06's Mazda, though it was close to him as it drove by. Insp Hogan pulled the door of the hijacked Mazda and stepped right.

6. As Insp Hogan pulled the door, D/S Gantly leaned in and pushed Ronan MacLochlainn. He knew Mr. MacLochlainn had a gun but he did not have time to look for it before intervening. He pushed Mr. MacLochlainn to prevent him from using the revolver if he still had it in his hand. His aim was to distract Mr. MacLochlainn and minimise the threat to himself. Mr. MacLochlainn, using both hands, grabbed D/S Gantly's right hand, in which D/S Gantly was holding his gun. A bullet was accidentally discharged. The ballistics evidence confirms that this occurred; a bullet discharged from D/S Gantly's gun was found in the engine of the Mazda, having travelled through an air conditioning vent, and a spent cartridge case fired from D/S Gantly's gun was found in the car. The ballistic evidence confirms - and the experts, including Mr. Burdis, agree - that this was not the fatal shot.

7. Ideally, D/S Gantly should not have had a gun in his hand, as Insp Hogan was there to keep the suspect covered with his gun. Their training had covered such scenarios. The danger is that a gun could go off accidentally in such circumstances, but even more dangerous is the fact that the gun is available for a suspect to grab, and this is what happened. Fortunately, no-one was injured at that point. The policing experts and experienced members of AGS who gave evidence agree that it is not best practice for a police officer to engage in a struggle while armed, if it can be avoided. The ideal is that the person in the car should be covered by an officer with a firearm and called from the vehicle, as had occurred with Mr. Carney in the gold Carina at the other end of the scene.

8. Of course, this was not an ideal scenario. This was an armed subversive who had now turned his gun on at least two armed gardaí (who had identified themselves to him) and two others, one an elderly civilian and another a plainclothes police officer. The ERU members were justified in deciding not to afford him a further chance to surrender. They dominated the scene; they did not want to create a situation in which there was a stand-off with an armed man in a car when they could gain the upper hand by opening the door, taking him

out, putting him on the ground and securing him and the car. Given the previous conduct of Mr. MacLochlainn, it was reasonable to extract him from the vehicle without invitation. However, ideally, D/S Gantly's weapon should have been holstered before he leaned in to struggle with Mr. MacLochlainn.

9. Having left the ERU jeep north of the Mazda, D/G Ryan came running and assisted Insp Hogan and D/S Gantly to remove Mr. MacLochlainn. These witnesses and others described how Mr. MacLochlainn initially put up a struggle and fought to escape - he did not want to be captured. Within seconds, he was pulled out of the car; placed face-down on the road and restrained. He was lying close to the driver's side of the Mazda.

10. The ERU team that had been sent north arrived from the Dublin direction within seconds of the shooting, and reached the scene as Mr. MacLochlainn was being taken from the Mazda. They had pulled up about a hundred yards north of the scene but beyond the hotel. They ran south. They wore bulletproof vests and had their firearms drawn when entering the scene. D/G McCabe arrived at the Mazda moments after the shooting and he saw five or six of his colleagues dealing with the driver of the green Mazda. D/G O'Driscoll saw Insp Hogan and D/S Gantly to his right-hand side, at the door of the green Mazda, taking a prisoner from the car; they appeared to be struggling, he said.

11. Within the next few moments, D/G Ryan removed Mr. MacLochlainn balaclava and he and D/G Duffin (who had just arrived from the north) handcuffed Mr. MacLochlainn's hands behind his back. He continued to struggle while he was on the ground. At least four guards were engaged with him at that stage; these were Insp Hogan, D/S Gantly, D/G Ryan and D/G Duffin.

12. There were other gardaí in the immediate vicinity; NSU-DG-32 and DS-06 both describe being there, as does DG-41. Still in his car, DG-32 saw Insp Hogan and D/S Gantly taking Mr. MacLochlainn from the car. D/G Michael Walsh also watched from a short distance away. He saw commotion around the car – *“pulling and extricating and dragging”*. He said that Mr. MacLochlainn was pulled out *“like a sack of spuds”* and that he could see that there was not full compliance; when people comply, it is a smoother extrication from a vehicle but when people do not comply then there is a struggle. The evidence of Tom B. suggested otherwise. Tom B. said that the police officer who had fired the shots opened the car door and the next officer reached in and pulled out a body, which landed on the road. He did not see the person

struggling. However, he clarified that, just as the person was dragged out of the car a garda officer told him to get back into his car so he did not see what happened next. This was the same witness who had confirmed that he focussed on what the police were doing and on keeping himself safe.

13. When Ronan MacLochlainn was face-down on the ground he told those around him that he had been shot. His balaclava was removed. D/G Ryan and D/G Duffin put him in a sitting position to remove his handcuffs. It is likely to have been at this stage that D/S Shanahan, arriving from the south, saw Mr. MacLochlainn sitting upright up on the roadway, and spoke to him. Whatever D/S Shanahan's recollection, which may have focussed too closely on the raider sitting at the car, I do not believe that Mr. MacLochlainn was left sitting on his own as submitted. No other evidence supports this proposal and it does not accord with common sense; he had just been arrested after a struggle. His handcuffs had already been removed.

14. D/G Duffin cut open Mr. MacLochlainn's clothes with a knife. Mr. MacLochlainn was sitting up at that point, leaning towards the car. They then put him lying on his back on the road to check if he had been shot. Their account is supported by blood staining in the area where the body lay, evident in photographs taken that evening; it suggests that he was lying in one position first and then was put in a different position at least once. They could see a cut to his chin. They exposed the clothing on his chest area revealing a puncture wound on his chest. ERU members who had been trained in first aid took over, in an attempt to treat Mr. MacLochlainn.

15. Mr. MacLochlainn's family queried whether, having been shot, he would have been in a position to struggle with members of AGS and, if so, for how long. The Commission heard medical evidence on this issue. Professor Cassidy agreed with Mr. Aidan Gleeson, a consultant in emergency medicine retained by the family of the deceased for the purpose of the inquest, that he could have struggled for perhaps one to two minutes, up to a maximum of three minutes. She explained that some people will drop immediately when they are injured, and while some can "*do amazing things*", in general most people will collapse within a couple of minutes.

16. Two to three minutes allows ample time for the brief struggle described and for Mr. MacLochlainn to let those around him know that he had been shot before he lost consciousness. It did not take more than two minutes for him to be removed from the car, placed on the ground,

and then put sitting up and lying down again in order to treat him. The medical evidence is in line with the accounts of those involved in taking him from the car. I am satisfied that Mr. MacLochlainn did struggle, even if it was not noted by Tom B. as he viewed the scene and was told to get down.

North of the Scene

17. Meanwhile, NSU-DS-04 was at the Cullenmore Hotel. He had spoken to NSU-DS-06 before the latter went south. When it became clear that something had happened, he began directing southbound traffic away from the scene. He saw Alice M. arrive at the hotel, very upset. Traffic was extremely heavy. Insp Nyhan directed other NSU members north of the scene to direct traffic; this direction was received, for example, by NSU-DG-36, who had been attempting to make his way to the scene after DS-06, DG-32 and DG-41.

Attempts to revive Mr. MacLochlainn fail

18. ERU personnel took out medical bags and talked to Ronan MacLochlainn; he complained of tightness in his chest. NSU-DG-32 overheard the conversation and went to their assistance as he was trained in CPR. D/G Ryan got a first aid kit from the back of the ERU jeep and tried to treat Mr. MacLochlainn but he deteriorated very, very quickly. D/G Duffin tried to put pressure on the wound. There was a lot of blood. He tried mouth-to-mouth resuscitation, using a vent-aid, while D/G Ryan and DG-32 started doing chest compressions. Their efforts were described in detail and seen by several witnesses, both guards and civilians. Mr. MacLochlainn became short of breath and it seemed to D/G Duffin that he was starting to slip.

19. Witnesses gave detailed, moving accounts of Ronan MacLochlainn's dying moments; many described how traumatic this was and said this was something they will never forget. D/G Duffin more or less shook his head saying that Mr. MacLochlainn was gone, or that there was not much more he could do for him. NSU-DG-11 had gone up to the Mazda to retrieve the owners' belongings. She saw NSU-DG-32 stop CPR, sit back on his hunkers and then whisper a prayer into Mr. MacLochlainn's ear. Her detailed evidence in this respect was compelling, and she concluded, "*I will never forget.*" She became visibly upset at the memory of what she had seen.

20. Mr. MacLochlainn did not respond. D/G Duffin got a poncho from his vehicle and covered the body. Mr. MacLochlainn was lying on

his back. It is difficult to specify the time. It is clear that the ambulance personnel had not yet arrived; they arrived shortly after 5.30pm. A number of witnesses - including NSU-DS-04, who had arrived from the north, D/G McCabe, Daniel McAlister and Philip Forsyth - saw the body lying covered on the road at this stage.

Position on the Roadway

21. An ambulance was called at 5.19pm. It approached from the south and arrived at the southern end of the scene at 5.29pm. It stopped at a garda car by a cordon. The paramedics and could not get any further into the scene for a couple of minutes. They were told to lie down on the road, as there was an incident ahead. One of them, James C. was asked to bring some children out of the area, which he did. These were the children in Ms. G.'s care and she accompanied them. Meanwhile, the other paramedic, David L. continued ahead and reached the body moments ahead of James C.

22. The paramedics found Ronan MacLochlainn lying on the road. James C. said the body was lying face up when he arrived. As a matter of common sense, to do CPR, as various members of AGS did, the patient has to be on his back. However, David L.'s statement, made in 1998, said the body was face down when he arrived.

23. David L. said in evidence that he would have had to kneel down and check if there was any sign of breathing by putting his ear up to his face and feeling for a pulse. He could not find any sign of life which meant he had to turn the man over in order to try to resuscitate him. He did that, he said, simply from left to right. It did not move the body significantly. He thought it most unlikely that CPR had been attempted as, he said, it would be well-nigh impossible to do it if someone had been face down. However, when asked if he recalled various other details of the scene he was unable to recall any detail. For instance, he could not recall details about the deceased man's clothing, the presence of blood, the vent-aid and the barrier mask beside the body, other people and vehicles around the scene, gardaí and their vehicles, or the vehicle Mr. MacLochlainn had been in. He did not recall discussing CPR with any garda at the scene, although NSU-DG-32 says he spoke to the paramedics and told them how long he had been doing compressions.

24. In contrast, James C. recalled the scene in considerable detail and his description accords with the photos taken by AGS that evening. He diffidently suggested that, while his recollection was that the body was not face down, perhaps David L. turned him over in the seconds before

he arrived. However, all of the evidence suggests that James C. is correct and David L. is mistaken. I am satisfied that what in fact happened was that the body was facing upwards, and covered, when the paramedics arrived. This shows how very significant mistakes can be made by witnesses with no reason to lie or exaggerate any part of these events. It was clear that David L. sincerely believed that this detail in his statement was correct.

25. The AGS investigators either missed the apparent conflict between the paramedics' statements or they did not consider it important enough to resolve. That is one of the most unfortunate errors in this case. The implication was that the body was left lying face down and no efforts were made to revive the injured man. That was, quite understandably, a matter of grave concern to Ms. Nic Gibb. However, I have no doubt that the various personnel who tried to save Mr. MacLochlainn did as they said. The details described by a variety of witnesses - both garda and civilian - were vivid and sincere. It is inconceivable to me that NSU-DG-11, all of whose evidence was careful, frank and convincing, would invent a story about her colleague uttering a prayer into the ear of a dead man. Add to this the statement of the disinterested witness, Dorcas O'N., who witnessed efforts to revive Mr. MacLochlainn, and it is clear that these attempts were made and that they continued for some time. The witnesses' evidence is supported by the medical paraphernalia around the body, some of it identified by James C. as being there when they arrived. The fact that their efforts were unsuccessful caused distress to those present. Further, at least one civilian saw a garda walk by with blood on his hands, presumably from efforts to revive Mr. MacLochlainn.

26. The paramedics called a doctor. They worked on Mr. MacLochlainn for about 40 minutes but could not revive him. They did chest compressions and attached shock pads for use with a cardiac machine. They were at the scene for over an hour. The doctor arrived and pronounced Mr. MacLochlainn dead at 5.59pm. The ambulance departed at 6.41pm.

Arrests at the Scene

27. Many of the members of AGS who were present at the scene and who were not involved with Mr. MacLochlainn participated in searches for Daniel McAlister and Philip Forsyth, who had been seen entering the ditch on the eastern side of the road. The ditch was tree-lined and the growth on both sides was substantial and thick. There was barbed wire, gorse and brambles.

28. Civilians, who were in cars and along the ditch throughout the scene, were understandably distraught and it is fair to conclude that at least some members of AGS were at least unnerved by these events. However, there was no immediate risk. Everything had settled down and there was an air of calm. Some members of AGS sought to reassure civilians that they were in control.

29. D/G O'Driscoll saw Mr. Forsyth him trying to conceal himself in undergrowth, handcuffed him in the ditch and brought him up to the road. He was assisted by ERU colleagues. Mr. Forsyth was put lying at the edge of the road, searched, and detained for a considerable time because the scene had to be secured. When the scene became more secure he was formally arrested. Mr. Forsyth was asked about that the person lying injured on the ground nearby; he said he had not met him before but knew his name was Ronan.

30. Still in the ditch, D/S Comiskey and D/G Daly walked some distance northwards. D/G Daly spotted a figure at the base of a tree and got over some barbed wire to approach him. He called out "*Armed Gardaí, put your hands in the air*" and Danny McAlister emerged from the shrubbery. Mr. McAlister had been lying on top of a fluorescent jacket, a pair of gloves and a balaclava, and had concealed himself by curling around the roots of a tree. He had travelled some distance north. He was directed onto the road and put lying on the ground. He saw a body lying on the road south of him, though he did not know who it was at that time. He gave his name as John Murphy.

31. Daniel McAllister was certain that there was a spotter plane and that it was the plane that spotted him. The evidence as to the capacity of those in the airplane, in terms of equipment and visibility, which was supported by other accounts, convinces me that this witness, while clearly believing he is correct, is mistaken in this regard. NSU-DG-17 said, "*I assure you I didn't see any man in a field. I was lucky to see fields, never mind men in fields.*" This witness was giving evidence for the first time in connection with his employment, although he has been in AGS for many years. His responses were frank and natural and very convincing. I believed his evidence.

32. Insp Hogan did not have to direct any arrests as the ERU members were well-versed in what to do. After the raiders had been secured, the scene was still not contained and many operatives searched elsewhere including the grounds of a nearby house. They did not know for certain how many raiders were involved. This continued to be

viewed as a live scene, the parameters of which remained unknown. It took at least 15 minutes before the gardaí were satisfied that the scene was fully under control.

The Arrest of Pascal Burke

33. Pascal Burke remained in Killiskey, for the duration of the raid and the subsequent arrests. He was in the white Daf van, which was parked in a gateway in which it was later photographed. Not only was he under surveillance at all times by members of the NSU in the immediate vicinity but the tracking device attached to his van was being constantly monitored. Mr. Burke knew the scheduled time for the Securicor van had come and gone. There had been no communication and he had neither seen nor heard what had happened. However, he continued to wait because, as he said, even if the operation had gone wrong, someone might get away.

34. There are two versions as to what occurred next - one is Mr. Burke's and the other is that of AGS personnel who arrested him. This latter version was addressed in oral evidence by all involved except NSU-DS-06, whose statement made in 1998 addresses some of the issues.

35. Mr. Burke says he heard the screech of tyres and he decided to abandon the van. He took his personal phone, locked the van and took the keys. He was getting over a set of railings when he heard slamming of doors, which he took to be gardaí approaching. He began to walk across the field as if he were out for a walk. When he knew the gardaí were coming after him, he began to run. He then heard shots fired by small arms over his head. He had not gone far into the field at this stage. He did not hear anyone say "*Armed Gardaí*". He put up his hands. Then, he was beaten and undressed, his track suit was pulled down and something was pulled over his head. He thinks he was handcuffed. He remained on the ground in the field for 10 or 15 minutes before a guard came and fixed his clothes back into place. He did not know this guard's name, but he knew him to see; he was an ERU member who, Mr. Burke thought, had been involved in his surveillance. Mr. Burke says he was then taken to the van. A nylon hood was placed over his head so he could not see which guards were there at that time. He says his phone was taken from him by the guards and planted in the Daf van.

36. Members of AGS who were engaged in Killiskey gave quite a different account of the arrest. These were NSU-DG-03, DG-09, DS-06 and D/Garda Derek Duffin. Their account is as follows. DS-06 arrived

in his vehicle and pulled across the front of the van. DG-03 crossed the road to meet DS-06. Pascal Burke left his van the minute DS-06's car arrived. In other words, he saw them and ran, rather than leaving before they arrived. DS-06 and DG-03 both followed Mr. Burke. DG-03 had drawn but not deployed his weapon and was pointing it at the ground as he was running. DS-06 also drew his official revolver. He called out, "*Armed Gardaí*", and called on Mr Burke to stop. D/G Duffin of the ERU heard DS-06 shouting "*stop, stop*"; he had arrived after DS-06 and DG-03 gave chase. He had heard a radio message that members of the NSU needed assistance in Killiskey, and probably went there at the direction of D/S Sears. When he arrived, Mr. Burke was on foot. D/G Duffin then took part in the chase. After a short distance DS-06 and DG-03 caught up with Mr. Burke. They stopped him, searched him for weapons and then formally arrested him. He was taken to an ERU vehicle driven to Killiskey by D/G James Ryan of the ERU and was transported to a Garda Station. The Daf van was not searched when Mr. Burke was first apprehended but the driver's door was open and certain items including a walkie-talkie and a phone were visible at this stage in the van. They were later photographed in situ in the van.

37. Mr. Burke is probably incorrect insofar as he thinks that the ERU member at Killiskey had been involved in his surveillance. Only two ERU men were present, and the evidence indicates that neither was involved in any surveillance, let alone close surveillance such that Mr. Burke could have identified him. It may be, however, that the man Mr. Burke described was DS-06. It is clear from the duty reports seen by the Commission that DS-06 had, in fact, been monitoring Mr. Burke and he had previously been in the ERU.

38. Four other significant allegations have been made by Mr. Burke. The first is that shots were fired. The second is that he was deliberately humiliated. The third is that items were planted in the van. The fourth is that he was not arrested until he arrived at the Garda Station.

39. I reject Pascal Burke's account of shots being fired. None of the AGS members present recalled shots and, apart from DS-06 none of them surrendered their weapons. DS-06 did not mention any gunshots in Killiskey in his statement. Mr. Burke did not mention the firing of shots when interviewed after his arrest, which may explain why no search was conducted in the field where he was arrested. DS-06 surrendered his weapon so that the ammunition could be accounted for, and his six-shot revolver was loaded with four bullets when surrendered; he had fired two at Mr. MacLochlainn, which strongly suggests that he did not fire any over Mr. Burke's head at Killiskey.

40. As to the second allegation, none of those present accepts that Mr. Burke was tackled or undressed as he described. Many of them saw some, if not all, of the events described by DS-06, DG-03 and D/G Duffin. None saw Mr. Burke undressed and lying in the field. All who commented on where he was held saw him on the ground near the van. Arriving after the chase, DG-13 observed that Pascal Burke had been restrained, was in handcuffs and was lying beside the white DAF van. A similar account was given by Garda Michael O'Grady, who was attached to Bray Garda Station at that time and arrived to preserve the scene.

41. The absence of forensic evidence or eyewitness accounts to support his first allegation affects Mr. Burke's credibility on the second. For this and other reasons, I also reject his account of his humiliation. I note that D/G Duffin had just tried in vain to save the life of Mr. Burke's colleague, Mr. MacLochlainn. He had treated that raider with respect and covered his body. I think it unlikely that, moments later, he would have treated a second raider with such marked disrespect, or colluded in leaving him in a field in a state of undress. I consider it very unlikely that any of the NSU members from whom I heard evidence would do so; they were credible and forthright witnesses.

42. As to the third allegation, those present have said that the items which Mr. Burke says he took with him were in the van and not on his person, when he was caught and searched. These were later photographed in the van. It would have been a futile and elaborate ruse for AGS members to replace them in the van, rather than simply recounting that they were on his person. It would have served no purpose.

43. Finally, Pascal Burke says that he was arrested at the station and that the recorded arrest at 6.09pm in Killiskey did not happen. I cannot accept his account, due to the consistent evidence of those in Killiskey to the contrary, and the necessity for colleagues in Shankill Garda Station to collaborate in this fiction if it were true. The custody record would have to be falsified, for instance. There was no reason not to carry out the arrest as described.

44. There are two possible explanations for Pascal Burke's evidence, in my view. One is that he made this up to inflict embarrassment on the guards involved in his arrest. The other is that something of this nature did occur - perhaps that his clothes were disturbed while he was being apprehended in the field - and he now believes that was deliberate. However, his insistence that D/G Duffin was a liar, rather than allowing

that there may be another explanation, leads me to prefer the conclusion that it is Mr. Burke who has given an incorrect account of events.

45. Witnesses were unsure as to how long passed between the raid and the arrest of Pascal Burke at Killiskey. Some thought it took 10, 20 or 30 minutes; others thought it was as much as an hour. The arrest time was noted as 6.09pm in the custody record and in the statement of D/G Duffin.

The Redeployment of NSU-DS-06

46. NSU-DS-06 said in his statement that he went to Killiskey after 6pm and joined NSU-DG-03, who confirms his arrival. D/S Sears was asked if it was peculiar that DS-06, an NSU member, would have left the scene to arrest Pascal Burke – a duty that anybody else could have performed; he said, *“this is all in the heat of the moment. It really is an intense, intense place where we are now”*. He speculated that DS-06 (a former ERU member) may have gone to Killiskey because the ERU were *“so thin on the ground”*. He ventured that *“it’s the heat of the moment, the momentum, the whole, the enormity of the whole thing”*. When asked if it was best policing practice for a person involved in a fatal shooting to immediately take it upon himself to leave the scene and get off-side, D/S Sears said *“this is all speculation. At that point ... maybe DS-06 didn’t realise the serious injuries to Mr. MacLochlainn”*. However, going by his statement, DS-06 must have known that he may have been responsible for a shot that wounded Mr. MacLochlainn.

47. A representative of GSOC discussed best practice with the Commission. Noting that involvement in a firearms incident is traumatic for all involved, he explained that, in the interests not only of the proper investigation of a shooting but also for the welfare of persons concerned, the persons most involved in the use of firearms should be taken to a controlled environment, away from the scene and away from the glare of the media. There, they can receive medical attention if required and their welfare can be catered for. They may then be asked to give an informal first account to investigators of what happened.

48. It was obviously better to arrest Mr. Burke where he was, rather than later on in Dublin, when he could deny ever being near Cullenmore or Killiskey. This is not a question of Mr. Burke posing a threat or being easily found; it simply made no sense to let him drive away. Nevertheless, while I can understand the momentum that would carry an officer on to a second incident in the circumstances described above, it was not best practice and should not have occurred. It would have

been better for DS-06 to remain at the scene, to account for what happened to his senior officer. His vehicle should have remained where he stopped it after the shooting, in order to preserve the scene. To give the most helpful account of what had occurred to his superior officer, if the circumstances of a live scene permitted, he should have been escorted to a safe venue where he could give an account of what had occurred as soon as practicable. I am cautious of the difficulty of applying today's standards to events in 1998, but, even then, it could not have been appropriate for an officer involved in a shooting to be immediately redeployed.

49. I cannot determine who is responsible for this redeployment; whether a direction issued to him or whether DS-06 acted without instruction. It is unlikely that a direction to redeploy was justified, if that is how DS-06 came to be in Killiskey, as the apprehension of Mr. Burke appears to have taken place quite a while after the other arrests and at a time when armed NSU officers were present in Killiskey and could have undertaken the arrest. Others at the scene on the N11 must also have been available to be deployed to Killiskey, rather than one of those involved in the shooting incident.

The SDU and Local Gardaí Arrive

50. Back at the scene, various members of the NSU and ERU tried to reassure civilians. Some noted the positions of items of evidential value such as cartridges. Others commenced traffic duty, preventing traffic coming too near the scene at either end. Some wore Garda tabards; others did not.

51. Around this time, reporter Valerie Cox arrived at the southern end of the scene by chance. She walked up through the scene to talk to civilians and described seeing young people in bibs; these were plainclothes NSU members though she did not realise that at the time. She thought they were doing some kind of training course. At that time, there was no cordon. She had not been long there before a lot of uniformed guards arrived. She described the scene as "chaos". She made a report from the scene to Five Seven Live, the RTÉ radio programme. After some time, she was asked to leave the scene.

52. The arrival of uniformed guards introduced an element of calm to the situation. Sergeant Gerard Walsh was the first uniformed guard there. He was attached to Greystones but was covering the Wicklow district, as it was Blue Flu day. He had probationer Garda Justin Doody and a student garda in the patrol car with him. They responded to a call

which came in to Wicklow town Garda Station at about 5.20pm, alerting AGS to an attempted armed robbery in the Cullenmore bends. Sgt Walsh, Garda Doody and the student guard arrived at 5.30pm, according to the crime scene logbook, and Garda Doody started taking notes at 5.35pm. Their car stopped a couple of yards north of the body of Ronan MacLochlainn. The patrol car visible in aerial photographs is probably theirs; it remained there until about 8.30pm. Having spoken to Supt Basil Walsh, Sgt Gerard Walsh decided that he should try to seal the scene and divert traffic, and told Supt Basil Walsh what he was doing. He remained at the northern end and directed Garda Doody to go to the southern end, to take control there. Sgt Walsh put up two cordons: one at the mouth of a laneway north of the Mazda and a second nearer the Cullenmore Hotel. In the crime scene log, he is noted as being on duty at the north end of the scene from 5.30pm to 8.30pm.

53. Insp Castles arrived at the scene at about 5.40pm in an unmarked garda car from Wicklow Garda Station with Sergeant Conway. The most significant vehicles, including DG-41's red Seat and DS-06's Mazda, had already gone. Insp Castles was given a brief account of the shooting by Supt Walsh but he did not know that the hijacked Mazda had crashed or that NSU vehicles had been involved and had been removed from the scene. The hijacked Mazda had already been damaged in the manner shown in the photos taken that evening, but he did not see anything that the Mazda could have collided with.

54. As previously noted, D/S Carney and Insp Butler of the SDU had been on duty in the Glen of the Downs area and heard a call from Garda Control to all armed units in the area, saying that assistance was required in the Ashford area. They drove to the scene, also arriving from the north. D/S Comiskey met D/S Carney at the scene. They walked through the scene from south to north, starting at the Securicor van, and D/S Comiskey pointed out various items of interest, including cars and weapons; either Supt Walsh or Insp Hogan had directed him to do so.

The NSU Sergeant Countermands the Superintendent

55. Supt Gerard Blake was on duty in uniform in Newtownmountkennedy Garda Station when he received a call to tell him that there had been an incident at the Cullenmore Bends. He started to drive to the scene in his own car but then flagged down an unmarked car equipped with blue lights driven by Insp Fennessy of the SDU. He does not recall at what time he arrived. He was concerned to put a

traffic management system into place. One of his first tasks was to order that cars remain at the scene, which he did.

56. At a meeting with counsel to the Commission, D/S Frank O'Neill of the NSU said he told NSU members at the scene to take their cars away. When giving evidence, he said he told the NSU "*just get the cars out of here*". He added that he had instructed that cars that were of more significance should not be moved. He said this to the drivers of the cars themselves, including people who might not have been in his unit, as he did not know where their sergeants were. When he gave this direction, he was standing near the Securicor van and speaking to the NSU members in his area. He gave the example of D/G Peter Brien's car, which was damaged as a result of being involved in the incident – D/S O'Neill did not expect this car to be moved. He said he had no interaction with people north of that location.

57. D/S O'Neill said in evidence that he recalls speaking to Supt Blake at the scene. At first, he said he does not remember the specifics of what they had talked about but when reminded that he had already said that he remembered Supt Blake telling him to leave all the NSU cars *in situ*, he confirmed that this was so.

58. D/S O'Neill explained his actions by saying that Supt Blake would not have any experience in surveillance and he felt that the cars near him, and definitely the car he was in, were of no significance to the crime scene. He commented that he would follow a direction from a superior officer, "*if he's right which I didn't think he was right*". He did not see the reason for operatives to be hanging around, or their cars. He did not see the benefit of it. He accepted the importance of preserving a scene and he accepted that the superintendent was his superior and yet he countermanded his order without reference to his own superior officer, Insp Nyhan, or any of the other sergeants.

59. D/S O'Neill was never questioned about this by his superior officers. He did not know that Chief Supt Camon subsequently reported to the Assistant Commissioner that the scene had been preserved in accordance with appropriate procedures. He said he did not know at the time that an NSU man had fired the fatal shot, but even if he had, it would not have affected his decision about where the cars were parked. He felt it was appropriate to make the order about cars parked at the southern end of the scene, because they were a long way from the shooting. He said it was made absolutely clear that it was just the cars in close proximity to him that were to go; he did not tell everybody to go away. This was when he was at the Securicor van.

60. Supt Blake was not aware that D/S O'Neill had decided to breach his direction and move vehicles out.

61. D/S O'Neill's order was clearly inappropriate. It disobeyed a direct instruction from a superior officer. This is self-evidently wrong. The reason given for disobeying was insufficient and insults the Superintendent's intelligence. Had he taken the trouble to consult with him, Supt Blake may well have agreed with him that some cars at the southern end of the scene could leave, it being ideal that surveillance vehicles were removed if they were not necessary for evidential or investigative purposes. However, he did not consult Supt Blake. I do not accept that his order was clearly directed only to certain people or specifically excused others. He gave a broad instruction that was followed by nearly all members of the NSU. The evidence from the NSU members generally was that they were told to leave and to bring their cars with them. The order may even have reached NSU-DG-36, who was some distance north of the scene and recalls being directed to leave. While he does not recall who gave that direction, the only person to whom such a clear direction has been traced is D/S O'Neill. When he originally met with counsel for the Commission, he frankly stated that he had issued this direction in relation to all cars.

62. D/S O'Neill failed to confer with any colleagues before he directed that the NSU leave the scene. He had no idea what had happened, which NSU members were involved in what event, and how. The effect of his order was to undermine the integrity of the scene and make it difficult to reconstruct these events. The departure of DG-41's red car (into which the Mazda collided) is probably not causally attributable to him as it was used to transport a prisoner and had probably left even before Supt Blake ordered that all cars remain in place. However, NSU-DG-32's departure from the scene (in a car that had been directly behind DS-06 at the moment of the shooting) may have been as a direct result of D/S O'Neill's order. DG-32 recalls receiving a direction to leave *after* the uniformed guards had arrived. NSU-DG-32 now agrees he should have left his car but says he did not think of it at the time. There would have been no difficulty in leaving his and DG-41's car where they were.

63. Supt Philip Kelly confirmed that, if the NSU unavoidably became involved, he would expect the relevant members to remain, leave their vehicles at the scene and subsequently make statements about their involvement. Insp Nyhan said he could not remember if he gave the order for NSU members to withdraw, but it would be standard

procedure. Once the scene was contained, they had no function there, he said. He said that the direction could come from any of the NSU but that it would be his call, if the NSU no longer served a purpose. However, the Inspector agreed that, if directly and actively involved, a member of the NSU had an obligation to remain at the scene and to account for her contribution to events. NSU-DS-04 also agreed that if any member had been a part of the scene, he should leave her vehicle there. He added that, in general, the NSU “*would have taken instructions locally or would have returned towards base if they were in a position to do so*”. The general rule was not to become involved in a scene if possible and to withdraw once a situation was curtailed.

64. Many members of the NSU cannot recall what prompted them to leave though some did suggest that it was probably as a result of a direction to go, and others that it was clearly appropriate that they leave in order to maintain their cover. D/S Shanahan received no direction to leave; he left his car at the scene because it had been involved, and this was the appropriate thing to do. He noticed that it had been moved from the position where it had stopped during the raid; this was to let the ambulance through, he thought. D/G Brien also left his car at the scene as it had been involved in a crash. The Laguna was still drivable, but it was self-evident that it should not be moved. He knew to leave his car, but it was not at the direction of D/S O’Neill or of anyone else.

65. The Commission can still reach its conclusions despite this breach of the hierarchical rules of AGS and of basic scene preservation guidelines. The overall result of the breach is nonetheless toxic. The removal of cars was one of the main factors that led to years of suspicion on the part of Mr. MacLochlainn’s family as to what had happened in the Cullenmore Bends. It was obvious to those who were there that many of the guards involved had disappeared and that cars had been moved. Yet AGS persisted then, and persists now, in claiming that the investigation was thorough and that the scene was appropriately preserved in that respect. It was not.

Garda vehicles – Transporting Prisoners

66. Five raiders were arrested on 1st May; four on the N11 and one at Killiskey. Each was taken separately to a Garda Station.

67. In normal circumstances, the scene would be secured and one would get transport from local gardaí to bring prisoners to the station, but that was not available on 1st May. Insp Castles made the reasonable

comment that the resources that day were not normal, due to the Blue Flu. It was not the case that local garda cars could be commandeered.

68. Insp Hogan explained that the usual practice was to use ERU vehicles to transport prisoners, as it was the ERU members who made arrests. Usually, the arresting officer would go to the relevant garda station with the prisoner in the car in which the officer had arrived. There were five ERU vehicles available to him, two of which had arrived from the north and three from the south, though the Izuzu jeep had driven through the scene south to north and stopped north of the Mazda. Those three ERU vehicles together with two NSU vehicles at the northern end were used to transport the prisoners:

- D/G Ryan removed the ERU jeep from its position across the road north of the Mazda, to go to Killiskey on the order of Insp Hogan. After he had transported Pascal Burke to a Garda Station, he returned to the scene and parked the jeep where he believed it had been before he left. It was dark by then. He thinks he was directed to return to the scene. He left the jeep in situ.
- D/G Harrington went with Saoirse Breatnach and another member of AGS to a Garda Station in the grey ERU Opel Vectra in which D/Gardaí Lyons and O'Driscoll had arrived at the scene from the north.
- D/G Daly brought Stephen Carney to a Garda Station in the vehicle he had been arrived from the north of the scene earlier that day, the ERU Vectra CDX. They did this on the instruction of D/Sgt Pat Comiskey.
- D/G McCabe walked Daniel McAlister to an NSU vehicle at the north of the scene, and transported him to Bray Garda Station in an NSU car driven by NSU-DG-38, accompanied by NSU-DG-37.
- D/G O'Driscoll went to Shankill Garda Station with Philip Forsyth. He does not recall what vehicle was used but it appears to have been the red Seat driven by NSU-DG-41, who recalls driving a prisoner to that Station.

69. Supt Gerard Blake had no knowledge of prisoners having been moved in vehicles which were close to the scene of the shooting. It seems that all such vehicles had been removed from the N11 before he arrived.

70. Insp Hogan did not make a decision to move any vehicle other than ERU cars. When asked about the removal of the red NSU car, he accepted that in an ideal world, this would not have happened. He added

that this was the significance of the Blue Flu: he had five prisoners to remove from the scene and no other resources, and no other personnel or cars were coming to the scene. He said he did not consider the investigation of these events at that early stage and he considered the transportation of the prisoners a priority above scene preservation. He could not nominate a stage when such a scene went from chaos to a point when one could give the order that nothing be moved. In hindsight, he would not use the red NSU car again.

71. Chief Supt Michael Murphy, who was then the divisional officer for that area, was sympathetic to Inspector Hogan's position. This was a combat situation, he pointed out. There was a lot of activity at the scene and some uncertainty about the numbers of raiders involved, or at least whether or not the arrested men may have had supporters in the area. There were weapons in and around the scene and civilians still at risk in the area. The Chief Superintendent would want to get prisoners out of there as quickly as possible. The detention provisions used on the day allowed 24 hours detention from the time of arrest and it was important not to waste that time. Also, he would be anxious that clothes would be taken from the prisoners for forensic testing as soon as possible. These factors partially explain the decision to remove cars from the scene, which might better have been left in place.

72. In my view, a fuller explanation lies in the failure to train the NSU and ERU teams together, which will be set out in more detail below. One of the benefits of the joint training must be to instil in the both units the importance of communication between them and the fact that in cases where the NSU become involved, as is almost unavoidable in circumstances like those of 1st May, both units know what the priorities are and how scenes should be approached after the event.

73. Chief Supt Murphy said he would have sought reports from those involved in moving such cars, had he known. He did not know then, as I do now, that there were other NSU cars at the scene which were equally appropriate to such a task. It was not necessary to move the DG-41's red Seat; other NSU vehicles were available to transport the prisoner. For instance, Insp Nyhan's own car was at the Cullenmore Hotel, within a minute's walking distance. Proper communication between Insp Hogan or Supt Walsh and Insp Nyhan or any of the NSU sergeants should have made this clear.

74. It does not appear to have been recognised at any point from the moment of the shooting right up to the hearings of this Commission, 17 years later, that the area where Mr. MacLochlainn was shot was as

important a scene as the site of the attempted robbery, and that the cars involved at that point should have been left *in situ* to allow for a full investigation of the shooting. The reason for this blind spot appears to have been the simple fact that it was clear immediately that a guard was responsible for the shooting. Several eyewitnesses confirmed that the shooting was justified. Within a few days, the ballistics confirmed the garda account of these events and the case was, effectively, closed. This failure to fully appreciate that the importance of the scene of the shooting, together with the anxiety of the NSU to disappear, and the lack of training or preparation for such a joint operation, combined to produce this unfortunate result.

Civilian vehicles

75. In contrast to the AGS vehicles, civilian vehicles were left at the scene. They were released over the coming days. Breffne E. collected his car well before Tuesday, 5 May. He thinks the road was probably open on the Sunday morning. Tom B. collected his car a few days later from the Cullenmore Hotel where it had been parked; his keys were in the hotel. Denis P. collected his car from Wicklow Garda Station. Fionnuala M. and Stephen D. were picked up in Ashford by a squad car at lunchtime on Saturday 2nd May. They were taken to the scene and removed their car. The hijacked Mazda was never returned; it remains in Santry Garda Station. Its owners received compensation as did those whose cars were damaged by the ERU jeep.

Civilians at the Scene and at the Chester Beatty Pub

76. Members of AGS took steps to reassure civilians who had been caught up in the raid and to keep them away from the immediate scenes around the Securicor van or the body. For example, Gráinne M. recalls being told not to wander around; “*they were quite emphatic about it*”. Some recall their names being taken by a guard. Others used garda mobile phones to call home. They were told to leave the cars *in situ* and they were taken for refreshments – some to the Cullenmore Hotel, others to the Chester Beatty pub in Ashford. Some made notes. Many felt traumatised. Journalist Valerie Cox did several interviews with people in the Cullenmore Hotel and in the Chester Beatty pub.

77. Of note, Ms. G. was taken to Ashford in a marked Garda car with the children who were in her care. The guard dropped them outside a boarded-up hotel in an unfortunate error. She walked 5 or 10 minutes with the children and found the Chester Beatty pub arriving at about 7pm. They were invited in and given food there. When she first got

there, there were no other people from the scene there, but then people started to arrive. This error was very distressing for this witness, on top of an already traumatic evening.

78. Witnesses were taken to Wicklow Garda Station late that evening, some in the early morning, where they gave their accounts to gardaí. Some were sent home by taxi from the station. Fionnuala M. thinks she and Stephen D. arrived at the pub when the 6 o'clock news was on, and remained there until it was nearly closing time. They had a few drinks in the pub. Guards took them to Wicklow Garda Station, where they made statements. Ms. M. recalls mentioning that she had taken a few drinks and she expected to make a further statement on a subsequent occasion but she was not contacted again.

79. The Securicor employees did not leave the Securicor van until 9pm that night though the driver stepped out at one stage to stretch his legs. They were driven through the scene to the Cullenmore Hotel. The Securicor van was left *in situ*. The money collected during the day was in a safe in the Securicor van and was placed under armed protection until another Securicor van was sent to the scene to collect the money. The employees returned to Securicor headquarters in that other van with the money. They made statements there, in the early morning. The Securicor van was removed by AGS in the middle of the night and taken to Santry Garda Station.

The Body of Ronan MacLochlainn

80. Insp Castles preserved the body of Mr. MacLochlainn from about 5.40pm. The Chief State Pathologist examined the body where it lay on the road at about 9pm. The undertaker arrived at 10.40pm to take the body from Ashford to Loughlinstown. Insp Castles remained with the body until it was removed and he travelled with it to the hospital. The post-mortem took place that evening, attended by an AGS photographer and Insp Handcock of the Garda Technical Bureau's Ballistic Section. The fatal bullet was extracted, preserved and taken for forensic examination.

The Hijacked Mazda

81. While the body of Mr. MacLochlainn was preserved, nobody was detailed to preserve the hijacked Mazda or the scene around it. This part of the scene was very fraught immediately after the shooting, especially while first aid was being given, but there should have been

more concern for the preservation of this vital part of the scene. I am satisfied that nobody interfered with the body, partly given the sheer number of people in the vicinity of Mr. MacLochlainn and trying to assist him. However, I do not have the same confidence as regards the hijacked car in which he was shot. By way of simple example, one of the paramedics, James C., is sure that the driver's door was open, as indeed it must have been initially to remove Mr. MacLochlainn. Sergeant Gerard Walsh, who arrived at the scene at approximately 5.40 to 5.50pm, also saw that the driver's door wide open. However, in the aerial shots taken within two hours of that time, the door is closed. The ballistics team did not arrive until after 8pm.

Preservation of the Scene: Conclusions

82. In the immediate aftermath of the shooting of Ronan MacLochlainn, this was a live scene. There had been gunfire and armed members of a terrorist organisation had been arrested; all on a public roadway. There were over 30 civilians present, including women and children.

83. There were essentially two scenes at the Cullenmore Bends. One was the scene of the attempted robbery, and the Securicor van was at the centre of that scene, or at least its logical starting point in terms of an investigation. The second was the scene of a shooting. Here, the Mazda should have been the focal point. At that time there was no protocol specifically dealing with the identification of a separate scene when a person had been shot by a member of AGS. However, Supt Maguire described this second scene as a critical scene and he said he would be astonished if it had not been preserved.

84. For a time after the shooting, Supt Basil Walsh was the most senior officer present. He gave conflicting evidence as to who was in charge of the scene, nominating both Insp Castles and D/S Carney. When Supt Blake arrived, he took over from Supt Walsh as the senior local officer and took a hand in this regard, ordering that vehicles remain where they were. Chief Supt Michael Murphy drove from Wexford on hearing of the shooting. He arrived after Supt Blake. Supt Blake's direction that the scene be preserved was given to Insp Castles for him to pass down the line. The Inspector provided resources for scene preservation duties.

85. D/S Carney confirmed that he was directed to take charge by Supt Walsh within 10 or 15 minutes of his arrival. Supt Walsh also asked him to identify certain exhibits around the scene. He did in fact

take charge and control matters, including access, insofar as he could, given the size of the scene and the fact that it comprised a public road with open fields and private houses on either side. D/S Carney understood Supt Walsh to mean the whole scene, from the Carina to the Mazda, and he knew that he should prevent interference with it. However, in the circumstances, that was not possible, given the nature and size of the scene.

86. D/S Carney tried to establish what had happened. D/S Comiskey relayed some of what had happened to him as they walked through the scene, D/S Comiskey pointing out items to D/S Carney, who noted them. D/S Carney did not have a full picture of what had happened at that point. While he knew that a raider had been shot, he did not ask who had shot the deceased man. He became aware that there were NSU members in the “hot spot” of the scene. He waited for the ballistics team to arrive, which was after 8pm. By then, all of the prisoners had been removed and the ambulance had left. Uniformed personnel had arrived to guard the scene and D/S Carney had catalogued the exhibits. He walked through the scene with the garda mapper, pointing out the things he had recorded, the mapper taking notes this time. D/S Carney then handed over the scene to the ballistics team.

87. Here is one of the first indications of the two scenes being treated differently; the items in and around the Securicor van were meticulously noted and mapped, as was the hijacked Mazda, including its registration number, but the revolver in the Mazda – which should have been central to the investigation of the shooting – was not mentioned in the map. By contrast, the gold Carina was labelled both by registration and the fact that it was “The Motor Car with Shotgun in it”.

88. Garda Justin Doody, a probationer, was directed to prevent traffic from entering at the southern end of the scene. He kept a written note of people entering and leaving the scene at that cordon from 7pm to 11.30pm. His note of what he saw at the southern end of the scene was very comprehensive and was clearly taken at a point when the cars involved in the crash with the Mazda had already been moved. At one point a journalist tried to get past but he prevented this with the assistance of Inspector Castles. Before taking up his position at the southern cordon, he made a detailed sketch map of the vehicles that he saw and he took the details of civilians on the roadway and of their vehicles. He began taking those notes at 5.35pm. However, those notes do not seem to have formed part of the paperwork used by the investigation team; they came to light only when Garda Doody met the Commission.

89. A Crime Scene Log was commenced at the northern end of the scene at 7.45pm. Details of those entering the scene were taken from then until 7.15pm on Sunday, 3rd May, when the road is noted to have been reopened.

90. In the days following the incident, there was an extensive search in the fields surrounding the Bends. This was conducted by the Divisional Search Team and was very thorough. On the morning of 2nd May, guards in boiler suits began combing the grass in lines. The searches continued for some days. Several items of forensic value – such as spent cartridge cages, spent shells and bullets – were uncovered, photographed, preserved, and taken for examination. The search continued even after the road had reopened and the fields and ditches were scoured until 6th May on the north side of the scene, and 8th May on the southern side.

91. In sum, while efforts were made to preserve what would have been a difficult scene to manage in any circumstances, two factors conspired against the achievement of that aim. One was that the NSU prioritised the maintenance of their cover over the maintenance of the integrity of the scene, as exemplified by the order given by D/S Frank O'Neill. The other factor was the general view that the scene around the shooting did not have to be approached in the same way as a crime scene, the shooting having been carried out by a member of AGS. This approach may not have been taken by all involved, but was taken by a sufficiently large numbers of AGS that all of the cars involved with the hijacked Mazda were moved before anybody thought to stop this. The gun in the Mazda was not preserved or treated as the crucial evidence it clearly was. Two of the most immediate witnesses to the shooting left before any investigation could begin, the man who fired the shot having also left or been redeployed. By the time the photographs were taken, they no longer reflected the scene in a meaningful way.

92. It is appropriate to conclude this section with the advice of the expert to the Commission, Alan Bailey, as follows:

“It appears illogical to keep the civilian owned vehicles at the scene if Garda vehicles are moved, losing key reference points, and potentially destroying evidence or moving material around the scene. It is possible that no damage to the integrity of the scene was done by moving the vehicles, but we can never know and it allows allegations of wrong doing to be made that cannot be disproved because the scene had been dramatically changed by removing garda vehicles.”

93. I will add only that while such allegations of wrongdoing have at least been dispelled in this case, clearly such errors made it more difficult to explore the allegations and much of the Commission's work has comprised considering and explaining anomalies that would never have arisen had the investigation been adequate.

I. The 1998 Investigation

1. The European Court of Human Rights has pointed out that a prohibition of arbitrary killing by state agents would be practically ineffective if there were no procedure for reviewing the lawfulness of the use of lethal force. This is why there is a duty on every state to conduct an effective official investigation after a person has been killed as a result of the use of force by state agents. The Court has held that every state must ensure “*by all means at its disposal*” an adequate investigation, judicial or otherwise.

2. The Court has stressed that “*particularly stringent scrutiny*” is required where a suspicious death has been inflicted at the hands of a State agent. Through its caselaw, the Court has identified a number of requirements for an investigation into the use of lethal force to be effective. It has summarised those requirements as follows: “[t]hose responsible for carrying out the investigation must be independent from those implicated in the events; the investigation must be “adequate”; its conclusions must be based on thorough, objective and impartial analysis of all relevant elements; it must be sufficiently accessible to the victim’s family and open to public scrutiny; and it must be carried out promptly and with reasonable expedition.” These are considered essential in maintaining public confidence in the adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. As the Court has stressed, “[w]hat is at stake is nothing less than public confidence in the State’s monopoly on the use of force.”¹²

3. On the evening of 1st May 1998, Deputy Commissioner Noel Conroy appointed Chief Superintendent Seán Camon of the *National Bureau of Criminal Investigation* (NBCI) to conduct an “independent investigation” into the attempted robbery and the shooting at the Cullenmore Bends that day. D/C Conroy told the Commission that Chief Supt Camon was an expert investigator, and that he appointed him because the circumstances were exceptional. The point of bringing in the NBCI was to assist local officers with its expertise. D/C Conroy understood that the NCBI would investigate both the attempted robbery and the shooting; he expected a full inquiry into the circumstances of both incidents. He told the Commission that he would be very surprised if the Chief Superintendent deviated from the garda manual as regards what a full investigation should entail.

¹² See *Da Silva v. United Kingdom* (judgment of 30th March 2016), paras. 229-240.

4. Garda witnesses indicated to the Commission that, in 1998, they understood an ‘independent’ investigator to be a senior officer from a department or unit which was not involved on the day. In fact, the ECtHR has held that the requirement of independence “*means not only a lack of hierarchical or institutional connection but also a practical independence*”.¹³ That role is now filled by GSOC.

5. Even though the NBCI had been called in by the senior ranks of AGS, the local divisional officer was still in charge of the investigation. In this case, that was Chief Superintendent Michael Murphy, who was the divisional officer for the relevant division. His name appears with Chief Supt Camon’s name on the report sent to the Director of Public Prosecutions. However, as D/G John Harrington of the NBCI put it, the degree to which the local officer was involved depended on how proactive the local person was. Most superintendents, he said, would be happy to see an expert taking charge of a major operation like this and would allow him to take over to a large extent.

6. Unfortunately, Chief Supt Camon died in 2010. The Commission heard evidence from his colleagues about his personal practices as an investigator, and it is clear that he would normally call the shots. The other members of the team would be unlikely to suggest a witness or a line of enquiry. Chief Supt Michael Murphy told the Commission that the Assistant Commissioner for the South Eastern Region telephoned him on the evening of 1st May to say that the NBCI would be investigating and he commented that he thought this was “*the right decision*”. He had a role in the allocation of resources but he said the actual investigation was a matter for the NBCI, which was an independent body. He played no other role, but occasionally attended the case conferences. Similarly, the local Superintendent, Gerard Blake, said that he had no problem with Chief Supt Camon taking over and commented that the NBCI had the resources for such a major investigation.

7. In this particular investigation, the local Chief Superintendent, the local Superintendent and the local Inspector (John Castles) were very experienced, and any of them might have had an input into the investigation. However, while all three were often present during the investigation and all attended the scene on the evening of the shooting and the early case conferences at Wicklow town Garda Station, the evidence suggests that none took a major part in the investigation.

¹³ See, e.g. *Da Silva v. United Kingdom* (judgment of 30th March 2016, para. 232).

A Scene Frozen in Time

8. Supt Patrick Brehony of the NBCI arrived at the scene with Chief Supt Camon at about 7.30pm. When he arrived, he found that the scene was “*frozen in time*”. Cordons were in place and vehicles had been left in place. He explained that if they had been there early enough, they might have had a role in preserving the scene. While he did not know what had happened before he arrived, Supt Brehony was certain that there was no movement of cars when he was at the scene that evening. It is clear, however, that if indeed the scene was frozen, it was frozen too late; significant actors and vehicles had left, many of which were not identified by the NBCI.

9. Supt Brehony said that in an ideal world, the NSU vehicles driven by DS-06 and DG-41 would have been left *in situ*, but some cars had to move. He was of the view that ballistics had been able to do its work and valuable evidence was intact. He did not know if the removal of the NSU vehicles had damaged the integrity of the scene. When he learned that an NSU sergeant had intentionally disregarded Supt Blake’s order that all vehicles remain at the scene, he said the Superintendent had been 100% correct and the direction to NSU to leave the scene was wrong.

Maps

10. D/G Brendan McKenna from the Garda Mapping Section went to the scene on 1st May 1998. When giving evidence to the Commission he relied heavily on his contemporaneous notes and, understandably, had little memory of these events, some 17 years later. In 1998, he prepared a sketch map of the scene covering a distance of 650 feet, and marked the locations of various vehicles and items, all of which were present when he arrived. On the sketch, at the southern end, he marked the location of a shotgun case, three spent shells, two cartridge cases (off the road), a rifle, a dummy rocket launcher, a fire extinguisher, three plastic containers with petrol in them, a road sign, a traffic cone, a jemmy, a stick, some stockings, a balaclava, a chisel, an angle grinder, and a lump hammer. On the northern end of the sketch, in addition to vehicles including the hijacked Mazda, he marked the location of the deceased, a torn bank or hedge, broken glass, two spent shells, a fluorescent jacket, goggles, a balaclava, gloves, and some blood on the road. DG-41’s red car and DS-06’s Mazda, having been removed from the scene more than two hours earlier, were not marked on the map. There was no note of a revolver in the hijacked Mazda.

11. I pause to reiterate earlier comments in this regard. Common sense suggests that if vehicles are involved in a shooting, they should be left *in situ*. Similarly, if anything is at the scene, it should be photographed *in situ* before being moved. These are the basics of scene preservation for any investigation. It was through no fault of the garda mapper and photographer that items had been moved before they arrived, although it is perhaps indicative of the general approach to the shooting that the revolver used by Mr. MacLochlainn, which was still in the vehicle when the photographer arrived, was not noted and that nobody in the investigative team noticed this.

12. D/G McKenna also prepared a general location map. On that map he noted the location of Belton's Lane in Killiskey, which is 1 mile from the main Dublin / Wicklow junction and 1.85 miles to the scene on the N11. He noted that it would take less than 4 minutes to travel that journey. In addition, he noted the location of a Co-op north of Ashford, which he measured as 0.4 miles from a roundabout at the entrance to Ashford town. In 2009, in advance of the inquest, D/G McKenna furnished an additional handwritten statement to the Coroner explaining references made on the maps.

13. Garda Justin Doody's sketch of the scene was also available to the Commission. His sketch was carried out at about 5.35pm on 1st May as he walked through the scene and included notes of the approximate positions of vehicles and people, primarily at the southern end. These were marked on his sketch in the order in which he encountered them, from north to south. His sketch includes the red NSU Laguna that collided with Stephen Carney's Carina. The measurements in his sketch are approximate; he stepped out the distances. Garda Doody's sketch includes three 9mm cartridges which he saw on the road. He also took civilians' details and listed them in the order in which he met them as he moved from north to south.

Photographs

14. D/G Martin Allen, the photographer, arrived at the northern end of the scene at 8.10pm, according to the crime scene log. He was told that there had been an attempted armed robbery and that shots were fired by AGS. He knew there had been a fatality; the body of the deceased remained at the scene, beside the green Mazda. He took photographs from north to south, as darkness fell. After he had photographed the scene as he found it, members of the Ballistics Section entered. They placed yellow markers next to various items and areas of

interest, which D/S Seamus Quinn pointed out to D/Garda Allen, who photographed them.

15. The NBCI investigation also obtained some aerial photographs which were taken at about 7pm on the evening of 1st May by a civilian in a helicopter, which had been published in a Sunday newspaper. These were very useful in terms of identifying the area and the cars that were still at the scene. NSU-DG-17 confirmed that (if taken without a zoom lens) these shots were definitely taken from a height of well below 1000 feet above ground level.

16. D/G Allen photographed the autopsy in the early hours of 2nd May. The next day he returned to the scene and took additional photographs. He also took photographs of the white Daf van at Killiskey and of certain items inside the van. A few days later he took aerial photographs but the pilot refused to drop lower than 1000ft owing to their proximity to pylons, so their value was limited to showing the general area. D/G Allen also took photographs during the forensic examination of vehicles at Santry Garda Station – the hijacked Mazda, the blue Transit van, and the Securicor van. In addition, he took photographs of rods placed in bullet holes in the hijacked green Mazda; he thinks D/S Quinn used the rods to estimate the trajectory of bullets. He took those photographs a few days after 1st May, in Santry Garda Station.

17. Having been asked to do so, D/G Allen took photos of an Isuzu Trooper jeep and a red Seat, possibly at the Phoenix Park. Those vehicles were not present at the scene when D/G Allen was at the scene and he does not remember why he was asked to photograph them or who asked him to do so. His photo shows a minor scuff to the front driver's side of the red car and more marked damage to the side of the jeep. These vehicles probably are the car driven by NSU-DG-41 and the jeep driven by D/G James Ryan on 1st May, respectively. Finally, D/G Allen took photographs of two green Mazdas, facing one another, again at Santry Garda Station. He does not recall why he was asked to do so. The first is the hijacked Mazda and the second green Mazda is probably that driven by DS-06.

18. The photographs taken by D/G Allen were divided into two batches, the first for general use and the second marked 'Not For Service'. The latter were '*for investigation purposes only*' and were probably provided to the incident room and possibly also to the Ballistics Section.

Local Gardaí and the NBCI in Wicklow

19. The Commission heard evidence from a number of locally-based members of AGS who were involved to varying extents in the investigation, led by the NBCI. The ‘incident room’, which was essentially the investigation hub or headquarters, was based in Wicklow town Garda Station.

The Focus of the Investigation

20. No specific person was designated to carry out inquiries about the shooting in the course of the investigation. D/G John Harrington said that different people focused on different aspects of the investigation. He could not recall anyone focusing on the shooting but expected that Chief Supt Camon was overseeing that. A house-to-house questionnaire was compiled by the investigation team. It sought details of any witness who might have driven through or near the scene at the relevant time. The document was headed “Attempted Armed Robbery of Securicor Van on 1/5/1998 at Cullenmore”. There was no question relating to the shooting.

21. It was suggested to various garda witnesses that the investigation related primarily if not exclusively to the attempted robbery, to the exclusion of the shooting. This was universally denied. Supt Brehony said that, had there not been a shooting in the case, it was unlikely that Chief Supt Camon or the NBCI would have been called in. The robbery attempt had been foiled, nothing had been taken and the suspects had all been arrested at the scene. There might have been a skeleton team to assist in interviews, but perhaps not even that as they had been arrested committing the offence. There would have been no need for the NBCI to investigate. He understood that the reason for their involvement was that there had been a fatality. Asked if a separate investigation was set up into the shooting, he said:-

“[T]here was an effective investigation conducted because there was an independent unit brought in to investigate it as distinct from NSU and SDU and the Emergency Response Unit who were there initially, so we were brought in - clean hands. The investigation was done very expeditiously ... and the file went to the DPP. The investigation identified the people who discharged their firearms. The investigation identified the people who came to the scene in the aftermath of the shooting.”

22. Supt Brehony concluded that the investigation complied with the standards prevailing at the time. He said standards have not changed since then although systems have changed. Supt Philip Kelly offered the view that the investigation might not have been consistent with today's standards but for the standards of the time, 17 years ago, it was a full investigation.

23. A further illustration of the focus of the investigation can be found in a letter headed "*Attempted Robbery of Securicor Van at Cullenmore*" and dated 4th May 1998, which was sent by Supt Brehony to an Assistant Commissioner to update him as to the progress of the investigation. There was one line in the letter stating that Ronan MacLochlainn was fatally wounded at the scene. There is no other reference to the shooting.

Conferences in Wicklow

24. The first NBCI conference was in Wicklow Garda Station on 2nd May. Its purpose was to set up the incident room and to allocate jobs. There was a briefing about what had occurred. There were about 30 or 40 personnel there and they started, according to Supt Brehony, with essentials such as identifying the first member to report the crime, the first member to the scene, the member who engaged the technical bureau and so on. They appointed an exhibits officer, and arranged a report for the coroner. The conference took perhaps an hour or an hour and a half.

25. Chief Supt Murphy, Supt Gerard Blake and Assistant Commissioner Kelly were at the first conference as were a number of NBCI members who were involved in interviewing the suspects. Many of those present were local detectives. Chief Supt Camon played a major role and directed a lot of the jobs that morning. Chief Supt Murphy's main function was to keep up to date so as to extend the detention of the prisoners, should that be necessary.

26. Supt Brehony said that everything was documented at these conferences for easy retrieval, to avoid duplication, and to allow the team to have a progress review of the investigation. D/G John Harrington of the NBCI was the "Book Man" for this investigation, maintaining a book of all the jobs that had to be done in that regard. Among other tasks, he was detailed to read through statements, to take down specific notes and headings, and to ensure that statements were taken in relation to all those headings. Supt Brehony was in charge of statements generally and local sergeant, Patrick Treacy, assisted in the

process of collecting and recording the statements taken. Sgt Pat Cody, then attached to Rathdrum Garda Station, was appointed exhibits officer. He did not go to the scene until 4th or 5th May. He received exhibits from various members who were conducting the searches and interviews. The searches were carried out by local gardaí who were trained members of the Divisional Search Team.

27. There was a conference every day thereafter as the investigation went on, each longer than the last as the jobs list grew. At each conference, all present were updated and then jobs were handed out. The incident room remained open in Wicklow for two or three months, never moving elsewhere. It ended when the file was completed and sent to the legal officers. The final report in this investigation was dated August 1998. All materials were then boxed and left with the local District Officer. In this case, as there were pleas of guilty, the box remained in Wicklow. It seems that much of the original material provided to the Commission was retrieved from that box in 2015.

28. No member of the NSU or the ERU appears to have been present at any of the conferences. D/G John Harrington discovered after the first conference that both the ERU and the NSU were involved. The Jobs Book – a hardback document for internal use maintained by the Book Man to keep track of tasks allocated and completed - refers to the ERU insofar as one of the many jobs handed out during the course of the investigation was to seek statements from ERU members. There is no mention of the NSU in the Jobs Book.

Statements and Interviews

29. Numerous statements were collected as part of the 1998 investigation. Witnesses were nominated by those working in the incident room, with the assistance of the ERU and NSU. There were at least three members of AGS proof-reading statements and making summaries of them. A separate person dealt with a statement index. At any one time there might be six people in the incident room, apart from the NBCI officer in charge, or the local superintendent. All original statements were kept together; there were no separate files for different units, e.g. the NSU or the ERU. Typed, copy documents were used as working copies in the incident room.

30. The names of civilian witnesses were taken at the scene and forwarded to the incident room to ensure that all relevant witnesses were identified. By and large, civilian eye-witnesses' statements were taken over the course of the evening of 1st May at Wicklow Garda

Station and Securicor HQ, and over the following days at witnesses' homes or at their local garda stations. In every case, at least one member of AGS was present while a statement was being taken and most were written by the garda and dictated, with occasional questions from that garda, by the witness. The date on which the statements were made appears on each one. More detailed supplementary statements were taken from some civilian witnesses over subsequent days and weeks.

31. Of note, however, having been immersed in the raid, Michael H. managed to turn his car and escape. He got as far as Newtownmountkennedy, phoned the emergency number for the Gardaí (112) on his mobile phone and was put through to Newtownmountkennedy station. He told a male garda what he had seen in the Cullenmore Bends. The man seemed unconcerned and said they had better send a car, which Michael H. thought was very odd. Michael H. gave the garda his details including his name and phone number but he never heard from anybody from AGS again, which surprised him. He did not think about it again until he heard about this Commission on the News on 8th September 2015. His evidence was quite important insofar as the shooting was concerned as it confirmed the evidence of other witnesses that Mr. MacLochlainn was carrying a gun as he fled north.

32. All of the detained raiders were interviewed several times during the course of their detention. Insp John O'Mahony of the NBCI monitored the ongoing investigation so as to ensure that the interviewers knew what was happening in case matters had to be put to the prisoners. He also assisted in assessing the necessity to extend the statutory periods of detention. Stephen Carney made a statement but refused to sign it. None of the others made any statements and each, for the most part, exercised his right to remain silent.

Statements made by Garda witnesses

33. Garda witnesses were not interviewed; statements were produced by the individual garda witnesses. In many cases, the original statements were handwritten, though some were typed. Most witnesses said they had signed their statements. Ideally, each statement should not only be signed, but should contain a declaration that the statement is accurate, in a standard form. The appropriate procedure if there was an omission or discrepancy in any statement, in particular around the forensic evidence, was for the witness to be asked for an additional statement. If no statement was taken, of course, these matters could not be clarified.

34. Many original statements were furnished to the Commission, largely those of civilian witnesses and members of AGS involved in preservation, search and various other investigative capacities. Those statements were identical in content to their equivalent in the garda file. In some cases, however, the original statement was not available. The original statements made by most of the NSU and some of the ERU operatives were not among the materials recovered in Wicklow, and have not been found. As set out below, some witnesses were named in a Statement Index but no statement, whether an original or a copy, was found in their names. None of the witnesses could explain this.

35. Many of the typed garda statements in the garda file were undated and many lacked a declaration that it was accurate. That notwithstanding, Supt Brehony and D/G John Harrington both said they could not rely on a statement unless it was signed and contained such a declaration. This applied equally to typed original statements. The documentation was being used to brief the law officers and had to be correct. D/G Harrington said he would send statements back if they were unsigned or if there was no declaration.

Statements and the NSU

36. In the same way that common sense indicates that vehicles involved in a shooting should be left and photographed *in situ*, common sense dictates that witnesses to a shooting should be asked to identify other potential witnesses who were close-by at the relevant time. This ensures, insofar as it is possible, that all direct witnesses have been identified and interviewed. However, many members of the NSU were not asked for statements and the NBCI members claimed that they did not and could not have known what the NSU saw and, indeed, did not even know how many of them were there. Similarly, NBCI members were not aware that an airplane had been deployed in support of the NSU operation and, by extension, they did not know that a video recording was taken from the plane of the events on the N11.

37. The Commission heard evidence about the general procedure whereby statements were obtained from members of specialist units - the unit's inspector or superintendent would be asked to obtain statements from the members. D/G John Harrington said that this request was the only interaction between the incident room and the NSU or the ERU. Specialist units such as ballistics sent their reports in automatically but the occasional phone call had to be made if statements were not in by a specific date. Given the units involved, i.e. the NSU

and ERU, they would not be coming into the incident room. The usual practice applied - they would write their own statement and they, or a supervisor, would hand it in to the incident room. Supt Brehony explained this was normal practice for all gardaí, unless it was an investigation into the actions of a garda which, of course, is a separate thing. If disciplinary action was being taken against a guard, he would be interviewed by a senior officer, and *“it would go along pro rata.”*

38. When he was asked to comment on the adequacy of the investigation, Supt Brehony drew attention to the number of witnesses who had made statements about what they saw there. He commented that it was unusual to get that number of witnesses to any scene. He acknowledged that some witnesses had left and said that there was an appeal but some members of the public were too scared to come forward. He was unaware that many NSU guards had left the scene, and some of these were intimately involved in the events surrounding the shooting. He said he would have no idea about the NSU at the scene and the investigation had not identified any such witnesses. He concluded by saying, *“you wouldn't expect the Press Officer to have to go on the air and ask for guards to come forward, do you know what I mean.”*

39. Insp John O'Mahony offered the view that in 1998 the situation was still volatile, insofar as subversive groups were concerned, and the NSU and the NBCI would not have had much interaction. The NSU was a very valuable resource and there was a certain amount of protection given to its members. It was not the practice for the NSU to give evidence in court, for instance. Only the people that were considered critical were asked to make the statements.

40. In general, the NSU members who did make statements in 1998 accepted that their statements were directed towards a book of evidence in relation to the attempted robbery and mentioned the shooting only peripherally if at all. Most said they had made their statements soon afterward. None recalls being asked specifically about what had happened in the context of the shooting. NSU-DS-04 made a statement which makes no mention of the shooting other than to say he saw Mr. MacLochlainn lying on the ground. He said he had not expected anyone to ask questions about the shooting. He did not seem to think that he could have offered anything more to an investigation into the shooting, even though he had spoken to DS-06 only moments before the incident.

41. It is unfortunate that nobody in the NBCI even thought of seeking a comprehensive list of witnesses to this shooting. D/G John Harrington said that he expected that the head of the NSU would not

only make a list of those who were present, but that he would provide the investigation with a summary of the part they played. While I accept that this was a reasonable expectation, it does not absolve the investigator from ensuring that this was in fact done. We now know that it was not, in fact, done. Indeed, their supervisor Insp Patrick Nyhan claims never to have discovered (until the Commission hearings) that the NSU was first at the scene or that one of them was unarmed.

The Index in the Incident Room

42. A Statement Index was among the items found in Wicklow Garda Station in 2015 and furnished to the Commission. This is a small hardback book, with sections divided alphabetically from A to Z. The Commission heard evidence that, generally, a statement index is a list of witnesses from whom statements have actually been received. It is not a list of those from whom statements are being sought or might be sought.

43. Sergeant Tracey made most of the entries in the Index. He explained that the procedure was that when a statement was made, it was given to him in the incident room. As soon as the statement came in, it was “indexed”, i.e. he put the author’s name in the Index, under the letter of the alphabet corresponding with the witness’ surname, he wrote a statement number beside the name in the Index, and he also wrote that number on the statement. Numbers were given out sequentially or chronologically, as statements were received. In other words, not only was the list roughly alphabetical, it was strictly chronological. A number could not be allocated in advance. If, however, two statements came in from witnesses whose surnames began with the letter A, the first to be received was listed first, not that which would be first alphabetically. A record kept by Sgt Tracey at the front of the Index indicates that statements came in both singly and in batches. D/G John Harrington agreed with this description of the process.

The Missing NSU Statements

44. Five names appear in the Index which are of concern. Three guards’ names appear in respect of whom no statement can be found. These are NSU-DG-41, DG-35 and DG-06. They do not appear sequentially in the Index. There is an additional difficulty as regards DG-02, to whom a typed statement is attributed, though he is certain he never made it.

45. DG-06 says that he did not make a statement. His name appears in the statement of an ERU member in the garda file. However, he has no recollection of anyone from the investigation team contacting him. He accepts that he had something to contribute, in terms of evidence. He does not think he could have made a statement he has forgotten. He accepted that the NSU operate with considerable and understandable secrecy and he does not know how someone in Wicklow Garda Station would have got his name; that is a mystery to him. When asked if somebody might have made a statement in his name he replied *“Absolutely not. If I’m making a statement, I make the statement, nobody else and nobody else would influence what I put into a statement”*. DG-35 did not recall making a statement. DG-41 said he discussed the events of the day orally with his colleagues but filed no written report and made no statement. DG-11 is in a slightly different position insofar as a statement has been attributed to her and while she has no recollection of making it, she said it was possible that she did make it but has since forgotten.

46. These four witnesses - DG-02, DG-06, DG-11, DG-35, and DG-41 -were critical witnesses to the attempted robbery and / or shooting. All five names appear in the statement index. None appears in the garda file. This gives rise to two possibilities. The first is that no statement was ever taken from any of them yet someone wrote down their names with a random number beside each one. The second is that statements *were* taken from each one and then either removed or it misplaced. In each case the member says that she or he does not recall making any statement. Only in the case of DG-02 is there evidence that he definitely did not make a statement, and that is considered separately, below.

47. Supt Brehony was in charge of the incident room. He, and those under his supervision, were collecting and recording the making of statements. He could not explain to the Commission how there could be a record of a statement, and yet no accompanying statement. He was at pains to confirm that he had never come across this before. He was asked if it was possible that a garda witness, or the Book Man, or whoever compiled the index, might assume that a statement would be forthcoming and he said *“no, no, no.”* A statement had to be in the Incident Room and documented before it could be given a number. The witness could be killed tomorrow, as he pointed out, and the statement would have to be there before you could record it. It was clear that Supt Brehony was surprised to hear of missing statements and all the more perplexed to hear that the members themselves did not recall making statements at all.

48. D/G John Harrington, the Book Man, did not write the names of the five NSU members in the Index; their names were not entered in his writing, he said. It was suggested to him that, if a sergeant gave five names of people who might make statements, these might go into the statement index before the statements were received; he emphatically refuted this, saying that a name would definitely not be added to the list in the hope that a statement would arrive.

49. Sgt Tracey said that the fact that a person's name was entered in the Index generally signified that the person had provided a statement. He did not think there was any circumstance in which a person's name would be entered in the Index before a statement was received in the incident room. He had no idea why the names of NSU members who do not remember making statements were in the Index. In his view, if a name was in the Index, and no corresponding statement could be found, the statement must be mislaid. He believed that if there was a name in the Index and a number, there must have been a statement at some stage. He also said he was not involved in any investigations involving members of the NSU.

50. For completeness, and before setting out my views on the issue of the other three witnesses, I should deal with the statement of NSU-DG-11. It is in a different category as she does not recall whether or not she made a statement and there is a copy statement, bearing her name. This is so clearly an account of what she saw and did that I am satisfied beyond a reasonable doubt that it was created by her in 1998. She does not seek to contradict anything in it and it is understandable that she does not recall every detail after 17 years. This witness was particularly distressed by the events of the day, having been pregnant at the time and also having been intimately involved with the incident, including witnessing the death of Mr. MacLochlainn. It is not surprising that she does not recall making a formal statement so many years ago.

51. As regards her three colleagues, DG-06, DG-35 and DG-41, no original statements appear in their names. Nevertheless, I conclude that the most likely answer is that all three members simply do not remember making statements but, originally, a statement was taken from or made by each of them, albeit that the statements may have been brief or even minimal. The contemporary note in the Index is difficult to ignore and the universal reaction of shock to the very suggestion of names being put in without corresponding statements was very striking. I must also conclude that each statement was removed from the file in Wicklow at some point. It may be that this was due to an inappropriate and unhelpful effort to protect NSU witnesses from being identified or

involved in court proceedings or in a coroner's inquest or, indeed, before this Commission. A more benign explanation is that the statements may have been removed in an attempt to identify appropriate witnesses for that inquest. There is no other evidence to assist me in deciding what motivated the removal of the statements but the approach of AGS generally to the protection of the NSU makes me somewhat cynical in this respect. These were critical witnesses and any competent investigator would want to receive their written accounts of what they saw and did. I also note that numerous other original statements are also missing from the Wicklow Box; these are the original NSU and ERU statements, but the difficulty does not arise in most cases, as the statements formed part of the garda file so copies remain. In other words, while I am certain that statements were selectively removed, I am less certain about the fact that the three witnesses in question made statements in the first place. I can make this decision only on the balance of probabilities; there is too little evidence on which to reach any firmer conclusion. It is impossible to say why the original NSU and ERU statements were removed, leaving only the typed copies.

The 'Fabricated' Statement

52. The document purporting to be the statement of DG-02 (which I will call a statement for ease of reference) mirrors quite closely what one might expect DG-02 to say, as it accords broadly with the account given by his passenger, but DG-02 now contradicts some of the matters in the statement and is adamant that the statement was not his. Indeed, he is gravely concerned that a document was furnished to the Commission in his name, which he did not create.

53. Sergeant Tracey said he most likely wrote the letter 'T' on top of the document to show that it was typed and he appeared to have given it a number. He does not know if that signified that it came to the incident room in handwritten form and was sent for typing. The names of DG-02 and his passenger DG-35 are not familiar to him. He does not remember it ever happening that a person came to him saying that a statement had been given to an incident room which was attributed to that person but had not, in fact, been made by that person at all.

54. D/G John Harrington said that, from the format of this document, he would expect that there was an original as well. He noted that the format of the document was unfamiliar to him; he had no idea why it was like that.

55. Supt Brehony could not explain the document. He said it is clearly not the original (if, in this case, there was an original). When told the member had disavowed the statement, he said it was very unusual, adding, “*you couldn’t make a statement for another guard.*” He was asked if one garda member, without the knowledge or permission of another guard, would write statement for that colleague; he said, “*Not at all, that would be a futile exercise.*” He was asked if another guard, knowing more or less what DG-02 might say, might have put together a statement on his behalf. Supt Brehony replied: “*A guard that would think that shouldn’t be a guard*”. His reaction was such as to confirm that he strongly agreed that to forge or create a statement for a colleague would go beyond a deficiency in the investigation, and would constitute something far more sinister.

56. DG-02 is adamant that he did not make this statement. In assessing all of the evidence in this respect, however, it is significant that he is equally adamant that he had approached the scene from the north but all of the evidence available suggests that he is wrong on the latter point. It is clear that, in respect of the direction of travel, this was an honest mistake; however it is one he does not accept is a mistake. He has no reason to misrepresent the direction and nothing to gain from it. I conclude that he has simply made an error which is entirely understandable after 17 years, during which time he has not been asked to address any of these issues in any forum. Further, he now recalls arriving at the scene not knowing that a Securicor van had been spotted. However, the evidence suggests that the only reason that he and DG-35 were at the scene at all was because they had seen the van themselves as it passed through Ashford and they followed it to the Bends. He also seems not to have seen an armed man approach his car, yet this seems to have been why he turned the car. Multiple witness accounts support the evidence of his passenger, and not his, in every respect: direction of travel, destination having turned, what was in front of their car, how they came to be at that location and why they left.

57. The inconsistencies between this witness’s evidence and the facts as outlined by other witnesses and supported by contemporaneous documents and forensic evidence from the scene, lead me to conclude that I cannot rely on his evidence as to whether or not he made the statement. It would be a very serious matter for a member of AGS to fabricate a statement. While it is also a serious matter to claim that a statement has been fabricated, in this case a retired member is being asked about events many years ago. In such circumstances, memory deficiencies should be expected, rather than surprising, events. The witness honestly believes that he did not make the statement, hence his

repeated protestations in this respect. The problem is compounded by the fact that there is no handwritten, original statement. Had the shooting been more thoroughly investigated and documents relating to it carefully preserved, this issue either would not have arisen or would have been easier to resolve.

58. Insofar as it is necessary to make any finding of fact in this respect, I conclude that the statement probably was made by DG-02 and that its contents are more reliable than his more recent memory of events, which is demonstrably wrong. In coming to this conclusion, I have also considered the oddity that the Index refers to other statements which either cannot be found or, where they have been found, are attributed to witnesses who say that they did not make a statement at all or cannot recall doing so. I am satisfied that the statement in question was probably not fabricated.

59. Finally, it is important to note that there was nothing in this document that touched on the shooting or on the issue of prior knowledge. If, for the sake of argument, a statement of doubtful provenance had purported to confirm that Mr. MacLochlainn was pointing a gun or that his car had crashed into a specific vehicle, its significance would have been great and the theory that the investigation was somehow tainted or deliberately biased would be bolstered accordingly. That is not the situation here. The document attributed to DG-02 exclusively describes events south of the Securicor van.

Chief Superintendent Camon's Report

60. The final report of Chief Supt Camon, which was sent to the DPP, was headed "Attempted Armed Robbery". This was the only report compiled as a result of the investigation. D/G John Harrington wrote large segments of that report, though not all of it.

61. The report states generally that witnesses were interviewed insofar as they were identifiable. The introductory section makes reference to the NSU, saying that they had a number of suspects under observation from early on 1st May and had followed them from Dublin city down to Ashford. The report describes D/G Brien and D/S Shanahan as the first members to arrive. It names a number of people who arrived on the scene to assist in the arrest of the raiders; we know these people to be ERU members. None of the NSU members who arrived on the scene is named other than the six who made statements.¹⁴

¹⁴ These were NSU-DG-03, D/S Shanahan, D/G Brien, Insp Nyhan, NSU-DS-04, and NSU-DS-06.

The six NSU operatives who had made statements were, in most cases, including that of DS-06, officers who had been involved in making arrests in relation to the attempted robbery. In the case of DS-06 in fact, his statement dealt almost entirely with the attempted robbery and the arrest. The exception was Insp Nyhan, who was not involved in making arrests or in the shooting; his statement outlined the movements of the two vans en route from Dublin to Ashford, and the identities of its driver and passengers.

62. With regard to the preservation of the scene, the report stated that the scene, including the area where the body of Mr. MacLochlainn lay, had been preserved by members of AGS having cordoned off both end of the road. It concluded: *"All correct and necessary scenes of crime procedures were put in place in this investigation and all necessary scenes of crime technical examiners were called to the scene and fulfilled their various functions."*

63. Insofar as the shooting is concerned, on the title page and in the index of the report, the only references were to an attempted robbery; there was no indexed heading about the shooting. In a section entitled *"Movements of Raiders during the Raid"*, the report stated: *"MacLochlainn successfully hijacked a blue Mazda 323 car and pointed his firearm a number of times at pursuing Gardaí before being fatally wounded"*. The preservation of the body of Mr. MacLochlainn and its transport to the hospital together with the findings made after the post-mortem report were outlined at a later stage in the report. Finally, at pages 105-106 report (the final two pages), there was a subheading, *'Discharge of firearms by Gardaí at attempted robbery scene'*. According to D/G Harrington, Chief Supt Camon drafted the paragraphs under this heading. It states that of 12 shots fired, seven were discharged by D/S Gantly and three by Insp Hogan, and it briefly outlined the circumstances in which those shots were fired. It continued:-

"Two shots were discharged at Ronan MacLochlainn by [NSU-DS-06], MacLochlainn having pointed a loaded firearm at him. One of these was the fatal shot."

The discharge of firearms in this case has been the subject of a full and comprehensive investigation. The facts of the case disclose that under the circumstances that prevailed on the day that all the Gardaí who discharged their firearms did so in accordance with the laws of the State and existing Garda regulations."

64. It was on the basis of the information provided in Chief Supt Camon's report and the accompanying garda file that, in November

1998, the DPP directed that no prosecution be brought in relation to the shooting.

The Ballistics Investigation

65. Members of the Ballistics Section of the Garda Technical Bureau arrived at the scene very shortly after the NBCI on 1st May. The general practice was for the technical people make their own decisions; it was not a matter for the NBCI to direct the ballistics expert as to what he should do. Over the subsequent days and weeks, members of the Ballistics Section examined the relevant weapons, the ammunition (spent and otherwise) and the hijacked Mazda. The team comprised Insp Edwin Handcock and D/S Seamus Quinn. Unfortunately, D/S Quinn was unable to assist the Commission. However, both he and Insp Handcock made detailed statements at the time and their original case-notes were preserved and made available to the Commission. In addition, Insp Handcock brought his official notebook with him to the Commission and provided copies of the relevant pages.

The Raiders' Weapons

66. Three firearms used by the raiders were found at the scene. D/S Seamus Quinn's statement describes how, after these items had been photographed, he made safe and removed a revolver from the green Mazda; he proved and removed a sawn-off shotgun from the gold Carina, and he removed an AKM assault rifle beside Securicor and blue Transit vans. He examined and test fired these weapons.

67. D/S Quinn found that the revolver he had removed from the Mazda was a .357 inch Magnum calibre, 6-shot revolver. Its serial and patent numbers had been drilled out. It was otherwise in good condition, lightly oiled, and capable of discharging shots. He said that, when he took possession of it at the scene, it contained six live rounds of .357 inch Magnum calibre ammunition, and all rounds were in good condition. His case notes include a diagram indicating the position of each bullet.

68. D/S Quinn found that the serial numbers of the sawn-off shotgun and AKM assault rifle recovered at the scene had also been erased. The shotgun was in "very poor" condition and was rusted. Due to a defect in the trigger mechanism, it would only discharge intermittently and could discharge accidentally. A live shotgun cartridge was found at the scene which was in poor condition and badly rusted but was suitable for use in the shotgun. Regarding the AKM assault rifle, its stock was sawn-off.

It was capable of discharging shots. It had a 30-round capacity and there were 28 live rounds of ammunition in the magazine when found at the scene.

69. D/S Quinn also examined a dummy rocket and launcher which he had seen at the scene near the Securicor van. The launcher was made of timber and plastic tubing, and the rocket had been fashioned from two Nash's mineral bottles which were cut in two and held together with tape. It had been painted green. It resembled an RPG-7 rocket launcher and rocket.

70. As it applied in 1998, the Garda Code required that a report be forwarded to the Barracks Master when firearms or ammunition were seized or surrendered.¹⁵ In compliance with the Code, on 2nd June 1998, Insp Castles made an official report to the Chief Superintendent in Wicklow about the three firearms recovered at the scene. As to how the firearms and ammunition came into Garda possession, the report stated that this was a result of an intercepted attempt by paramilitary criminals to hijack a security vehicle at Cullenmore Ashford, Co. Wicklow, and it further stated that members of the ERU were involved and that one of the raiders was fatally wounded.

AGS Weapons

71. The Garda Code applicable in 1998 stated "*Whenever firearms have been produced or used on duty a report should be made of the circumstances when the members concerned return to their station*".¹⁶ I am satisfied from the evidence I have received that most members of AGS understood that if shots were discharged at a scene, it was expected that all gardaí in possession of firearms at the scene would hand in their firearms for inspection. They considered the parameters of this scene as being the immediate vicinity where the man was shot. This was not confined to those who had discharged their weapons. This broad understanding was reflected in a note entered in the Jobs Book on 2nd May stating: "*All firearms used by the Gardaí and in possession of Gardaí at the scene should be technically examined*".

72. Members of the Ballistics Section examined 28 firearms surrendered by members of AGS; 12 from the NSU and 16 from the ERU.

¹⁵ Garda Code, Vol. 1, 4th Edition (1995), Section 40.26, para. 2.

¹⁶ Garda Code, Vol. 1, 4th Edition (1995), Section 25.42, para. 14.

73. Insp Donal Neill of the NBCI was in charge of collecting the garda weapons. Statements made in 1998 outline the following:

- On 2nd May 1998, Supt Basil Walsh gave two weapons to Insp Neill. These were a Sig pistol with a magazine capacity of 15 (serial number U557929), which held 13 live rounds of 9mm ammunition, and a second Sig pistol (U557884), also with a magazine capacity of 15, which held 9 live rounds of 9mm ammunition. These two weapons were assigned to Insp Hogan and D/S Gantly respectively. These weapons are still in the Ballistics Section.
- The following morning, on 3rd May, D/S Comiskey of the ERU provided three shotguns, two sub-machine guns and one rifle to Insp Neill. A contemporaneous document noted that these six weapons were assigned to ERU members – the shotguns to D/S Comiskey and D/Gardaí Lyons and Harrington; the sub-machine guns to D/Gardaí O'Driscoll and Duffin; and the rifle to D/G Michael Walsh. However, the evidence suggests that the ERU member to whom the weapon was signed out might not necessarily have been the member to carry it on the day.
- At midday on Sunday, 3rd May, Insp Neill received a 2" Smith & Wesson .38 revolver (6D66502). This was a six-shot revolver, which, when surrendered, was loaded with 4 live rounds of .38 inch calibre cartridges and 2 spent .38 calibre cartridge cases. This was the weapon assigned to NSU-DS-06. It is still in the Ballistics Section.

74. Insp Neill gave these nine weapons {three shotguns, two Uzis, a rifle, two pistols and a revolver} to D/S Quinn in one batch. He subsequently collected the following weapons and passed them on to D/Sgt Quinn:

- 11 more Smith & Wesson .38 revolvers. Contemporaneous notes indicate that these were all NSU weapons, and linked to three D/Sergeants (NSU-DS-01, DS-02 and DS-05) and eight D/Gardaí (DG-02, DG-06, DG-11, DG-15, DG-27, DG-35, DG-41 and DG-43); and
- Seven Sig pistols. Contemporaneous documents link these to the following ERU members: D/Sgts Comiskey and Sears and D/Gardaí Harrington, M. Walsh, Lyons, Daly and O'Driscoll.

75. D/G McCabe of the ERU gave one further Sig pistol directly to D/S Quinn.

76. Apart from the two pistols associated with D/I Hogan and D/Sgt Gantly (U557929 and U557884) and the revolver associated with NSU-DS-06 (6D66502), none of the weapons given to D/S Quinn was loaded.

77. The Commission heard evidence about who surrendered their weapons and why. Members who were not in the immediate vicinity of the Cullenmore Bends generally did not surrender their weapons. The evidence was less uniform with regard to the members who were at the scene. Some surrendered their weapons while others did not. For example, DG-02 and DG-35 surrendered their weapons. DG-35 thinks the weapon was probably requested in that it did not automatically occur to her to hand it in. DG-11 also surrendered her weapon; she had drawn it upon entering the scene. In contrast, DG-03 had his firearm drawn at Killiskey but was not asked to surrender it afterwards. He said he would not have expected to have to hand it in and noted that he had not discharged it that day. Typical of the inconsistent manner in which weapons were surrendered were DG-32 and DG-41, who were in equivalent positions, close to the shooting; DG-41 surrendered his while DG-32 did not. There is no suggestion that any of these members discharged shots at the scene and no spent cartridges or bullets have been left unaccounted for, but the haphazard process whereby some members were apparently requested to surrender weapons while others in equivalent positions were not is symptomatic of the lack of organisation in all sections of AGS and the failures of coordination in the organisation, which are highlighted throughout this report.

The Reconstructions at Santry

78. There were two reconstructions of the shooting at Santry Garda Station - one on 30th July 1998, involving Professor Cassidy, and a second on 10th August 1998.

79. D/S Quinn's statement and case notes are silent with regard to Dr. Cassidy's examination of a Mazda 323 GLX on 30th July. Insp Handcock did not attend that examination; he was on a family holiday at that time. Professor Cassidy noted four holes in the hijacked car all of which were consistent with bullet holes. Two of the holes were in the rear door on the driver's side were consistent with two separate bullets. These appeared to be aimed towards the front of the vehicle. The third hole was to the middle part of the windscreen and was consistent with being fired from in front of the hijacked Mazda, with the bullet

travelling towards the front passenger side. From internal examination the bullet appeared to strike the armrest on the front passenger door. The fourth hole was in the driver's door wing mirror. On the mirror side the glass had shattered and there was an area of damage which was consistent with having been caused by a bullet. The direction of travel of this bullet was consistent with being fired from in front of the vehicle and travelling towards the back at a downward angle. Professor Cassidy could not assess the angle with any great precision but thought it probably at an angle of between 25 and 30 degrees from the horizontal.

80. Having examined the vehicles, Professor Cassidy thought that the fatal wound was consistent with Mr. MacLochlainn being shot while seated in the driver's seat with the bullet fired from a vehicle coming in the opposite direction. To reproduce the trajectory of the bullet through his body it would appear that he was sitting slightly hunched over the steering wheel, probably with his head down, so that the bullet came in, grazing the underside of the chin and then into his chest. Her opinion was that the gun was at least a few feet away from Mr. MacLochlainn when fired due to the absence of any secondary projectiles on his body. Professor Cassidy agreed when giving evidence that that his being hunched over could be consistent with having been thrown forward in a collision; she could not say why he was bent forward but she knows that he must have been. The evidence about the positions of the seat and the sun visor in the Mazda explains this.

81. NSU-DS-06's name is mentioned in D/S Quinn's case notes in respect of the second reconstruction, on 10th August 1998. D/S Quinn's case notes refer to an official motor car 96-D-44595, a green Mazda 323 GLX. They outline measurements relating to the wing mirror, driver's window and driver's seat of the Mazda 323 GLX. D/S Quinn's case notes continue:-

"First shot – at windscreen of Mazda 95-D-16466

Fired approx 65 inches from windscreen.

Second shot – at mirror.

Fired approx 30 inches from mirror.

Both of the above shots estimate at approx. 5 degrees from the horizontal."

82. The Commission's firearms expert has indicated that it is not possible to definitively determine which of the two shots fired by DS-06 was the first shot. This suggests that the sequence above was provided was provided to D/S Quinn by DS-06, who was uniquely placed to give a definitive answer in that regard.

83. Photographs taken at Santry Garda Station show two green Mazdas – one the hijacked Mazda and the other a Mazda GLX – facing one another in an apparent reconstruction, with rod being used to estimate the trajectory of bullets; it is not clear if these photographs were taken on 30th July or on 10th August or on another occasion entirely.

Forensic Evidence: Conclusions

84. D/S Quinn examined and fired the firearms found at the scene and the official Garda firearms. He then microscopically compared the spent cartridge cases and bullets recovered from the scene, the body and the Mazda with the spent bullets and cartridge cases which he had test fired from the raiders' weapons and from the official Garda weapons. He found that, apart from the two Sig pistols (U557929 and U557884) and the Smith & Wesson .38 revolver (6D66502), none of the test fires compared with the spent cartridges or spent bullets recovered from the Mazda, the body, or the scene. In other words, and in accordance with the statements made, only Insp Hogan, D/S Gantly and DS-06 had fired their weapons.

85. D/S Quinn was satisfied from his examination that two spent cartridge cases found at the scene were consistent with having been discharged by the weapon surrendered by Insp Hogan and seven were fired by the weapon surrendered by D/S Gantly. These cases were found on the road, near the grass verge and in a gateway; and the last was the spent bullet recovered from the evaporation canister in the Mazda. This was discharged as D/S Gantly tried to remove Mr. MacLochlainn from the car. The ballistics team had not found the round that went through the ventilation system until they had a conversation with D/S Gantly, who explained it to them. Finally, D/S Quinn concluded that the spent .38 inch calibre bullet removed from the body of Mr. MacLochlainn had been fired by the weapon assigned to NSU-DS-06.

86. In 2015, Mr. Mark Mastaglio, a forensic firearms expert retained by the Commission, conducted a detailed examination of the firearms and ammunition preserved by AGS. He had access to the contemporaneous working notes made by Insp Handcock and D/S Quinn and the photographs and maps prepared by AGS. He also had an opportunity to examine the hijacked Mazda. He did so in consultation with Mr. Michael Burdis, a UK-based policing expert retained by the family of Mr. MacLochlainn.

87. Mr. Mastaglio's forensic examination of the spent cartridge cases and bullets recovered from the scene, body and Mazda confirmed the findings made by D/S Quinn in 1998. Mr. Mastaglio and Mr. Burdis agreed that the forensic firearms evidence suggests that Ronan MacLochlainn was shot and killed whilst he was sitting in the driver's seat of the hijacked Mazda 323F. Since photographs taken on 1st May show that the driver's sun visor in the hijacked Mazda was down, it is likely that he was sitting low in the seat. It was possible for him to have his arm outstretched, as if holding a gun, in the direction of the trajectories through the wing mirror and the rear offside door.

88. The fatal shot was fired by DS-06 who discharged his revolver as his car approached the hijacked Mazda 323F. The nature of the damage caused by the bullets indicates that both shots were fired slightly downwards, from offside to nearside and from front to back, with respect to the Mazda 323F. The cars would have been within a few metres of one another. DS-06 discharged two rounds. One bullet passed through the driver's wing mirror, killing Mr. MacLochlainn. The other bullet went through the hijacked car's windscreen. While it is not possible to say definitively, it is reasonable to contend that the first of the two shots went through the windscreen and the second went through the wing mirror.

89. D/S Gantly fired six shots when he was in the area of the initial attempted robbery. He also fired another shot when he was in, or very close to, the Mazda 323F. His pistol shot significantly to the left due to the rear sight being misaligned. It was fitted with a laser sight which would project a red dot onto a target. Insp Hogan fired two shots at the hijacked Mazda as it travelled northwards, shattering the rear offside door window. Both shots to the rear offside door had virtually identical trajectories and the close proximity of the two bullet holes to one another supports the contention that they were discharged in rapid succession. Insp Hogan would most probably have been between two and three metres behind the hijacked car when he opened fire. No evidence was found of a third shot discharged by Insp Hogan. Ultimately, the experts found that none of the ballistics evidence contradicted the accounts given by D/S Gantly, DS-06 and Insp Hogan.

90. Mr. MacLochlainn's death was due to internal injuries relating to the internal tracking of this bullet through his body. The same bullet caused the mark to his chin due to the position in which he was seated in the car, with the seat pushed quite far forward by Patrick O'N., who was a smaller man, and the visor down. While an awkward position, this is

the only way in which Mr. MacLochlainn could have driven the car in the circumstances, and I am satisfied beyond a reasonable doubt that this is exactly the position that he was in. A submission was made that he might have been thrown forward by a crash, but not a single witness makes this claim and it can be dismissed as a theoretical hypothesis only, dictated by the known position of the body. This position is fully explained by the factors set out above.

91. I am also satisfied that the window, still intact and wound down when examined in 2015, was wound down by Mr. MacLochlainn before he drove towards DS-06. Patrick O'N. did not drive with the window down and had no reason to wind it fully down, as was done here. Mr. MacLochlainn had just hijacked this car and was being chased on foot by two gardaí. The most obvious reason to wind the window down was to use his handgun if necessary. In order to rest his hand or arm on the window, it had to be fully wound down.

92. Finally, D/S Gantly's pistol had the potential to carry 15 rounds and one in the breech. His evidence suggested that seven shots were fired but there were 9 rounds in the magazine when it was returned; thus, if he fired seven shots, it is likely that he carried one in the breech. The same applies to Insp Hogan, whose pistol was loaded with 13 rounds when surrendered; if he fired three rounds, he must have had one loaded in the breech.

The Collision(s)

93. The statements made by Insp Hogan, D/S Gantly and D/G Ryan in 1998, which were handed to the incident room in Wicklow Garda Station and included in the garda file, made reference to a collision between the hijacked Mazda and an oncoming red car at the moment of the shooting.

94. The statement made by D/S Quinn, also submitted to the Incident Room and included in the garda file, outlined damage to the front of the hijacked Mazda, which he noted both at the scene and on 3rd May, when he visited Santry Garda Station. He described how, at the scene, he noted damage to the front grill, bumper and bonnet of the Mazda, as well as to various bullet holes. He also described how, when he examined the Mazda at Santry on 3rd May, he noted '*material damage to the front bumper, spoiler, right wing, and right side of the rear bumper*'. His case notes include numerous measurements and detailed diagrams of the Mazda.

95. The photographs taken by the AGS photographer at the scene and afterwards in Santry Garda Station confirm visible damage to the bonnet of the Mazda, as well as damage done by gunshots through the doors and windscreen.

96. Notwithstanding this evidence, the report prepared by Chief Supt Camon makes no reference to a collision.

97. Some members of the NBCI were clearly aware that there had been at least one collision. Among the contemporaneous documents provided to the Commission was a letter written on 8th June 1998 by Supt Brehony to Chief Supt Camon about the hijacked Mazda. This letter sought to regularize the possession of the Mazda and to minimize cost to AGS, as its owner was hiring a car. Having listed the damage caused by bullets, the writer went on in the letter to say: "*The vehicle in question received substantial damage resulting from collisions with other vehicles and from the firearm discharged*" (my emphasis). Identical wording, outlining multiple collisions, was used in a letter to the DPP dated 20th August 1998. Nevertheless, Supt Brehony now says that he did not realize in 1998 that the hijacked Mazda was involved in any collision or collisions. He is unable to say at this remove why his letter referred to multiple collisions. He offered a number of possibilities: maybe he had a report or a photograph to that effect; maybe someone told him about the collisions; maybe he assumed that there had been collisions having seen the damage to the Mazda. He says, however, he did not know how the damage was caused, and he might have been mistaken about the collisions.

98. The evidence also indicates that NSU management were aware of a collision or collisions with the hijacked Mazda. In an internal report dated 2nd June 1998, sent to the Chief Superintendent in charge of *Crime & Security Branch* (apparently for intelligence purposes), Supt Kelly stated that the Mazda which Mr. MacLochlainn had hijacked drove first into a Garda car and then into a Garda Jeep. This is the only mention in any document of a collision with a Garda jeep and there is no other evidence of this, although the actual damage done to the Mazda is more consistent with this version of events than with any other. The similarity between the wording of Supt Kelly's report of 2nd June and the letter sent by Supt Brehony on 8th June is noted. The two are not identical, but the information might have come from the same source.

99. The frontal damage to the hijacked Mazda, as seen in the AGS photographs, suggests that it was in a collision or collisions with another vehicle or vehicles. One of those vehicles must have been the

red Seat into which the Mazda collided at the moment of the shooting. One photograph of a red Seat is among the photographs taken by AGS, and that photograph shows only a barely visible scuff (described by the Commission's expert as mere *discolouration* under the right hand headlamp) to the front of the Seat. If that is the red Seat into which the Mazda crashed, and there is no other explanation for its inclusion in the photographs, it is clear that this collision could not have done all of the damage visible at the front of the Mazda. At least one other vehicle was involved.

Evidence of the Commission's Expert

100. Mr. Mark Nangle, consultant engineer, examined the hijacked Mazda in Santry Garda Station at the request of the Commission. In its current condition, the damage sustained to its bonnet appears much as it did in photographs from the scene and thereafter in May 1998. The only differences identified by Mr. Nangle related to a headlight and to the bumper, and neither affected his conclusions as to the cause of damage. It was likely that there was some damage to the bumper of the Mazda in the ordinary course of its being towed from the scene but this did not affect his conclusions.

101. Mr. Nangle formed the view that the Mazda sustained a moderate impact slightly to the right of centre front, and it dipped down under whatever it impacted with. Nine times out of ten, this kind of damage is caused when a vehicle breaks and goes into the back of another car. This causes the car to ride underneath the bumper of the vehicle it hits. It is less likely to have been an impact with the front of a car because, not only might one have a decorative rail or something like that on the front of a car, but generally the front bumpers on most vehicles are lower than the back bumper so the two would meet rather than one going under the other. Very little impact would have been required to do the damage visible to the Mazda, which was mainly to the bonnet and number plate. It could be done at speeds of 10 to 12 km per hour. Mr. Nangle could not estimate the speed at which the car was going or whether it was accelerating or decelerating when it was damaged. Even in 1998, he said, a Mazda could accelerate to 60 mph in ten seconds.

102. Mr. Nangle was shown photographs of the ERU jeep and of the red Seat. His conclusion was that the damage to the bonnet of the Mazda could not have been caused by the jeep or the Seat alone as the damage visible on the pictures of those vehicles was so minimal. Another unidentified vehicle was involved.

103. Looking first at the Seat Cordoba, Mr. Nangle said that, normally, if that type of vehicle sustains an impact of a moderate nature, as is found on the front of the Mazda, the gap between the right hand side of the bumper where it runs along the right-hand wing would distort or open. However, it does not appear that the Seat in the photograph sustained any type of a moderate impact. It seemed to Mr. Nangle that the mark on the Seat was an old, normal wear and tear mark. The bonnet line to the wing was, he said, perfect and the black lower grill appears to be intact.

104. Equally, a frontal or rear collision with the Isuzu Trooper jeep in the photograph did not cause the damage, Mr. Nangle said. If it was in a collision with a four-wheel drive, it had to be a vehicle with no bull bars involved and the jeep in the photograph has bull bars. The exhaust of the Isuzu Trooper jeep pictured would have marked the Mazda on its left had it collided with the rear of that vehicle, but it did not.

105. Having discounted either vehicle as being the sole cause of the damage to the Mazda, alternatives were discussed. Mr. Nangle noted that a jeep is mounted much higher off the ground than a regular vehicle. If a jeep had a smooth bumper and did not have bars on the front of it, there is a possibility the front bumper of the jeep could have driven over the front of the Mazda. Thus, the damage to the Mazda could have been caused by a jeep other than that in the photograph if there was no tow bar.

106. Mr. Nangle was asked if a tow bar could have caused one of the dents in the front of the Mazda. He pointed out that there was no damage to the radiator of the Mazda, such as might have been caused by a tow bar. This led him to conclude that the impact had been with a flat surface rather than with a tow bar.

107. It was suggested to Mr. Nangle that the damage to the Mazda may have been caused by contact with the ditch and the side of the ditch as Mr. MacLochlainn drove it along. He did not agree. If that was the case, he would expect to see damage lower down on the bumper than there actually is and, in particular, the lower cross member would have been damaged. It was not. The damage was not caused by anything in the ditch, unless it was a kind of crash-bar, such as one might see in a forest, which had a long enough straight edge.

108. A further possibility explored was that the vertical damage to the bonnet of the Mazda was caused by a collision with an upright pole. However, Mr. Nangle discounted this possibility, noting that a vertical

line of damage of the sort sustained by the Mazda is caused by downward pressure on a flat surface; the surface has to give somewhere so there is a creasing line from the stress of the impact. It breaks at some point and becomes a vertical impact.

109. Mr. Nangle concluded that the damage to the Mazda could have been caused by a collision with the front or back of a four-wheel drive with no tow bar if the Mazda did not brake at all. If the Mazda did brake, it might have collided with a car. It was more likely to have collided with the back rather than the front of the vehicle; Mr. Nangle has never seen damage like that sustained by the Mazda arising from a head-on collision. If in a tight line of cars, the damage could have been caused by driving into the car in front in order to do an emergency U-turn. Both Patrick O. and Mr. MacLochlainn himself were involved in trying to turn this car, but none of the witnesses reported any collision between the Mazda and any other vehicle while it was turning, nor was there evidence of the car in front of the Mazda in the line of traffic being damaged. Given the chaos of those few minutes, this is perhaps the most likely theory but there is no further evidence on the point to assist.

Adequacy of the Investigation: Conclusions

110. It is abundantly clear from the evidence set out above that the investigation conducted from the Incident Room in Wicklow town Garda Station focused, in the main, on the armed robbery at the Cullenmore Bends on 1st May. Suspects had been apprehended and charged, and a book of evidence was being compiled for the purpose of court proceedings against them. This was excellent, meticulously careful and professional investigation. It had all the hallmarks of a thorough and fair approach. Witnesses, including NSU witnesses with a legitimate interest in remaining covert, were identified and statements were taken from them. Maps were drawn up and photographs taken. However, scant attention was paid by those in the Incident Room to the shooting of Mr. MacLochlainn.

111. There is no evidence that even a basic inquiry was made as to what the NSU members had seen of the shooting. The whole focus of the investigation leads me to the firm conclusion that obvious questions were never asked and vital information was never uncovered. Despite other serious record-keeping problems in AGS, discussed elsewhere in this report, it seems to me that the audit trail was not the problem here. It is not a case in which inquiries were discreetly made and not recorded. Rather, the inquiries were never made.

112. NSU management knew the numbers of NSU involved on the day and knew how heavily involved they had been. If they did not know these details, they should have done. They appear to have taken the entirely inappropriate view that because there were witnesses to the shooting who were telling a similar story and because they generally act in a covert manner, there was no need to identify any further witnesses. A casual approach was also taken to the surrender of weapons by NSU.

113. The phenomenon described above, whereby the shooting was not treated with the healthy scepticism that should attend all independent investigations, again explains this. The NSU was not inclined to offer its members as witnesses and the NBCI did not take any trouble to seek additional evidence about the shooting once they had three or four guards saying much the same thing. The initial accounts of the shooting received by the Incident Room were provided by NSU-DS-06, Insp Hogan and D/S Gantly. It is no disrespect to them to say that no investigator should be satisfied with the first three accounts he receives. Other equally important eye-witness accounts were never obtained.

114. The many weaknesses in the investigation into the shooting of Mr. MacLochlainn may best be explained by referring to certain comments in the oral evidence. While he was not centrally involved in the investigation it is interesting to note that Supt Callinan offered the view that “*No member of An Garda Síochána sets out to shoot anybody ... It just doesn’t happen that way.*” If this was the approach of the investigation team, and it appears that it was, that certainly explains the lack of rigour applied to the investigation. Two other comments confirm this. Supt Brehony referred to the practice of obtaining statements from gardaí as being the usual practice, *unless it was an investigation into the actions of a garda*, which, he said, was a different matter. Chief Supt Murphy said something very similar, commenting that he would only interview a garda if it was suspected that he had committed a crime. In this case, an investigation ought to have been conducted not just into the actions of a garda but there ought to have been an internal inquiry made of the entire unit, but it was not, because nobody appeared to recognise that this was not an inquiry into Mr. MacLochlainn’s actions alone but into the actions of DS-06, including why he was there – or at least it should have been such an inquiry.

115. The same standards apply to AGS as apply to all citizens, and this is vital when they use their firearms. It is wrong to assume that they are innocent before an investigation begins. Such an approach is the very antithesis of a thorough investigation and would rarely apply to any other section of the community. I use the word “rarely”, as I am

conscious of the history of how complaints against the clergy, for instance, were handled in this jurisdiction until the 1990's. This reference is deliberately added to reinforce the dangers of allowing any part of society, no matter how laudable its role, to enjoy some kind of immunity even from suspicion, let alone prosecution.

116. A very frank comment was made by NSU-DS-04. He accepted in evidence that, although he had given a statement about these events, he did not expect to be asked about the shooting. This sums up the approach by the institution and its individual members; no independent investigation was expected. While understandable, this is evidence of loyalty to one's colleagues, which goes so far as to assume that no garda will act wrongfully and it demonstrates why the independence of any investigation is a key factor.

117. On a much less serious issue but one which remains common, I must also add in this regard that the practice whereby statements are not dated is unhelpful and inexplicable unless by reference to a garda unwillingness to be transparent generally. Some witnesses expressed surprise on being told that there was no date on the copy of their statement given to the Commission. This practice is so ubiquitous that I can only consider such a reaction to be feigned surprise. In every such case, the witness was now unable to tell when the statement had been made. In assessing how reliable statements are, it may be important to distinguish between a statement made the next day and a statement made months later. This is impossible if the statement is not dated. No witness was able to justify the practice of making out a statement without a date. It is unjustifiable.

118. Given the reactions of various senior officers appearing before the Commission to the information that the cars were moved and statements of direct witnesses never sought, it is clear that they had no idea how poor the investigation was in 1998. It was news to many of them that there were significant deficiencies. Chief Supt Camon was, by all accounts, a very experienced investigator but he made the same error that most of his colleagues made: he never focussed his attention on the shooting. Had he done so, he might have sought statements from other NSU witnesses, and he certainly would have sought further statements from those who referred to the shooting. Ideally, he should have interviewed those closely involved in the shooting. The NBCI arrived at the scene too late to prevent the removal and movement of evidence. It now appears that the NBCI may not have been aware of these breaches of basic scene preservation rules. Had this been identified at

the time, the NBCI could at least have minimised the damage done to the investigation by acknowledging and exploring the reasons for it.

119. Many witnesses pointed to the need to protect NSU witnesses from unnecessary exposure by not seeking statements. This is another example of misguided priorities. It highlights, once again, that the focus of the investigation was not on the shooting. The direct witnesses to the robbery and those who made arrests were named, even if they were members of the NSU, presumably because it was considered important to secure all necessary evidence to achieve a successful prosecution. The covert nature of the NSU was not what prevented the witnesses from being identified in the first place; it was the institutional blindness to the fact that the NBCI was supposed to be testing, and not simply endorsing, the accounts given by those who had fired shots.

120. It is current best practice to ensure that key witnesses, even garda witnesses, be interviewed as to what they saw and heard. Experience teaches that even a professional witness, and a garda witness can be considered as such, benefits from the skill of a good interviewer ensuring that the salient evidence is elicited as soon as possible and without contamination. Ideally, those who witnessed the shooting should have been interviewed about the details of what they had seen at an early stage. The Commission was told that if further detail was required from a garda witness, a further statement (even a third one, if necessary) would be requested.

121. The statements produced for the investigation team contained minimal references to the shooting. NSU-DS-06, for instance, does not even mention the red car into which the Mazda collided after Mr. MacLochlainn was shot. This appears to me to be a result of the wholly one-sided approach to the investigation. The shooting was not the focus of that statement, although he had to address it. The surrounding witnesses were not referred to, nor was the make and model of his own car, or its position on the road at the time of the shooting, or where it came to rest. This illustrates, again, that the NSU priority was to protect the identity of its members, and this extended even to their vehicles. Rather than explore what occurred at around the time of the shooting, and identify potential witnesses, a perfunctory reference was made to it in a statement about the attempted robbery, and this was accepted by the investigators. There was no request for further statements about the shooting.

122. The NSU appears to have taken the view that the investigation of the matter was for the NBCI and that the NSU had no role in finding

out what its members did or saw on 1st May. Supt Kelly, amongst others, referred to the potential contamination of evidence if concurrent investigations are undertaken. It is not correct to suggest, however, that the existence of an independent investigation (such as, for instance would now be undertaken by GSOC) prohibits any kind of internal inquiry. Even the report to which he signed his name on 2nd June 1998 would not have been possible if that suggestion was taken seriously.

123. Chief Supt Jennings, meanwhile, declined to comment on numerous issues on the basis that he was not there that day. This is an extraordinary approach from the man who was in charge of surveillance and intelligence that day, albeit that he was out of the country at the time. Had there been an adequate de-briefing as to what had occurred, he might have learned more of what had occurred. This was not an everyday occurrence. NSU operatives had entered the scene of an incident and one of them had shot a man dead. One would expect the man in overall charge to display some curiosity as to how these things had occurred and to instigate an appropriate debrief, involving Inspectors and Superintendents in his unit, to discover what had happened.

124. It has been submitted on behalf of Ms. Nic Gibb that there are cases where the full range of eyewitnesses are not known to the investigators, and perhaps only come forward years later in response to some publicity. This has been the direct experience of the Commission in relation to one witness, Michael H., who came forward following reports of the public hearings. The submission continues, however, that NSU witnesses are in a different category altogether. Their presence and participation in the operation was ascertainable immediately, but no steps were taken to investigate or understand it. Why, the question is asked, would AGS seek to limit the extent of an investigation, were it not for the hope of managing the process to its own benefit?

125. I accept that AGS sought to manage the process of taking statements for the protection of the NSU. I do not think that this extended to limiting the investigation so as to deliberately manipulate its findings. It seems to me that the reason the incident did not receive the full and appropriate attention which ought to attend a shooting was not because there was a conspiracy to conceal anything but because it was a member of AGS who had fired the shot and it was considered that, once a few other members gave the same account as he did, and the ballistics section found evidence consistent with their shared account, there was no need to investigate further.

126. While the Chief Superintendent charged with conducting the investigation is partly responsible for the investigative failings, he adopted an approach that was shared by many of his colleagues in terms of trusting fellow members of AGS. He ought to have ensured that the investigation was more rigorous but there was also an institutional and systemic deficiency within AGS, in that no member recognised what ought to be done, or how incomplete the investigation into the shooting actually was, when compared with the investigation into the attempted robbery. This was clear from the evidence of those who were available to address the issue. Despite obvious deficiencies, there was no method whereby it might be addressed and no system within the investigation whereby it could be ensured that relevant witnesses were identified, the scene preserved and the best practice adopted in every respect.

127. I am conscious that Chief Supt Camon is now deceased and thus could not give evidence to the Commission. It is therefore with some reluctance that I name him in this respect. However the uncontradicted evidence was that he had, and took, primary responsibility for the investigation and it would be wrong of me not to confirm that he was the person, therefore, who was in the best position to ensure that a satisfactory investigation was conducted. It would also be wrong not to acknowledge that the systemic failures of AGS in terms of ensuring real independence in an investigator, adopting investigative practices that were transparent and robust and ensuring that best practice was adopted also contributed to the deficiencies identified. It must finally be noted that the Chief Superintendent's approach was shared and endorsed by most of the members of his investigative team and by many in the ERU and the NSU.

128. It is interesting to note the view expressed by Supt Brehony in this respect, which is that the NBCI would not have been there at all if it were not for the shooting. Given this reasoning, it is odd that the investigation did no more than make the most perfunctory inquiry into the shooting and investigated the attempted robbery, in which, as the Superintendent himself pointed out, the raiders were caught red-handed, with much greater rigour.

129. A share of the responsibility attaches to the NSU, as members of AGS, for not volunteering all of the information that was in its possession. The NSU was careful to disappear and was not forthcoming with information. It was not, as some said in evidence, the function of the NBCI to identify garda witnesses, though some fault lies here also due to the entirely misplaced assumption that garda witnesses will identify themselves. No truly independent investigator would do this.

Given how obvious it was that members of the NSU had become involved in such a dangerous situation, and that they had quickly disappeared from the scene, it was a fundamental question, and an obvious one, to ask NSU management what members of the NSU had seen of relevance to the shooting. This was a significant failure on the part of Garda management, both in the NSU and the NBCI. In my view, what was probably done was to ask the NSU for the names of witnesses to the attempted robbery and not to the shooting. Where witnesses happened to see both, they mentioned the shooting, but there was no attempt to isolate and interview the witnesses who saw only the shooting and not the earlier attempted robbery. In several cases, no account at all was sought or taken from witnesses who were within yards of the shooting.

130. The NBCI team was passive when it came to investigating the shooting, receiving evidence proffered by others but not seeking any out. The NSU and ERU were permitted to offer what witnesses they liked. The ballistics team undertook forensic examination and comparison, in conjunction with the State Pathologist, to satisfy their own rigorous standards rather than to answer any questions posed of them by the NBCI. The ballistics team fell under the formal umbrella of the NBCI investigation although there is no evidence of any specific requests being made of them or of the State Pathologist in respect of the shooting investigation. Indeed, they carried out reconstructions which were not outlined in their statements and the NBCI seems not to have been aware that such examinations took place. The photographic section was also very thorough and covered not just the scene, but at least one of the later reconstructions. The NBCI did not undertake any particular investigation into the shooting in terms of identifying or interviewing witnesses or mentioning the reconstructions. If the NBCI was there mainly because of the shooting incident, it is strange that it did so little in this regard.

131. The only reasonable conclusion one can draw from the final report sent to the DPP, the evidence of those who took part in the NBCI investigation, the contents of all the statements taken, and the contemporaneous documents from the Wicklow Box is that there was a thorough investigation into the attempted robbery. As a part of that investigation, some information came to light about the shooting, which suggested that it had been justified. There was no active investigation into the shooting, other than that carried out by the ballistics team.

132. I must add one important postscript. The ballistics investigation was thorough, complete and meticulously recorded so that it could be,

and was, understood and confirmed by anyone who cared to review this evidence. The sole criticism I make in this regard is that statements were not made with regard to the exercise in Santry, which can only have been a reconstruction of the shooting itself. Both Mazdas involved appear to have been there and trajectory rods were used to attempt to track the bullets which entered the car. This exercise was not outlined in the statement submitted by D/S Quinn and came to light only through the 'Not for Service' photos which cast light on Quinn's case-notes. The absence of a statement outlining the procedures undertaken and the findings noted again reflects the fact that statements were sought for the purpose of the book of evidence and not for the purpose of an investigation into the fatal shooting. Had the reconstruction been better documented, it might have allayed some concerns as to who was responsible for the shooting and how, physically, it had occurred. The officers attached to the ballistics section – Insp Handcock and D/S Quinn - have done their colleagues a significant favour as, without their diligence, it might have been impossible to substantiate some of the oral evidence of the garda witnesses so many years later, and to be as confident, as I am, that the eye-witnesses are reliable and are not fabricating an account in order to protect the reputation of a colleague.

133. I agree with the assessment of Ms. Nic Gibb to the effect that the quality of the ballistics investigation does not mean that a proper and thorough overall investigation was carried out. The accessibility of the ballistics investigation to Ms. Nic Gibb and to the Commission is another issue, which is dealt with in section M, on Record Keeping and Disclosure.

J. Post-Incident Events: Debriefs and Reactions

1. A number of events occurred after 1st May 1998 on which evidence was heard by the Commission, without which the overall picture of the circumstances of the shooting of Mr. MacLochlainn would be incomplete.

Debrief

2. The Commission heard evidence that after every police operation there should be a meeting to identify how the operation went and whether there were any lessons that could be learned from it. There was extensive evidence from garda management and from the experts retained by the Commission and by the family of Mr. MacLochlainn as to what an ideal debrief would entail. Most agreed that it should take place soon after the event, though not immediately. It should involve all who participated in an operation, describing the role that each one had played. The point of the exercise was also variously described as a way of learning lessons, a method of identifying what could be improved and a way of discovering any area in which an individual or unit fell short in fulfilling the tasks undertaken.

3. According to the current Chief Superintendent in charge of the *Security and Intelligence Division* of AGS, Peter Kirwan, *Crime & Security Branch* usually assessed a surveillance operation, such as this one, informally. The focus of an operational assessment would be on the use of the intelligence in the operation, the identification of targets and weapons, and the question of whether any information on a group or individual needed to be updated.

4. The evidence was that, in 1998, debriefs were common events. In practice, the superintendent in charge of the unit usually chaired the meeting and asked each individual present what role he had played, and then invited feedback. The superintendent usually arranged for someone to take a note. The practice was for the relevant superintendent to pass a summary of any issues or problems identified at the debrief to those involved in training the unit. The same summary was passed up the line so that other units might learn from the experiences of those involved the operation. This applied to both successful and unsuccessful aspects of any operation. If this was not done, the units operated in isolation and did not learn from their own mistakes, let alone from the experience of other units. Similar principles apply today.

5. A debrief in relation to Operation Morrison should have elicited contributions starting from the beginning of the surveillance on 1st May, if not before, to explain why the suspect vans were under surveillance, and should have extended to the arrests of the suspects.

6. Garda witnesses were asked at the Commission's hearings if they remember a debrief after 1st May 1998. The results were mixed, largely depending on what unit they were attached to. The ERU, and particularly Insp Hogan and D/S Gantly, were certain that there had been no specific debriefing in relation to these events. Most of the NSU thought that there had been and nominated a meeting at which Commissioner Pat Byrne attended briefly as the occasion of the debriefing. In fact, most of the ERU had been at this meeting as well, but most of them considered it to be a formal commendation from the Commissioner rather than a debrief. It appears that although members of the ERU were present when Commissioner Byrne spoke, the meeting continued after he and they had left and only NSU operatives contributed at that stage.

The Commissioner's Address

7. Comr Patrick Byrne attended a meeting in Garda HQ on 2nd May with some of those engaged in Operation Morrison. It was not pre-arranged; he was attending an event involving the Garda mounted unit, which was based close to the NSU offices, and stopped by on his way, at about midday. Supt Kelly chaired the meeting, which had already started when the Commissioner "dropped in". He expressed his gratitude to the members for preventing the robbery, in particular because it had coincided with the day of the Blue Flu. He said that he was satisfied with the operation although he regretted that one of the men involved had lost his life. It is his recollection that his attendance had nothing to do with a debriefing.

8. The meeting took place in the parade room at Garda Headquarters, and was attended by many of the members who had been present at the Cullenmore Bends, from both the NSU and the ERU. It was described as being very crowded, with standing room only, and there were about 25 people present. The Commission has viewed the room in which this meeting took place and if there were 25 people there, it would have been crowded; it is relatively small. The ERU roster confirms that six of the members who had been on duty on 1st May attended a debrief at Garda HQ that morning.

9. Some members of the ERU recall that the meeting had started before they arrived. D/S Sears made the comment that it appeared to start as a debrief but it had become side-tracked when the Commissioner attended. He described the Commissioner as a good speaker and said that he had spoken for a considerable part of the meeting. D/S Sears got the impression that the Commissioner was relieved at the success of the operation given that it coincided with the first time there had ever been any kind of industrial action taken by members of AGS. He spoke with feeling but was not victorious or inappropriate in his address. Most of the ERU witnesses specifically noted that the meeting was relatively short and they would not have described it as a debriefing.

10. Supt Philip Kelly described this meeting as a debriefing, which was interrupted when the Commissioner addressed them. He said that the role of the NSU on the day was addressed and that the events were described at the meeting by those who took part. The debrief was for the purposes of the NSU and not for investigative purposes. Supt Kelly, Insp Nyhan and the team leaders were there. The meeting did not go into the detail of who discharged a firearm or why, because this was under investigation. He knew at that point who had fired the fatal shot. He did not think that NSU-DS-06 was present; he is sure DS-06 was told to take the day off. Communications were discussed but he did not recall coordination between the units being a topic.

11. A report that Supt Kelly prepared, dated 2nd June, was based, he said, on the accounts given by the various members at the debrief. As has previously been noted, there is a description in that report of the hijacked Mazda colliding first with a garda car and finally with a garda jeep referred to earlier in the report. Supt Kelly says he believed this account at the time and he pointed out that NSU-DS-08, the administration sergeant who drafted the report, probably took notes at the debrief. This is not correct, however; NSU-DS-08 was not present on 2nd May, although he did draft the report. The report suggests that the ERU jeep driven by D/G James Ryan collided with the hijacked Mazda. If the forensic evidence did not support this, Supt Kelly says, it must either have been explained or transcribed incorrectly.

12. The main feature of the meeting for most witnesses was this address by the Commissioner, such that most witnesses remembered little else about it. A number of witnesses commented that they were in shock at that time or at least not functioning normally. Particularly memorable in this regard was NSU-DG-35 who had, by then, realised she was not wearing a bullet-proof vest when she was confronted by a man with a shot gun. She called the meeting a *“kind of a debrief”*. She

could not recall any details of the meeting, or whether or not she had made any contribution to it. However, she did learn about the fatality, about the hijacking and also that there was a family involved in the incident, and she appears to attribute all of that to the debrief.

13. Some NSU operatives recall the meeting in detail. NSU-DG-03 referred to the meeting as a debriefing and described a discussion with his colleagues, trying to ascertain the sequence of events and what exactly had happened. He gave the times of events he had recorded on 1st May to one of the sergeants during the meeting. He recalls his colleagues giving similar details of what they had done. He recalls some of those who were present. He thinks DS-06 was present because he would have been aware of DS-06's contribution as it was linked, in part, to his own involvement in Killiskey on 1st May. He does not recall any discussion of the shooting.

14. Supt Johnston also described the meeting as a debrief and vividly remembers sitting in the room, on the left-hand side, about three rows back. Welfare issues were discussed, he says. That is the only debrief that he remembers in relation to this operation, though he is aware of a suggestion that there was another.

15. NSU-DS-04 was at the Commissioner's address and said it related to the Blue Flu. He described what occurred after the address as a debrief. He commented that more intensive debriefs take place when things go wrong than when things go right. He characterised this operation as somewhere in the middle: the units prevented a robbery, but there was a fatality. He said that opinions were given from the floor and that he gave his own view as to what happened, but does not now recall what his comments were.

16. As regards Insp Nyhan, the most he could say was that there may have been a "debrief" but he does not recall it. When asked if he was responsible for holding such a meeting, he commented that it was a crime scene and that they would be making statements. He did not appear to appreciate the distinction between debrief and a criminal investigation. When asked specifically to reflect on the two different processes, he repeated that he did not know if they had had a debrief.

Debrief in Superintendent Kelly's Room?

17. It was suggested by some garda witnesses that there may have been a small debriefing of team leaders in Supt Kelly's office in the days after 1st May 1998. NSU-DS-08 said it was the custom of Supt Phil

Kelly to hold a meeting in order to debrief. Not everybody involved in the operation would be there; it would primarily be the team leaders. They would go through the scenario of events. Such meetings were quite informal and usually took place in Supt Kelly's little conference room; they did not usually take place outside the building. However, none of the sergeants recalls any such meeting. For instance, Supt Johnston agreed that debriefings did happen quite regularly in that room - it was awkward because the table was too big for the room and it was difficult to get in or out once the meeting began. Notwithstanding that this was the general practice, he was a team leader on 1st May and he does not remember such a meeting.

18. I have not found any evidence of a separate, more exclusive debrief in Supt Kelly's room. The only evidence in this respect was that of DS-08, who was not at the meeting on 2nd May and therefore felt there must therefore have been another; since debriefs were *usually* in the Superintendent's room, he felt it must have taken place there. It seems that this one was not.

The "Debrief" Report dated 2nd of June, 1998

19. DS-08 said the report dated 2nd June and signed by Supt Kelly looks as though it was written in his style and he probably did compile it, but he does not remember doing so. He remembers the day because it was Blue Flu day but he had no other role in the events of that day. If there was a debrief meeting after the event, DS-08 thought he probably sat in on it. However, he was definitely not present at the Commissioner's address on 2nd May; he would remember if he had been at a meeting addressed by the Garda Commissioner. If, as Supt Kelly suggests, the notes from the meeting on 2nd May formed the basis for DS-08's report, therefore, the information was third hand.

20. Supt Kelly's report supports the evidence that a debrief, however limited, was conducted as one key detail in that report is not contained in any duty report; that is, the information that the blue van had been jump-started and driven to Clondalkin on the morning of 1st May. It is clear that the administrative sergeant who drafted the report did not simply sit down with the duty reports prepared by team leaders after the conclusion of Operation Morrison, as he could not have discovered the trip to Clondalkin in that way.

21. DS-08 was clearly involved in creating the report signed by Supt Kelly. This suggests to me that the information on which he relied to create his report was likely to have been third-hand information,

compiled at or recalled from the meeting on 2nd May. This explains why a meticulous witness such as he is would record events which could not have occurred, i.e. that the hijacked Mazda crashed into the ERU jeep. As a result this report – one of the few contemporaneous accounts of what happened on 1st May – cannot be relied upon for events or for their sequence. While broadly correct, it sets out details that are demonstrably wrong and is a good example of the infirmity of hearsay evidence and the importance of a comprehensive and properly recorded debrief.

ERU Debrief?

22. With regard to the ERU, D/G Ryan said that it would now be out of the ordinary not to have a debriefing after a serious incident but that might not necessarily have been the case in 1998. Then, it was not the practice to have an informal meeting or discussion about what had occurred on an operation. D/G Daly agreed that debriefs were less frequent before 1998 and became more prevalent thereafter, though not specifically as a result of this operation. He and other witnesses did explain that the majority of ERU training incorporated scenarios encountered during the course of their work. Thus, there was no formal meeting where ERU members sat down and discussed what occurred on 1st May. Some witnesses noted that the ERU was extremely busy at that time. This is a very poor reason not to have any debrief after an operation of this magnitude. It is of little comfort that Insp Hogan sent a short report on 4th May 1998 to Supt Basil Walsh setting out the basics of what had happened on 1st May; that document contains no evidence of institutional reflection about what had happened or how it might be approached if a similar event occurred again.

Current Policy on Debriefing

23. If a similar thing happened today, GSOC would conduct an investigation into the shooting in parallel with the AGS investigation into the attempted robbery. However, it would be still be appropriate and important that the units meet to discuss welfare and to establish the basic facts. While they should be careful to do nothing that could be interpreted as interference with either investigation, it would remain logical to establish the facts. For both units, the mitigation of future risk is a very significant factor and another reason to insist on a debrief.

24. Chief Supt Kirwan explained that a strategic assessment now takes place after every operation. As far as AGS management is concerned, they are looking at the wider or national picture as to what

the operation tells them about the subversive or criminals involved and what implications it might have for security or resources issues. The units themselves have other operational considerations, including how to improve their own training. In this respect, Chief Supt Kirwan expects unit commanders to prepare reports assessing how the operation had gone and what might be improved. Chief Supt Kirwan would expect to see a written report of the basic facts reflecting the debrief and he referred to Supt Kelly's report, which appeared to him to be such a record.

25. The Commission heard evidence that, in 1995, AGS set up a peer support programme which was extended after the fatal shooting of DS-06. This involves peer supporters, who are of similar ranks to the persons involved. Those involved in an incident of this nature may be met by a psychologist to be debriefed in relation to the traumatic incident. This is a counselling measure, rather than an investigative measure. The process is voluntary, not obligatory. Supt Johnston said that if, today, one of his officers was engaged in a fatal shooting today, the member would not continue on active duty unless he was engaged in a fluid scene. As soon as the scene was contained he would leave the scene and return to NSU offices where he would be debriefed.

26. Chief Supt Kirwan warned of what he called a common feature in legacy or historical cases, not just in AGS, which is that the record-keeping was not as comprehensive at the time. As in this case, many of the relevant records are no longer available. Attempts to interpret decisions in such circumstances may be unsuccessful or inaccurate because it may be that decision-makers had a perfectly sensible conversation and made a decision based on it, but the conversation was not recorded. As the experts on policing have pointed out in this respect, the absence of careful records is one of the most significant failings in the history of this case. This matter is discussed more fully below. If more careful auditing systems were introduced arising from the findings of this Commission's investigation, it would be hugely beneficial.

The Raiders' Debrief

27. I note with interest that, just as garda witnesses disagree on the nature of the meeting(s) and/ or debrief(s) that took place within their organisation, so too is their disagreement among the raiders on a similar debrief in prison.

28. While Pascal Burke stated that the raiders had a debrief in prison after these events, other raiders denied that this had occurred. Mr. Burke said that it was to find out exactly what had happened, what had gone wrong and why. Any information collected goes to the leadership of their organisation, so that it can be used in future operations. Mr. Burke recalls taking notes. Daniel McAlister disagreed with this evidence. Philip Forsyth said that there were conversations amongst themselves in prison. He would not describe it as an official conversation or as a debrief. It was just a general conversation.

29. I note that not only does there appear to have been an attempt to hold a debrief in prison, but the raiders do not appear to agree on what was discussed, or even on whether it occurred, either. I do not consider it necessary to decide as a matter of fact whether or not such a debrief was held.

Discussions

30. This was the only day in the history of the State to date when there was civil disobedience by An Garda Síochána and one of the very few incidents where there was loss of life in the course of an operation. Clearly, most witnesses discussed these events amongst themselves, even if only in a cursory way, but most also agreed that they did not discuss who had fired the fatal shot in any detail. Most garda witnesses indicated that they had sympathy for any colleague who found herself in that position and did not consider it a matter for discussion, in the sense of gossip or idle chat. In other words, while naturally it was discussed, it was not a topic of prurient interest. Witnesses pointed out that the units were extremely busy at the time and there was not much time for reflection in terms of contemplating or discussing the operation. Some witnesses were very clear that they did not discuss the shooting at all, finding it a distressing topic. Many referred to it as a deeply disturbing incident for everyone. Most found out soon after the event who had fired the fatal shot and many of them knew the man well. His identity would not have been common knowledge, but it was known within the two units involved.

31. During the Commission's hearings, Ms. Nic Gibb's legal representatives queried two aspects of the evidence about what had been discussed after the incident. One was whether or not there was any belief or discussion about the raiders having fired shots, the other was as to whether there was a belief or a discussion amongst AGS that NSU-DS-06 had acted inappropriately or that the operation as a whole had been a disaster.

32. None of the garda witnesses recalls any suggestion within AGS that the raiders had fired shots, though some recall initial media reports to this effect. No garda witness recalls any discussion of these reports or, after the mistaken report was corrected, any discussion as to how the error occurred.

33. Equally, the Commission heard no evidence of a belief that this had been a disastrous operation. Instead, the evidence was that there was a sense that a significant armed robbery had been prevented - there was a considerable arms discovery at the scene and prisoners arrested. There was a consciousness that a man was tragically shot dead but a sense of relief that no colleague or member of the public was injured. The evidence does not suggest that members of AGS considered the operation to have gone wrong, let alone that there had been some kind of disaster.

34. The evidence of NSU-DG-05 was interesting and, perhaps, typical of the garda evidence. He was not involved on 1st May, though he knew of Pascal Burke and gave evidence about viewing CCTV footage from Heuston Station. He does not recall any discussions about the events of 1st May and, at the time of giving evidence, still did not know who had shot Mr. MacLochlainn. While he thinks there would have been talk about the shooting, he certainly would not have probed anyone about it; that, in his view, would not be a nice thing to do given how traumatic these events must have been. He did not remember any news report about an exchange of fire, nor did he remember a correction.

Debrief: Conclusions

35. There was no comprehensive debrief involving both the NSU and the ERU. There should have been a structured meeting, at which all were present. A note should have been taken of the contributions made, at least in summary. This did not happen or, if it did, no records remain in relation to it. There was, however, a debrief or meeting of the NSU, when that unit remained in the parade room after Commissioner Byrne had addressed the two units. The ERU operatives had left, it appears. NSU-DS-06 was probably there but it is impossible to be sure about this. If he was, he was not asked in any detail about the events leading up to the shooting; the focus was on the arrest at Killiskey.

36. Perhaps the most telling feature of the subsequent investigation was the omission to obtain a full account from NSU-DS-06. The suggestion made by Supt Kelly that the debrief was held on a day when

he was off work speaks volumes, if indeed this was the only NSU debrief. While he later provided a statement, he mentioned the shooting only briefly, with no explanation as to how he came to be at the Cullenmore Bends or why he then left the scene. It is clear that he was never interviewed or taken through his account about the shooting of Ronan MacLochlainn by an investigator. Even one thorough interview in this respect might have obviated the need for a Commission of Investigation into these events.

37. The NSU and ERU did not expect an investigation into the shooting: this was undoubtedly the view taken by most, if not all, members the time. This may explain why many do not recall the details of a debrief. Ordinarily, one would expect a debrief into a fatal shooting by a colleague to be memorable, and perhaps fraught, but not if there was a general consensus that there had been no major errors, that the operation had gone reasonably well, and that the shooting was justified. The meeting was not particularly contentious because the shooting was not analysed. There are two possible reasons for this: first, some mistakenly thought that an internal investigation was prohibited because of the ongoing NBCI investigation, and second, there was no expectation that a rigorous investigation into the shooting was necessary. The official view was, and still is, that there was no need to cover up or invent this meeting as there was no “disaster” to cover up.

38. Several recalled the advice given on 2nd May that anyone affected by the events of the previous day should seek peer support, which was available. Unfortunately, and even ironically, the most obvious candidates for this message were DS-06 and the heavily pregnant DG-11. One was told to take the day off (according to his Superintendent), although it is likely that he was there, and the other was at her doctor’s at the time of the meeting, due to her concerns that the trauma of the incident might have affected her unborn child.

39. D/Garda Peter Brien had not initially remembered any meeting, but in a conversation in 2015 with NSU-DS-04, he learned that there had been a meeting in the days following these events in 1998 and that the Commissioner had attended to congratulate them on the job they had done. He still did not remember that meeting, or the Commissioner being there, however. From the evidence of NSU-DS-03, it is very likely that D/G Brien was there. The conversation with DS-04 took place as the two men left a meeting of witnesses, all of whom were to give evidence to the Commission, and all of whom had left AGS. The meeting was in the Phoenix Park and took place during the summer.

40. This evidence indicates to me that, perfectly understandably, in the lead-up to the Commission's hearings some members of AGS discussed among themselves not only the issue of whether or not there was any meeting or debrief in the immediate aftermath of the shooting, but also what occurred at that meeting. This may have contaminated the evidence, making it is more difficult for me to determine what occurred at that meeting. It explains why so many garda witnesses, after 17 years, described the morning in the same way but were unable to provide any detail when pressed.

41. This is particularly unfortunate because, in a case which featured a number of avoidable errors, the risk is that their unusually similar yet superficial evidence will feed a new conspiracy theory. Ms. Nic Gibb asks *Is it the position that once senior members realised what had happened that day, there was an agreement to maintain silence around it?* I do not think that there was any such invention or agreement to hide what occurred; such a conspiracy would be singularly difficult to maintain and, more importantly, seen from its own vantage point, AGS did not consider that there was a need to hide anything that happened at that meeting. The submission made by lawyers for Ms. Nic Gibb is that there was no debrief after the shooting as there was concern that a debrief would reveal a disastrous operation and the total chaos that ensued. That submission ignores the view taken by AGS of these events both then and, to a large extent. I reiterate: the operation was not considered to be a disaster.

42. The fact that the ERU did not take part in the debrief led to factual inaccuracies, the most obvious being Supt Kelly's report that the hijacked Mazda had collided with a garda jeep, a suggestion repeated some days later in a letter written by Supt Brehony of the NBCI. The driver of the ERU jeep was not at the debrief and could not correct this.

43. Another issue raised at the Commission's hearings was the theory that the shots fired by the ERU and the NSU endangered other operatives and that this also should have led to a debrief and possibly a change in training methods. Supt Basil Walsh's suggestion that this was a problem for those at a higher level in AGS does not seem to me to be correct. In any event, the suggestion aired in cross-examination on behalf of Ms. Nic Gibb (though not pursued in final submissions) that NSU-DS-06 endangered Insp Hogan by shooting in his general direction cannot be seen as a systemic failure, due to the extensive training that DS-06 actually had. In any operation against armed criminals, it is possible, if not likely, that an armed response unit will be in danger themselves, whether through the actions of the suspects or

their colleagues who seek to deal with them, if necessary by shooting at those suspects. This was not an aspect of the day's events that called for a special inquiry other than the debrief that should have occurred anyway. I see the wider issue of NSU and ERU acting in the same theatre as being a different one, which did require both a debrief and a change in training methods - the most obvious change being that the two units should be trained together, which now occurs.

44. The evidence of Insp Patrick Nyhan was shocking when one considers the role this man played on the 1st of May. He was in charge of two teams of NSU members. They became directly involved in a shooting and in the prevention of an armed robbery. The actions of one of the members under his direct command caused the death of a man. Yet he claims not to have known if there had been a debrief or how statements were collected from the NSU members involved. The individual officers were left to themselves as regards who would or would not provide a statement or learn lessons from the events of the day. There would be no need for Inspectors, or indeed any hierarchy, if this were the correct position.

45. The current policy on debriefing appears to be appropriate and the evidence is that, while they had no appreciation of this in 1998, both units are now conscious of the importance of a thorough, documented debrief. There is, however, no evidence of joint debriefing today, which may be the best way to ensure that the facts are reliably obtained.

Media Reports of the Shooting

46. It is a matter of grave concern to Ms. Nic Gibb that the information given to news outlets by AGS on the evening of 1st May, and thereafter published and broadcast, was inaccurate. The Commission heard evidence from those involved and has established the following facts. The late Assistant Commissioner Richard (Dick) Kelly, rang Deputy Commissioner Noel Conroy to tell him about this incident. As far as he can recall, Deputy Comr Conroy was told that the incident involved an exchange of fire.

47. Deputy Comr Conroy immediately contacted the Press Officer, Superintendent John Farrelly, and informed him of what happened. Supt Farrelly had given a radio interview at 5.30pm in relation to Blue Flu. He was due to go on the Six-One News on the same subject. He recalls being in make-up when Deputy Comr Conroy telephoned and he believes he was told that there had been an exchange of gunfire. Both recall that Deputy Comr Conroy told Supt Farrelly not to disclose that

there had been a fatality until the relatives of the deceased individual were informed. Supt Farrelly thinks the conversation took place at about 5.56pm and he was due on air at 6pm so he cut the conversation short. He rang Paul Reynolds, the RTÉ Crime Correspondent, and briefly filled him in. He does not recall if he told Mr. Reynolds that there had been an exchange of gunfire and Mr. Reynolds does not remember, either.

48. The story broke during the Six-One News. Supt Farrelly did not say that a man had died. Afterwards, he recorded an interview with Paul Reynolds for broadcast on a later programme and in that interview he referred to an exchange of fire at the scene. He then left RTÉ and travelled to the scene. When he arrived, there was a cordon at the Cullenmore Hotel, manned by a uniformed Garda. Chief Supt Camon was in charge of the scene. Supt Farrelly did not ask him to confirm any details; it was best for him not to know too much.

49. On 2nd May, Deputy Comr Noel Conroy was present at Garda Headquarters with Commissioner Pat Byrne. His memory is that somebody from the ballistics section met him there and told him that no shots were fired by the weapons seized from the raiders. The statements made by the relevant members of the ballistics section indicate that the forensic examination of the weapons was not completed undertaken later that week, but that does not necessarily mean they did not know by the morning of 2nd May that no shots had been fired from the weapons. The Commissioner prepared a press release to correct the error. It was given to the press office and went out that afternoon.

50. Supt Farrelly stressed that AGS did not deliberately disseminate inaccurate information about an exchange of gunfire; it was a mistake that was corrected at the earliest possible opportunity. It was in nobody's interests to fabricate such a report. He recalled only one other retraction of a story in his 12 years in the Garda Press Office. He does not recall getting an account of how the inaccuracy had arisen.

51. I accept that the media reports of an exchange of gunfire were not deliberate. While it is likely that the Assistant Commissioner's information came from another member of AGS, that account was probably based on a misapprehension formed during the course of the raid, or the report of a civilian at the scene, such as one of the security men in the van, who certainly was under the impression that the raiders had fired shots. This was not unreasonable, as some of the guards he was watching were ducking at the sound of gunfire and they say themselves that they did not know who was firing. I do not consider it

critical to establish who first claimed that there was an exchange of fire. As soon as it became clear that the raiders had not fired a shot, the error was corrected. It was not in the interests of AGS to supply misinformation. They swiftly issued the retraction, which minimised the effect of the error. The retraction was carried in the Sunday newspapers. I do not consider the issue to be significant in the context of my terms of reference, given how easily it may have arisen, how it created only embarrassment for AGS, and how quickly it was corrected. However, I see how, in the overall context of these events, this was a matter which caused considerable distress to Ms. Nic Gibb.

The Superintendents call to Ms. G.

52. As previously outlined, Ms. G. was one of the civilians caught up in the raid on 1st May. She had several small children in her care and the hijacking and shooting took place in close proximity to her vehicle. Her vehicle was one of two struck by the ERU jeep as it mounted the ditch to get around the hijacked Mazda on its northbound journey. She wrote a letter of complaint to Wicklow Garda Station on 4th August 1998. The concerns raised were that there had been members of the army or FCA at the scene, that she and the children in her care had been dropped by a member of AGS at a hotel that was boarded up in Ashford, and that she had heard that the gardaí knew in advance about the robbery. A copy of the letter was sent to the Garda Commissioner, the Minister for Justice and her local TD.

53. In response, NBCI Superintendents Martin Callinan and Patrick Brehony were detailed to visit her at her home, which they did on 17th August 1998. She did not know either man. The visit was probably not pre-arranged. Neither man was in uniform. They identified themselves using their badges when they arrived at the house. After the meeting, the feedback given to recipients of the letter was that Ms. G. appreciated the visit and did not expect any further correspondence.

54. Ms. G's recollection of this meeting differs considerably from that outlined by the two superintendents.

55. Ms. G. recalls very little of what she said to them in the course of the meeting, which did not last very long. However, she raised a number of concerns about the manner in which the meeting was conducted. She says that the two men who called to her house asked if she knew anyone in the IRA. She does not recall in what context that question was asked. Her evidence was that they said she was lucky to be alive because the robbers were the same people who had done the

Omagh bombing, which had taken place two days before their visit, on 15th August 1998. Ms. G. would not otherwise have known this. They told her that they hoped they would not be hearing any more about the incident. She took this to mean ‘be *quiet and don’t talk about it*’; she got the impression that she was never to speak of it again. She does not recall any more of the conversation. In terms of the atmosphere, she was terrified and felt very intimidated. She was on the couch and the two men seemed to be towering over her as they were talking to her. She does not remember anything about their tone or manner as opposed to their size.

56. Supts Callinan and Brehony do not recall mentioning Omagh. Supt Brehony says he would not then have known who was responsible for Omagh. Supt Callinan thinks he probably would remember if he did so, the incident having just occurred days before. He does not believe either he or his colleague brought it up and he had no recollection of that issue being discussed. Supt Brehony also says he did not tell Ms. G to forget about the events of 1st May or direct her to stay quiet. He said that he had great empathy for this witness. He knew what she had been through and had no reason to say any of those things to her. Supt Callinan said he certainly did not ask her about connections in the IRA. If he or Supt Brehony had any such concerns, they would have gone about the meeting in a totally different way but it did not arise, he said. When asked about the tenor of the meeting, Supt Callinan replied that they would in no way try to alarm her or make her concerns worse by introducing material that might otherwise be upsetting to her. Their behaviour and demeanour at the time was such as to reassure Ms. G. He did not accept that they might have unwittingly increased her concerns or intimidated her. When told that Ms. G. had felt very intimidated by the meeting, Supt Brehony said: “*She couldn’t have ... we had great rapport with her*”. He added that he had heard her evidence and took from it that she was very unsure about what had happened.

57. Ms. G. accepts that the men may have corrected her impression on the three issues she raised in her letter. She now knows that there were no FCA members at the scene, that the guard who left her at the hotel had made an error, and that the gardaí were not aware of the robbery plan in advance.

This leaves me with the task of deciding which of the two versions of events is more likely to be true. It is not necessary to go so far as to reject either account out of hand. Ms. G. was, of course, traumatised by what had happened on 1st May, but she was not so affected as to be unable to give a coherent account of this visit to her home. I did not

find her unsure in her evidence. She was, perfectly understandably, upset to find two superintendents at her door, probably entirely unannounced. I accept her evidence about the effect that the visit had on her. Different people can form different impressions of the same event; this is an example of that phenomenon.

58. While their purpose may have been to reassure, the impression they created was that Ms. G., having been corrected as to what happened on the day, was not to complain further. I think it unlikely that she was quizzed by the two men about IRA connections; as Supt Callinan pointed out, this would have been entirely counterproductive. However, I accept that the Omagh bombing was mentioned, albeit not to intimidate but probably because it was so current and, broadly speaking, this was another terrorist offence and thus comparable. While this may not have been intended to intimidate, it had that effect. Linked in that way, it is a short step to recalling this conversation as being about the IRA generally or even about connections to subversives. Even an innocent reference to the Omagh incident and the fact that the same people may have been responsible, coupled with a throw away comment as to whether Ms. G. knew this or not, could very easily have been construed as something more sinister.

59. Seen in this light, what may have been intended as reassurance and inquiry as to whether Ms. G. was satisfied that everything had been dealt with, explains her impression that she was to say nothing more. I accept that neither superintendent issued an explicit direction to say nothing nor did they intend to convey a message of that threatening nature; however, the impression formed by Ms. G. was reasonable in the circumstances.

60. I do not accept that Ms. G. was happy that the two men had called or that there was a great rapport between her and her visitors, as has been suggested by the superintendents. The poor impression that they left may not have been obvious to them, and I am conscious that both have refreshed their memories by reading the reassuring letter of feedback that Supt Brehony wrote to their superiors at the time; thus they may not remember the exact circumstances as vividly as Ms G. does. However, I conclude that the feedback letter does not reflect the reality of the visit, however superficially it matched the various issues raised. It is now too late to dislodge the entrenched memories that the various parties have of these events.

61. The mood of a meeting need not be overtly hostile for a participant to feel intimidated. It is also possible for two men to be

wholly unaware of the effect their physical presence is having on a woman, particularly if they hold positions of power and have essentially invited themselves into that woman's home. The two men cannot have been sitting for the entirety of the meeting and Ms. G.'s recollection of them towering over her was clear and convincing. Tone and approach can be more important than content in many conversations. I can only conclude that the approach of the two officers was misjudged. Their memories of the events are largely gleaned from a letter written at the time to confirm to their superiors that the meeting had taken place and that the issues, insofar as they were concerned, had been resolved.

62. The Commission notes that initiatives to raise awareness of how victims of crime are treated have been introduced within AGS since 1998 and in particular since the Victims Directive (2012/29/EU) came into effect. This episode demonstrates how necessary those initiatives are, even when the professionals involved are very experienced in their field. The Commission welcomes this sensitive approach adopted within AGS to victims of crime, and trusts that sufficient resources will be made available to AGS to pursue these initiatives.

K. Command Structures and Control

1. As set out above, Article 2(1) ECHR provides that “*Everyone’s life shall be protected by law*”. While the provisions of the Convention were only formally adopted in Ireland in 2003, it is instructive to note that the ECtHR has consistently identified not only the obligation of the State to safeguard life, but has described its duty to investigate deaths at the hands of State agents by reference not only to international standards, but also by reference to the subjective belief of the agent, given the context of the event. In other words, it is relevant to consider the kind of command structures and controls in place in the Irish police force in 1998, in order to establish whether or not they conformed to international standards, and to consider the operation in its context.

2. In *Makaratzis v. Greece*,¹⁷ the Grand Chamber of the European Court of Human Rights concluded that any decision under Art. 2 should take into consideration “*not only the actions of the agents of the state who actually administered the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination. In the latter connection, police officers should not be left in a vacuum when exercising their duties, whether in the context of a prepared operation or a spontaneous pursuit of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect.*” The Court pointed out that a relevant consideration in that case, in which numerous shots were fired by police officers at a suspected terrorist in a car, was the political climate in which the shooting had occurred. Even this, which was a factor in the decision there was good reason to believe that the shooting was necessary, did not excuse what was referred to as the chaotic nature of the operation and the multiple shots fired in “*largely uncontrolled chase*”.¹⁸

3. The provisions of the Garda Code, including Section 25.42(5) on self-defence, cited above, demonstrate that, in 1998, the administrative framework within AGS for the use of firearms was as rigorous as the legal framework as set out above. This provision reflected a high standard of care in their instructions in the use of firearms, which emphasised the legal responsibilities of the individual officer in the light of conditions prevailing at the moment of engagement.

¹⁷ [2005] 41 E.H.R.R. 49.

¹⁸ Ibid, at paragraphs 65, 66 and 67.

4. Bearing in mind those guidelines, the Commission heard expert evidence about best international practice for the planning, command and control of police operations and the circumstances in which police officers and units should intervene to alleviate danger to themselves or to others, or to intercept those involved in criminal acts. There follows an assessment of whether those standards were achieved by AGS in 1998.

Command Structures

5. The expert evidence on the issue of command was straightforward. There are certain basic features of an ideal policing operation. One of these is that there should be well-defined command structures. It is important in a disciplined force to have a chain of command, so that it is clear who is in control of a developing situation. Clear identification of the commander and the command structures affects every aspect of an operation from planning to debriefing.

6. There are many ways in which to set out the command structures in an organisation. It can be done in a written code, by long practice and custom, or it can be done informally, even verbally. All these methods were used by AGS in 1998, with mixed results. While the hierarchical structure of the organisation was and is very clear, due to the formal ranks and titles at every level, there was no written or strict command structure for specific operations. There was not a lot of evidence on the specific issue of hierarchical structures and command roles in AGS but the impression created was that the coordination of operations involving two units was quite informal in 1998. In particular, there were no rules as to who was in charge, if anyone, and at what stage. While there might have been a broad understanding in practice, there was no formal and well-defined guideline. A protocol formalising these issues was put in place in 2002.

Overall Commander

7. A commander should be identified for every operation. In particular, an operation should have an identified, remote, static, strategic commander. The policing experts, Mr. Michael Burdis and Mr. Alan Bailey, agreed that this is a requirement for any policing operation. The commander's role is to direct what should be done and where people should be. The commander should be in a remote and static location. If he is distracted by other events, he is distracted in his ability to deal with the situation. He should be in a position where he is not personally in danger. One cannot effectively command and execute

simultaneously. Situations can change quickly on the ground, so the overall commander should constantly reassess the objectives of the suspects. A good system of command enables analysis of any new information and appropriate coordination of the operatives.

8. A number of difficulties, some insurmountable, presented on 1st May 1998, which were beyond the control of AGS. They included the unexpected nature of events from the point of view of AGS, communications limitations, Bank Holiday traffic, and the Blue Flu, which meant that resources were very limited. None of these prevented the appointment of an identifiable commander.

9. The closest thing to a written plan or roadmap for the events that unfolded on 1st May 1998 was an ERU Operational Briefing Order in relation to Operation (Van) Morrison. This is a very short document. The most obvious omission is that the section in which commanding officers should be named was left blank.

10. Some witnesses named Supt Basil Walsh as the overall commanding officer. He was certainly the most senior officer on the ground, but that is not the same thing. He was not a static, remote commander. The evidence of the ERU members was that, effectively, he and Insp Hogan made the tactical decisions together, although Supt Walsh confirmed that he largely left matters to the Inspector, who had more operational experience. Supt Walsh might have fulfilled the description of strategic commander had he remained in the office, though it is difficult to see how, since he knew nothing about the operation until Insp Hogan came into his office that morning. Either way, as it turned out he was in the very centre of the action and found himself in personal danger, which severely reduced his ability to command. This was one of the effects of the Blue Flu, which would not have occurred on any other day. There was a sufficient reason to explain his presence at the scene, and given how little he knew about the operation, his delegation of responsibility to Insp Hogan was understandably almost complete.

11. Supt Kelly was, nominally at least, the most senior officer involved in the surveillance operation. He was at Garda HQ in the Phoenix Part on 1st May. However, he clearly took little or no part in reacting to any new information. If he was involved in any planning for the operation, there is no evidence of this. It may have been impossible for him to remain up to date on the day, due to the communications failures. This should not have been unexpected, however; members of the NSU were well aware of the deficiencies in their communications

systems. Nevertheless, there was no attempt to identify who should take over in the event that communications were disrupted. There seems to have been no contingency plan in this respect. Supt Kelly said that in a planned operation, as head of the NSU, he would have been on the ground. In light of the expert evidence received, this would not have been wise, unless at some remove from the expected event.

12. Supt Kelly recalls being in phone contact with Supt Walsh during the afternoon, before the Securicor van had been spotted. They discussed likely scenarios but there is no evidence that any direction issued as a result and no record as to what might have been considered.

13. It is clear, therefore, that there was no strategic commander of Operation Morrison. No-one was designated to look at the bigger picture of what might be occurring or of what might be expected. Due to the failure of senior management in AGS to name a commander in overall charge of this operation, information was not collated, distributed and managed as it should have been on 1st May 1998.

14. It has been pointed out by AGS that the RIRA was dictating the pace, and that ongoing monitoring had to be done on the initiative of the members, who could not phone their commanders for orders as regards which road to take or how to park the car. That is, no doubt, true. It is not correct to state, however, that there was thus no place for orders being given or plans being made by a static commander. Ideally, this would have been a senior member of the *Crime & Security Branch*, which section was in possession of the most detailed account of Pascal Burke's history and had some knowledge of others involved on the day. It was a feature of the failure to appoint an overall commander of this operation that this information was not mined by such a commander even as events unfolded, and used to formulate a plan and to advise the NSU members as they drove in and out of the scene.

Tactical Commanders

15. Experts also agreed that, in an operation such as Operation Morrison, tactical commanders should be identified for each unit. In this case there should have been one for the surveillance unit, and one for the armed intervention unit. Each tactical commander should know how many operatives he has on the ground and roughly where they are; their sergeants should know in more detail. He should also know in broad outline where the supporting members of the other unit are. In particular, an NSU Inspector should know where the ERU teams are,

given that it will be his decision as to whether or not to call them in. This requires coordination between the units.

Tactical Command of the NSU

16. Given his rank and his position near the scene, Insp Nyhan appears to have been the tactical commander of the NSU. He was in charge of the surveillance operation on the ground. His role was to allocate the NSU resources and to hand the operation over if an armed intervention became necessary. He understood that he had a supervisory role and gave the example of directing one of the teams to follow a particular car as one of the actions he might carry out.

17. Insp Nyhan might have been in a better position than his ERU counterpart to review events from his more remote location at the Cullenmore Hotel. However, he did not issue any orders, or at least none that related to the management of this operation, nor does he appear to have collated or managed incoming information. While the NSU witnesses knew that Insp Nyhan was in charge of the surveillance teams, almost none of them spoke to him that day, and very few received any direction from him. Moreover, he seems not to have known how many NSU operatives were on the ground let alone where each one was located at any given time. Equally, he does not seem to have taken stock of the ERU's location.

18. Between the moment when the Securicor van was spotted and the moment when Ronan MacLochlainn was shot, no orders were issued to the NSU either collectively and few, if any, were issued individually. In the absence of direction, individual NSU operatives reacted to the situation that was put in front of them. The evidence suggests that their tactical and strategic commanders on the day, if such existed, took little part in this operation and, according to Insp Nyhan, the actions of an NSU operative were largely a matter for himself as he could not be phoning for directions all the time. The NSU was left to its own devices other than if a particular sergeant was in a position to direct individual action.

19. Insp Nyhan's evidence was unusual. It was difficult to discern if he was deliberately avoiding answering certain questions or just did not think carefully about his answers. He had made a statement in 1998 and began reading it out at times. He said he could not now remember what happened on the day in question. When asked if, on 1st May 1998, he was familiar with how the NSU and ERU teams were getting on, he said that he would have listened to the radio talk but did not know where any of them had gone. He could only vouch for one vehicle, the blue

Transit van. He was at the Cullenmore Hotel when the Securicor van was attacked. He said he only knew a Securicor van had passed. He did not know what kind of incident had occurred and only found out when he went to the scene afterwards. His evidence was that the NSU operatives should act instinctively and without direction in most cases, and that the ERU could intervene when the time was right. There was no communication with the ERU when they started to move - no member of the ERU appears to have consulted Insp Nyhan, and he did not discuss any matters with the ERU.

20. I do not accept that Insp Nyhan did not know what was going on, but if he did not, that is as serious a deficiency as suggesting otherwise. He was in a vehicle with NSU-DS-04, who knew exactly what had happened and when. NSU-DS-04 explained to the Commission that, after he passed the blue van by while conducting surveillance, he predicted a roadblock and was considering how best to intercept when the Securicor van appeared and the whole operation accelerated. He knew, as the Securicor van approached the Bends, that there were members of the ERU and of the NSU on the southern side of the Bends and an ERU team north of where he was at Cullenmore. He said they were discussing what to do, which may well have included Insp Nyhan, even though the Inspector can no longer recall these discussions. DS-04 knew that members of the NSU had followed the security van and he said that he may directed them to do so himself. DS-04 said that no order was given to confront the suspects, but once the van was spotted, there was no need for such a direction.

21. It may be that, while carrying out these tasks, NSU-DS-04 was acting to fill the gap left by Insp Nyhan, who appeared to take very little part in the operation. Given the apparently informal system operated by AGS in such situations, it may be that DS-04 was the more active of the two men and took over, Insp Nyhan being content to let him do so. However, the sharing or handover of control to DS-04, if it occurred, was not notified to any other NSU member. The delegation of duties is, of course, a feature of the work of any team. However, in a disciplined force like AGS, if a member of a lower rank is delegated to fulfil the duties of the team commander, this should be made clear to all personnel. Otherwise, there is no clarity on the commands or instructions to be obeyed. Such a situation can lead to random or contradictory orders being given which may not be wise or well-informed, such as that issued by D/S Frank O'Neill to the NSU operatives to leave the scene and to take their vehicles with them.

22. There is another potential explanation for Insp Nyhan's reluctance to reveal any events of this day. This is the general secrecy of the NSU as a unit. The very nature of what they do means that it is not surprising that NSU members prefer to say as little as possible about any aspect of their work, but there is a danger that this attitude can leak into their approach to every policing issue that arises, even those that require the utmost transparency. An extreme view of the importance of being covert in all matters may lead some NSU operatives and senior management to the view that the importance of their covert work allows them to hide matters, even to the point of misleading their colleagues and others. If any witness holds this view, it is very wrong.

Tactical Command of the ERU

23. The experts agree that at the intervention stage, it is the tactical ERU commander on the ground who takes charge. The commander's function is to position his resources at appropriate locations to be able to respond to events and arrest offenders.

24. The evidence suggests that, on paper at least, Supt Walsh was the commanding officer and Insp Pat Hogan was the tactical commander. Insp Hogan was the most senior member of the ERU on the ground. The ERU was answerable to Supt Walsh but he was not a member of the unit. He had been a detective with Special Branch but he had never been attached to a specialist intervention unit. Unfortunately, Supt Walsh says that Insp Hogan was in charge and Insp Hogan that Walsh was in charge. Supt Basil Walsh was the senior officer, but most agreed that Insp Hogan was the operational commander. It was unclear who was fulfilling what role. This was exacerbated by the presence of Supt Walsh at the scene, rather than at a remote location where he could take an overall view of events. It was in the exceptional circumstances of expected industrial action that he left his office. In those circumstances, it would be unfair to be unduly critical of Supt Walsh in this respect. His reason for joining the unit was understandable but his presence, confusing the issue of who was in command, may have made a dangerous situation more difficult to control.

25. The ERU was better served than the NSU, in that its tactical commander took an active role that day. Insp Hogan was careful to consider and assess the situation and acted appropriately in the circumstances. In contrast to Insp Nyhan, who was at a distance, Insp Hogan unexpectedly found himself directly involved in events at the scene and in personal danger. All of the distractions and stresses that this situation carried with it must be considered in assessing his conduct on the day. Given that a live scene developed with no more than 20

minutes warning, the Inspector and his team of sergeants did an excellent job of containing the scene and coordinating their efforts.

26. Notwithstanding the pressures, and acting with little information, Insp Hogan made tactical decisions in advance of the raid using the resources available to him. He issued various orders, which ensured that the ERU had teams at both ends of the scene, which could have proved decisive in containing the incident. He managed to coordinate a basic plan of containment, thereby planning for contingencies. Insofar as one could plan for a scene which was initially unknown and an offence which was unpredictable, the ERU took up and maintained the most advantageous position it could. The crucial factor was their distance from the anticipated scene of events, not the exact location of each operative. By the time the Securicor van was spotted, the ERU had already taken up their positions in reasonably appropriate and convenient locations, from which an intervention could most safely be mounted. When the Securicor van passed the yard in Glanbia, Insp Hogan directed that they follow it. His teams were essentially on automatic pilot once they reached the scene, and were guided by the training. The time for issuing orders had passed, by then.

Commands during the Raid

27. Insp Hogan gave no orders from the time he ran past the Transit van until after the shooting. He cannot be faulted in this respect. There were now armed people on a road filled with civilians and their vehicles. Civilian safety had to be a primary objective. The complexity of the situation meant that there was no reality to a plan being considered or executed. However, as policing expert Alan Bailey pointed out, such incidents are effectively planned by training the emergency response team appropriately; they practice responding to multiple threats and, if done often enough, they act efficiently, safely and as a team. The training undertaken by the ERU is briefly discussed below. Arising from their training, throughout the day the ERU teams appeared to be well aware of their roles from training and operational experience. They followed the suspect vans and their NSU colleagues at a sensible distance, never compromised the operation, prepared and put on their kit without instruction at the appropriate time, and followed orders (to travel north and south respectively and thereafter to follow the Securicor van) without question.

28. The deficit which arose when the ERU's tactical commander found himself in the middle of an armed robbery might have been minimised had there been a static coordinator, and there is comment

elsewhere on this issue. The scene commander may have been Supt Basil Walsh but he issued no orders or directions during the raid. The ERU was in operational mode and, having no operational experience in such situations, the Superintendent may have been wise to relinquish control to the tactical commander. After the shooting, Insp Hogan directed the arrests, in conjunction with Supt Walsh. Supt Walsh was involved in scene management after the event along with some locally-based members of AGS at the scene. For instance, it was he who nominated a member of SDU to preserve the scene, among other such actions. Insp Hogan and the sergeants from the ERU made decisions in relation to removing people to stations, as was normal at such a scene. The vehicles used were not ideal, a fact which was accepted by Insp Hogan; this is commented on elsewhere.

29. It was suggested that, as the ERU is a highly trained unit and very experienced, it did not need instructions. Clearly there is no question of issuing instructions at a scene as to where a person should run or who should take out her gun: that is the reason for training, which prepares the operatives to act and react in a live scene. However, this is far from suggesting that the ERU do not need a tactical commander. The tactical commander's role is – and was in this case – largely played out in advance of an operation. The ability to direct what occurred once the raid had begun is a different issue to planning an interception or a surveillance operation; the dynamics of the situation are entirely different.

Operational Orders

30. The Commission heard evidence that, since 1998, training has been introduced within AGS for senior investigative officers and this training includes operational and strategic planning. Further, Supt Johnston said in evidence that, today, those involved in planning retain written notes of the planning stages of the operation. In addition, he said, a formal written record would be made of the operational and strategic planning behind an operation, in the form of an Operational Order. The Order he described sets out the operational objectives, risks, safety, resources, aims and units involved. One can tell from the Order who has operational control from each section. The Order outlines the intelligence behind the operation and the role of the NSU. This forces the strategic and operational commanders to examine all relevant aspects as they go through a operation. However, it has since been suggested that such orders are not yet in use and remain at the drafting stage.

31. If such an order is not yet in use, it should be implemented immediately. One of the reasons which may explain the reluctance of AGS to implement such an obviously beneficial measure is the natural disinclination of the body to commit anything to paper which might reveal operational matters to third parties. The problem with this is that it ignores the very pressing need for a police force to be transparent and accountable to the people it polices.

32. One of the most dangerous aspects of Operation Morrison was the absence of a leader or commander and of formalised system of coordination and communication between the two units. If the operational order described by Supt Johnston has not yet been implemented, AGS has yet to learn from this failing.

Contingency Plans

33. Had a strategic commander been nominated for Operation Morrison at the outset, consideration might have been given to the creation of contingency plans based on the information available to AGS, however limited. Policing expert Mr. Bailey pointed out that, even when little is known of an operation, contingency plans serve to fulfil three important functions: there is a checklist of what should happen and what equipment is needed in a number of eventualities; the routine is easier to follow in an emergency if it has already been planned; and, if correctly documented, such a plan provides information for future operations or even for subsequent investigations in terms of what was anticipated at a certain time.

34. On 24th April 1998, the NSU's regular monitoring of RIRA suspects graduated to a formal operation. Tracking devices were deployed. The decision to have the ERU available on standby 24/7 implied a recognition that an event involving explosives or arms was possible, if not probable. However, the NSU made no formal contingency plans.

35. The ERU operational briefing order is significant because it shows some planning on a strategic level by that unit. The venue of the surveillance operation, the number of officers and equipment needed were noted, along with a checklist of necessary information. This order was made up on 24th April 1998. Further notes were added to the document in subsequent days, suggesting that the information was updated, if not reviewed.

36. Operation Morrison was what Mr. Bailey described as a planned surveillance operation which became a spontaneous armed intervention. I am satisfied that AGS did not predict the purpose, timing or location of the RIRA's actions. However, the absence of intelligence to suggest what, if any, event was planned does not explain why there were no contingency plans at all. The inspectors and sergeants should have been appropriately briefed, including a discussion about what might occur and how the units would approach the operation. They might not have known specifically what was planned, but they could have put in place broad plans for an incident involving two vans and suspects who might be armed. They strongly speculated that the transfer of explosives would occur, yet there is no evidence of planning for such an event. By the time the blue Transit van stopped in the Bends, it was obvious that an incident would occur but at that stage, it was too late to make plans.

37. The fact that this was Blue Flu day has been highlighted by AGS. However, the prospect of unofficial industrial action on that day was signposted well in advance. NSU and ERU members of garda rank came to work that day not from a lack of solidarity with their uniformed colleagues but because they were conscious of the possibility of subversives taking advantage of the notified depletion of the force. In the circumstances, one might have thought that the Blue Flu would have provided an additional incentive to put contingency plans in place.

Command Issues: Conclusions

38. Garda management failed to clearly identify an officer as being the overall commander, and the tactical commanders for each unit. As a result, the impression of individual autonomy attaching to each garda operative on the ground was enhanced when, in fact, such autonomy ought to have been minimised. The experience of the NSU and the training of the ERU stood them in good stead on the day. However, this does not excuse the fact that garda management had not put in place a routine, joint, briefing system under a proper command structure in which contingency plans could be considered. Such a structure would have prompted informed debate as to what was afoot and should also have led to a better understanding about who would command at what point, and when a handover might take place

39. This was a highly dangerous situation, a complex surveillance scene which turned into an armed intervention. Everyone involved knew that it might escalate; otherwise, the ERU would not have been involved. Instead of engaging in planning, however, senior officers expected that the ERU and the NSU would simply go about their

business without coordination, instruction or orders. They relied largely on the experience of the relevant units to deploy effectively. It is possible that there was a more formal process but that the witnesses can no longer remember taking an active role in this respect. However, as Alan Bailey has pointed out, there is no record anywhere of any participation by the senior officers in the management of this operation or in planning or debriefing. To use Mr. Bailey's phrase, there is no audit trail in this respect.

40. The Commission acknowledges that Garda resources are not infinite. Decisions must be made based on the resources that are available. In addition to the vans at Heuston Station and Pascal Burke, numerous other subversive targets were being monitored by the NSU, unrelated to these events. In addition, the 1st May 1998 was a day on which resources were under severe strain due to industrial action. However, the gaps in the strategic planning for this operation did not arise because of a lack of resources on that particular day; they could have been remedied if formal planning and control procedures had been put in place at an earlier stage.

41. Since 1998, the two units have trained together and have a detailed written agreement about their expectations and their respective roles. However, in 1998, there had been no joint training at that time and it would be four years before the protocol was put in place. The ERU had been trained to be conscious of each other's roles and of the risk to civilians. Individual witnesses showed an excellent understanding of how their ERU colleagues would react and how they accordingly concentrated on tasks appropriate to where they were themselves.

42. However, as Mr. Burdis correctly pointed out, in a firearms operation, one needs to be trained not only to take measures for one's own safety and that of civilians at the scene, but as also to how one's colleagues will react as units act in tandem. Most of the NSU officers at the scene had never received such training and there is no evidence that the NSU had been given any guidance about what to do if they found themselves in the middle of an ERU intervention. Furthermore, while there was some evidence that the ERU had trained in relation to firearms incidents following a handover from the ERU, it was inherent in this evidence that the NSU would not be involved in any containment or intervention. Their training did not contemplate the presence of plainclothes, armed NSU members in the middle of the scene. In the circumstances, it was inappropriate for senior management to rely on them to deploy effectively without direction.

Handover

43. One of the most important commands in a joint operation is the direction that the operation should pass from the control of one unit to the other. The Commission heard evidence about best practice in such scenarios. Ideally, the NSU should discreetly follow a target and, when appropriate, should formally call in the ERU. This decision should be communicated to all personnel involved. In order for operatives to know who was in charge, every member of the NSU and ERU must hear the direction that the ERU is taking control of the scene. Ideally, there would be a handover and an interception by the ERU before there was any risk. Supt Peter Maguire said that “*situations were never allowed to develop*” which involved a grave risk to life or property. The ERU were specifically trained to intercept and they rehearsed these kinds of scenarios. The ERU had the appropriate equipment, including vehicles, and it was the designated intervention team.

44. It was for the NSU to say when the optimum time was reached for a handover. The NSU was in charge while it remained surveillance operation and that unit was best placed to say when it had become appropriate for the ERU to intervene. The NSU officer in charge should trigger the handover to the ERU. The decision to intercept could not be made without communicating with the ERU both as to whether the decision was correct and as to whether it could be implemented. For instance, the NSU commander had to know, even approximately, where the ERU teams were.

45. Once the handover decision was communicated to all personnel, the NSU should pull back from the scene. Supt Maguire said that when the ERU moved in, “*it is imperative that everybody else gets out*” as the armed intervention would involve “*a serious confrontation*.” Supt Maguire said that, in general, he did not think that the NSU “*would ever want to become involved in conjunction with the Emergency Response Unit in confronting armed criminals. That is not their task and that is not their role*.” This touches on the potential for confusion if both armed units end up at the scene. Many witnesses made the point, however, that the NSU engage in surveillance on dangerous individuals. While the initial objective is to gain intelligence or evidence, sometimes they find a crime developing before them. They may be first at a scene quite unintentionally. In addition, if there are not enough ERU operatives on a particular day, the NSU might have to assist.

What happened on 1st May 1998

46. On 1st May 1998, there was no formal handover. There is no evidence of any discussion as to whether or not the ERU should move in before the Securicor van appeared. Discussions did take place amongst the ERU members as to how they should react but there is no evidence of concrete discussions between them and the NSU on where or when they should intervene.

47. Chief Supt Kirwan said it was time to consider ERU intervention when the blue van first set up at 4.45pm in the Bends. The NSU and ERU were in radio contact at that stage and, whatever the decision, there should have been discussions and a direction communicated to all personnel at that point. No such direction was given.

48. There was little or no direction from Supt Kelly nor Insp Nyhan before or after the appearance of the Securicor van. This does not reflect well on either the Superintendent or the Inspector. Supt Kelly lost contact with the team on the ground at a point when the Securicor van was spotted, before the attack began. He said in evidence that he told the NSU teams to move in at that point, i.e. to follow the Securicor van and see what happened. He had no radio contact with any NSU members on the ground after that point. He did not call on the ERU to take control. Mobile phones were available and telephone contact was made after these events by Insp Nyhan. No reason was given as to why the Inspector did not use his phone from the Cullenmore Hotel.

49. At this point, after the Securicor van was spotted, the two teams took action unilaterally, with most of the NSU operatives acting independently. There is no evidence of discussions between the units at this stage, and neither notified the other of its intentions.

50. As a result, the first operatives to arrive at the scene both at the south and at the north were from the NSU. It appears that, when the Securicor van passed Glanbia, almost every member of the NSU team in the yard put themselves in a line of traffic proceeding to where an incident could now be anticipated, without knowing where the ERU were. D/S Shanahan and D/G Brien assumed that they were the only two cars in the line of traffic following the Securicor van. They did not know about the car in front of them carrying NSU-DG-02 and DG-35, nor did they know about DG-11, who was in a car behind them, or the three ERU vehicles behind her.

51. Even without the knowledge that they were travelling into the *theatre of events*, so to speak, it is unsatisfactory that this happened without any apparent consideration by their senior officers of alternatives, and without any messages announcing positions to the two units, even in the few minutes available. The NSU operatives followed closely behind the Securicor van as they had been directed to follow it and they were not told to pull back. D/G O'Brien recalls being so directed. He and his colleagues could have been protected by a direct and timely request from Insp Nyhan at this point, or even from a sergeant in the Glanbia yard, who might have been at a better vantage point to recognise the importance of this development. Consideration should have been given at that point to calling in the ERU and a timely order could have been given to the NSU to pull back. Instead, they continued to travel to the scene, from both directions. There having been no direction to pull back, none of the NSU operatives disobeyed an order or did anything inappropriate in this respect. Even had such an order been given, some operatives close to the scene may have had to keep driving rather than draw attention to the operation and their duty may have been to continue posing as civilian vehicles.

52. The three NSU members arriving from the north a short while later seem to have driven there not knowing exactly what was happening other than that an armed incident had occurred and some NSU colleagues appeared to be at the scene. In the lead vehicle, NSU-DS-06 stopped at the Cullenmore Hotel to speak to DS-04, who knew that an ERU team been sent to the north before the Securicor van was spotted and that they could not be at the scene for some time yet. At this point, the operation could have been handed over by the NSU, but it was not.

53. Curiously, Insp Nyhan gave evidence that an NSU sergeant gave an order that the ERU should engage. This, if true, would amount to a formal handover. He did not know who that sergeant was, and never found out, but said that as he was responsible for his sergeants, that order may as well have come from him. In fact, there was no evidence of any such order. Insp Nyhan showed no regard for accuracy. It appeared to be his view that the fact that the ERU had acted, supplied evidence of the order. His approach seemed to be that if everyone had managed to fulfil her role, more or less, it did not matter who did what or whether anyone knew what the details were. He did not know who was in Glanbia but appeared to assume that this was where the order was given. He never asked any questions about it and never wrote anything down. He had not known that an unarmed NSU officer was one of the first at the scene.

54. The failure to effect a handover is partially explained by the fact that there was no overall commander with strategic oversight of events as they unfolded. The view taken on the ground was that the Securicor van was only a probable target and that surveillance was ongoing. Communications difficulties undoubtedly hampered the flow of information. It is striking, nonetheless, that there was no apparent coordination on the ground at this crucial stage. The decision to hand over should have been made when the Securicor van was seen at Glanbia, and communicated to all members. At a minimum, it should have been discussed by the two Inspectors and / or the Superintendents. It is not sufficient to say that the robbery took them by surprise as there was a build-up to that event which should have been the topic of ongoing discussion between them. The communications that day were adequate to allow such contact, even if not every message was getting through; mobile phones were working even if radios were not. Communications might have failed to reach some members, should a handover have been announced, but this does not excuse the fact that the handover does not appear to have been discussed at all. The operatives from both units could hear each other within a couple of miles of the scene, the coverage failing only from the farthest point north at the Cullenmore Hotel to a point south of Glanbia. This meant that most of the NSU could have been directed to leave when the ERU began to move. This did not happen.

55. While individual officers did indeed act appropriately, including Insp Hogan, who effectively took over without a request from the NSU, there was an abdication of responsibility on the part of the commanders of the NSU. It is only fair to point out, however, that this was far from being an uncontrolled or chaotic scene, as described in the *Makaratzis* case, where police officers did not have sufficient experience in policing during peace time to know how to deploy effectively.

56. Acknowledging that he was not there on the day, Chief Supt Jennings said that *"this happened so quickly it just wouldn't be as clinical as in a planned operation where strategies would be drawn up as to what to do and how the hand over was going to take place"*. Of course, one could not expect a strategy to be drawn up for the first time at that point. This reinforces the need for an overall commander to take charge and ensure ongoing communication, for that commander to have considered strategies in advance and while the operation was ongoing, and to consider handing over. A decision to hand over would have taken only seconds to announce to most of those involved, whether effectively or not due to the radio signal problems.

Consequences

57. The lack of a command structure or effective strategy was a factor which led to members of both units arriving at the scene together, all armed, all in plainclothes and in a situation of extreme danger and urgency. Some wore garda tabards but most did not, in particular those who arrived just as the raid began. While many witnesses insisted that they knew each other well from having conducted joint operations before, it was obvious by the close of the evidence that this was by no means universal and that it was possible that a member of one or the other unit could be mistaken at the scene for an offender. Most witnesses agreed that having plain-clothes guards entering a scene is a danger to be avoided, particularly if they are armed. While an ERU member could be more easily identified by his carriage and build and by his heavy weapons and bulletproof vest, almost by definition a member of the NSU is not easy to identify. If he approaches a scene with his arm concealed and in plain clothes, the danger to the operative himself and potentially to his colleagues and any members of the public present is obvious. Nevertheless, there was no enquiry into fact that there was a risk to the operatives in the scene that day.

58. On the issue of both teams ending up at the scene simultaneously, Insp Hogan commented: *"In an ideal situation I would prefer to avoid it... the concept of what is called 'blue on blue', is always in the mind of any commander, and by that I mean police shooting police"*. While he reminded the Commission that many of the officers of both units did know each other, he agreed it was not ideal for them to meet at a scene. He agreed that, whatever about the risk to other police, there was also a risk to the public, though he correctly pointed out that there was always a high level of risk to the public when sending in armed police to deal with terrorists. One cannot eliminate every risk.

59. The ERU effectively took charge without direction on 1st May. The ERU team proved that they had been well trained in their responses to this emergency on the day. Having supported appropriately, the unit intercepted immediately and appropriately as soon as they were alerted to the fact that there was an armed attack in progress. There has been no suggestion, nor could there be, that the legal framework for a decision as to whether or not to employ force was in place or not. The ERU had been well trained both in operations, and in when they were entitled to use force. Their coordination at the scene was impressive and prevented further casualty or injury.

60. Before this interception, however, the picture is one of a group of NSU operatives driving around apparently uncoordinated, some repeatedly passing through the Bends, with no contingency plan, as it became more and more likely that there would be an incident at an identifiable location. Had there been a briefing as to what might occur, had contingency plans been discussed, and had a formal direction been issued for the ERU to take charge and for the NSU to withdrawn, the operation might have been managed more smoothly and fewer NSU and ERU operatives endangered, let alone members of the public and the raiders themselves.

The 2002 Protocol

61. Some years after the events of 1st May 1998, the ERU and the NSU worked together to prevent a bank robbery. During that operation, NSU-DS-06 entered the scene and was killed. He was acting as a member of the NSU on that occasion. A ricochet bullet, fired by a member of AGS, proved to be the fatal shot. Chief Supt Kirwan, from his memory of those events, did not think that there had been a formal enquiry nor did he remember any criticism of DS-06 for entering the scene at the time. It is noteworthy, however, that there had been no formal handover of the incident to the ERU.

62. There is now a specific protocol, created in 2002, to assist in determining when and how to hand over an operation. The ERU is more involved in all stages of an operation now than in 1998. Communications and coordination have improved such that the ERU currently participates in the command structure of the NSU, and operations and handovers are more streamlined as a result. The guidelines advocate being specific about each individual plan, identifying the commanders, and setting the demarcation lines in a pre-operation briefing. Some witnesses thought it likely that the protocol was essentially a response to the events outlined above - in other words, evidence of an assessment of that operation and lessons learned from it - but others thought not. The evidence was clear, however, that there was no specific reference to the incident in the Cullenmore Bends at later training or in drawing up the 2002 protocol.

63. From 2002, alongside the protocol, there was significant development of the dual roles of the NSU and the ERU. Joint training was undertaken, to ensure greater safety when the two units were working together. Joint tactical training of the ERU and the NSU commenced in 2006. It seems to me that these developments, including

the protocol, must have been at least partly as a result of the events resulting in the death of NSU-DS-06.

64. Chief Supt Kirwan said the protocol was a reaction to different things, including the interaction between the ERU and the NSU over a period of time. He and other witnesses said that the written protocol reflected what was already agreed as a set of applicable principles. If those principles were already agreed in 1998, they were not applied properly on the 1st May. The terms of the protocol highlight the deficiencies in the 1998 operation, but are reassuring in that they suggest that such failures regarding command and coordination are less likely to be repeated today.

Interception

65. Another vital command in any operation, particularly in a joint operation, is the direction to intercept. This usually coincides with the *Handover* of the operation but I have considered the two issues separately. The *Handover* was considered in terms of how it should be communicated and implemented, rather than in terms of its timing. The *Interception* is now considered in the context of when, if at all, it should occur. The *Handover* concerns the relations between the two units, the *Interception* concerns how the intervention team, having decided to take over, interacts with the suspects.

66. In the optimum scenario, the ERU intercepts and prevents an offence. Reduction of risk is a matter for the commander of every operation although in practice, elimination of risk is impossible.

67. The ideal location for interception in the context of joint operations is a sterile location or a static operation, where the NSU can tell the ERU how many people are there, how to enter the premises, how to surround it, and what weapons or other obstacles may be encountered. Bearing these factors in mind, the various options put forward in submissions as being open to AGS on 1st May are considered below.

Background: The Nature of this Group

68. As a preface to my analysis I note that much of the danger and risk inherent in the interception of this raid was created by the nature of the raid planned, not by any action of AGS. While, with hindsight, one can isolate the factors which might have enabled AGS to predict a robbery of a vehicle, the plan itself was so dangerous and so replete with

risks to the public that it is hardly surprising that AGS did not predict it. The primary cause of the risk to civilians was the conduct of this group. The raiders showed little regard for the safety of the public. The risk to civilians was not created by AGS whose members, while near the scene, were not in time to predict or prevent the attack but successfully intercepted it quickly after it had begun.

69. I consider the nature of the group to be significant in assessing the reaction of the ERU and the NSU to what was developing. The men involved were members of a subversive group which had broken away from a parent organisation with a long history of violence. Subversives in both groups were known to hold very strong political beliefs, for which many of them were prepared to kill or to die themselves. This group could not be classified as simply robbers; there was an element of publicity attaching to their project and a history of unwavering belief in the justice of their cause that made the various members of this group dangerous and unpredictable. The short history of the RIRA led AGS to expect one thing; then they saw a moving target, which led to a complete reassessment of the situation. All the while, the disrespect that members of this group and its parent organisation had consistently shown for human life had to be considered. One of the raiders gave evidence that the group was under orders not to shoot at members of AGS. However, the leadership of such an organisation, even if it does actually espouse such principles, cannot predict what young men with guns will do in a position of stress and while attempting to carry out, or to flee, a violent offence. The treatment afforded to the Securicor employees and to civilians at the scene showed no such peaceful intention. It would have been extremely difficult for AGS to predict the outcome of an interception, not knowing who else was involved, or anything about their intentions or capabilities.

Interception: At Heuston Station or Earlier?

70. Had AGS known that the RIRA planned to rob a Securicor van on 1st May, they might have been able to consider substituting the driver of the Securicor van in advance, or even apprehending the raiders as they left home. This was not possible, as the robbery was not predicted.

71. The next possibility was to intercept the vans at Heuston Station, knowing that one was stolen. However, as Supt William Johnston pointed out, this would have involved risk to the public, to AGS and to the IRA themselves. This would have been disproportionate, as there was no intelligence to suggest that there were weapons or explosives in the van. Supt Johnston concluded that the use of the tracker devices on

the two vans was the safest and most practical way of dealing with the vehicles, given what they then knew. Looking at what was done in 1998, he would not do anything differently today. I see no reason to disagree with him. Apart from the fact that the evidence supports AGS's claim that they did not know when the raiders intended to use the vans and so, could not plan the timing of arrests, the evidence also shows that the weapons were not kept in the vans but were collected for use at the Bends on the morning of 1st May. Had weapons been spotted that day, there would have been a stronger case for arresting those involved at Heuston Station. However, the evidence suggests they were not.

Interception: When the Raiders got out of the Van?

72. One of the possibilities explored by Ms. Nic Gibb in cross-examination was that the ERU should have intervened to arrest the men at the blue Transit van and the Carina when the road sign, cones and angle grinder were spotted. It was suggested to numerous witnesses that it must have been clear then that an armed incident was planned. Mr. Burdis makes the sensible point that the poor communications between Garda HQ and those on the ground was a reason to intervene early rather than allow this situation to become even more dangerous as loss of communications means a loss of control.

73. It seems to me that there was, in fact, an intention to intercept at this stage. I accept the evidence of NSU-DS-04, who saw the men setting up at the side of the road and says that, from then on, he was acting to bring about an interception but his plans were interrupted by the arrival of the Securicor van. The evidence established that, while difficult to decipher what was going on, DS-04 had deduced the main element of the RIRA plan i.e. to intercept a vehicle. His aim had been to meet and brief everyone, and then move in on the suspects. If the Securicor van had been half an hour, or even 15 minutes later, the units might have managed to carry out this plan. As it was, he and Insp Nyhan had only arrived at a suitable location from which to stage an interception, the Cullenmore Hotel, when the Securicor van was seen approaching the scene, and this changed the picture again.

74. In cross-examination, lawyers for the family of Mr. MacLochlainn tested the theory that AGS must have known more, and in particular they must have known the suspects were armed, which should have increased the imperative to intercept.

75. AGS certainly knew by the time the raiders got out of the blue Transit van that an incident was planned at that location, but the information available to them did not necessarily indicate that an *armed* incident was about to occur. While it is only common sense to allow for the probability that anyone associated with the IRA might be armed, it is important for an NSU or ERU operative not take it for granted that a suspect is armed until she knows that he is. This ensures that no over-reactions or dangerous assumptions are made. There was no intelligence to the effect that anything was being stored in the vans at Heuston Station or that any weapons had been collected en route. There was institutional knowledge that the IRA and offshoot organisations sometimes kept firearms at or near a scene, rather than carrying them to a scene, so as to minimise the risk of prosecution. Further, as Supt Johnston commented, it seemed unlikely that the IRA would store explosives or weapons in a van in a public car park and it had never done so before to his knowledge; indeed, the improbability of such action was confirmed by Pascal Burke. By the time the raiders stopped at the side of the road, the only evidence of potential weapons was of the removal of items from the van on 24th April, which suggested a forensic awareness more in relation to the van itself than to the items removed. While the blue van was followed to Clondalkin on the morning of 1st May, there is no suggestion that the NSU operatives watching it were able to observe the collection of weapons that probably took place at that point. Therefore, on the basis of the intelligence alone, it seems to me that AGS could not be expected to conclude that there were weapons in the van.

76. Chief Supt Kirwan pointed out that AGS had to consider the likelihood (now confirmed) that the suspects had spotters in the vicinity and could abort the operation if alerted to a garda presence. He added that they were likely to target civilian cars to get away, and could have taken hostages in so doing. Indeed, they did try to flee in civilian cars when interrupted, which confirms that it would have been reasonable for AGS to fear for the safety of civilians.

77. Notwithstanding this concern, it appears to me that, given the history of this group, the best decision would have been to move in as early as possible to prevent whatever action was planned. There was a window of about 20 minutes in which this interception could have been planned and implemented before the Securicor van was spotted and the scenario changed again.

78. The Commission heard evidence that the ERU, ideally, did not move in before firearms were collected, as there may then be no reason

to arrest or hold the suspects. In addition, premature intervention would alert the suspects to the surveillance and the planned offence would probably take place anyway, at another date, with increased anti-surveillance measures. It seems to me that those disadvantages should have been weighed against the guarantee that the risk to the public is minimised and the value, however small, of disruption to the organisation by confirming that it is being watched and that AGS knew what it was doing.

79. Interception at this point was the ideal option, but it was not the only option. I do not find that there was a culpable failing on the part of AGS not to intercept. Even Mr. Burdis agreed that he did not know exactly how he would have acted to intervene at that stage.

80. It cannot be overlooked, however, that one of the reasons there was no interception at this point or, indeed, at any later point, was because there was no command structure and no overall commander to consider that course of action. This led to the lack of lateral thinking identified by Mr. Burdis, and the failure to think strategically about the operation generally. The decision to intercept anyway would have been the best or ideal course of action but nobody in Wicklow was in a position to take that decision. When there is no overall strategic commander, the ability to analyse and thus to predict risks correctly or at least consider them thoroughly, is reduced. There is no thorough briefing, no contingency plans are discussed and the operation proceeds with a kind of “group-think” in which operatives react to events as they unfold instead of trying to prepare for different eventualities. Further when nobody knows who is in charge, an operation can be paralysed or delayed by a lack of leadership.

Interception: When the Securicor Van was first spotted?

81. Lawyers for Ms. Nic Gibb also submit that AGS could and should have made efforts to intercept the Securicor van en route to the scene, after it had been spotted in Ashford. Her final submissions posit that there were two missed opportunities. She says: *If a member of AGS was aware that there was a Securicor van in Ashford, that is knowledge within the organisation. Even if it is accepted that the radio communication from DG11 was not picked up until the Securicor van approached the co-op where there were so many members positioned, efforts could have been made at that stage to prevent the Securicor van from driving into the ambush.*

82. Witnesses universally dismissed this theory. NSU-DG-30 and NSU-DG-11 both laughed at the suggestion that an NSU member could

have stopped the van as it travelled north. The latter was exceptionally well-placed to comment on the opportunities for interception as she was the first to see the van. She said that from the time when she spotted the van to the time when she witnessed the attempted robbery, things happened very, very quickly. NSU-DG-35 did not think she could have stopped the Securicor van in Ashford. Although she had a tabard, it would not have been recognizable to members of the public. This is not an unreasonable view. However, she added that if there had been a direction to stop the van, she would have found a way to do so. It is difficult to say how this could have been done by a sole NSU operative. Indeed it might even be far-fetched to suggest that the driver a cash-in-transit van carrying more than £250,000 would have stopped for any of these NSU witnesses. For instance, one of them was visibly pregnant, another was in plainclothes and on a motor bike, and a further group of NSU witnesses who arrived early on the scene were described (in terms of their dress) by one civilian witnesses as looking “*as if they were on the way to a party*”. While he guessed they were guards because of the way they approached the scene, “*they were not the A-team*”, as he put it.

83. Various civilians were asked to give their likely responses to an attempt to intercept. Gráinne M. would have stopped if a person, dressed in plain clothes and with or without a tabard, had stood in traffic in front of her and put his hand up. The driver of the Securicor van would not; in fact, he would have driven through the blue Transit van if there had not been a civilian car parked in front of it on 1st May 1998.

84. NSU-DS-04 was of the view that interception could not have been achieved by the NSU and only possibly achieved by the ERU. The evidence suggests that the option of pulling a car across the road to block the Securicor van could only have worked if an ERU vehicle with lights and sirens was used, as the driver was trained to drive around or through any unmarked vehicle.

85. In the view of NSU-DG-11, the ERU could not have stopped the van either. It has been stressed that the presence of the Securicor van in Ashford was known to just three NSU witnesses and that the message about its approach did not reach those in the Glanbia co-op yard until the van was passing the gate there. I accept this evidence. The majority of ERU witnesses agreed that, by then, they could not catch it, even if they had wanted to, and certainly they could not be sure of doing so. Few conceded that it was physically possible to overtake and cut off the van. Supt Basil Walsh said “*we couldn’t stop it; we couldn’t catch it: the traffic was chaos*”. Insp Hogan was not sure if he it would have been possible to intercept the Securicor van had he received an order from the

NSU to intercept while at Glanbia. They were in heavy traffic, with a substantial amount of traffic ahead. He had no resources north that could have come south before they got to the Securicor van. His team did not know how far away the scene was, as the three teams in Glanbia had come from Hunter's Hotel and had not driven through the Bends. He also pointed out that there are risks inherent in this scenario; many collisions are caused in a forced stop scenario, which would have been a feature of this option. The traffic was heavy in both directions and there was a limited hard shoulder on the left.

86. The ERU's decision to follow the Securicor van at a distance rather than to intercept it appears to have been motivated, in the case of the senior officer there and most of the ERU sergeants, by a continuing uncertainty as to what the purpose of the men at the blue Transit van was, coupled with the difficulty of catching up. This was not a deliberate attempt to catch the raiders red-handed. There was no conscious decision to put the Securicor van and the NSU operatives in greater danger. In the circumstances that prevailed, not having been called upon by the NSU to intervene, their collective decision to follow the van was understandable. There can be no criticism of Insp Hogan in this regard, and while it might have been better, with hindsight, to have made every effort to catch the Securicor van and try to stop it, there was no culpable or negligent conduct on his part by not doing so in the circumstances that prevailed. While theoretically possible, the interception of the Securicor van would have been difficult to achieve without any risk to civilians, to the Securicor employees, and of course to members of AGS. To suggest that it should have been done and that AGS should be criticised for failing to attempt it would amount to a counsel of perfection reached with the benefit of hindsight and with intimate knowledge of the scene, the surroundings and the time it might take to reach the scene from the Glanbia car park in heavy traffic. It would also ignore the guidance given by the ECtHR, to view the State agents' decisions subjectively.

87. The most immediate physical obstacle to interception as the blue van at this stage was the heavy traffic on either side of the target vehicles. I note the advice of policing expert Mr. Alan Bailey, who indicated that an interception should not take place unless members of the public can be protected. Where a spontaneous event arises out of surveillance, as occurred in this case, time is required to make and put into effect a plan to protect the public. A safe interception on this public road would have to include sealing it off from access by civilian traffic, even temporarily. When the Securicor van was first seen, there was no time to ensure that members of the public were vacated from the scene

and others prevented from entering to allow the ERU to confront the suspects at the blue Transit van. Such steps would also have left insufficient operatives to intercept the white Daf van. Chief Supt Kirwan pointed out that the alternative of blocking all the traffic ahead of the van, perhaps up to seven or eight vehicles, was not without risk either. While it was suggested that the Bends could be hermetically sealed in order to effect arrests safely, this was not the case, in my view. The raiders knew the terrain better than AGS. There was at least one country lane leading from the scene into the fields. Fields and houses were accessible on both sides. Interception at this point carried significant risks and, crucially, required time. That time was not available.

88. It is submitted on behalf of the family of Mr. MacLochlainn that if it is accepted that the information about the approaching Securicor van was not received by the large number of members in the co-op car-park, this was a failure in co-ordination and communications. The submission concludes that this may be an example of the failures in the management of the operation, which lead to situation unfolding as it did.

89. This was a failure in communications rather than coordination in my view but, unlike other failures, it is not the fault of AGS. The available technology in 1998 at a spot that was chosen by the raiders for its poor coverage and signal strength was not sufficient to ensure immediate or widespread communication with colleagues in the area. No amount of management systems and no command structure, however robust, could have remedied this problem. A further difficulty for all those involved, and even for a hypothetical commander, was the speed at which events occurred. The Securicor van left Rathnew after 5pm, it was first seen in Ashford shortly afterwards, it passed the co-op between 5.05pm and 5.08pm, and the raid was noted to have been over within a few minutes of its arrival at the Cullenmore Bends. While one expects senior garda commanders to coordinate and react to events as they occur, there comes a point when coordination will fail due to changes in circumstances, particularly when those changes occur very rapidly.

Communication with the Securicor Van?

90. Mr. Burdis and Chief Supt Kirwan agreed that the ideal solution, when AGS spotted the Securicor van heading north, would have been to notify the Securicor driver. There was a garda division that liaised with the security companies. However, Chief Supt Kirwan's view was that there was not enough time to achieve this. Even if only travelling at 30

miles an hour, the time available to AGS to act was about two minutes. In fact, the driver thought their speed was nearer to 40 miles per hour.

91. Even the longer time frame was too little time to achieve this, in my view. No member of AGS at the scene had direct contact with the security company, and Insp Hogan he did not know what the situation was as regard contacting Securicor, so at least four calls would have been required: one to find out which department in AGS deals with the issue, a second to the garda division in question, a subsequent call from that division to the company and the final call to the driver. If it could have been done, it would have been ideal but would have been extremely difficult to achieve in the time available.

Garda Escort?

92. An alternative plan, that was ill-advised according to the ERU witnesses, was to send the Securicor van into the Bends with a garda escort. The danger to the Securicor employees and to the escort itself would have been extreme and it was difficult to predict what the risk might be to civilians. It is hard to see how an escort could have been organised, given that there was not sufficient time for a safe interception.

Interception: Conclusions

93. As to why the operation had occurred as it did, NSU-DS-04 explained that *“it happened on a bank holiday weekend, a Friday, on a very busy road, without any prior intelligence and with the number of perpetrators that were involved, the number of cars on the road and the fact that the target for the incident was not known until the very last minute it probably couldn't have gone down any other way”*. He pointed out that if they knew the location, there would have been the possibility to have people at vantage points in the rural setting round the area *“to call it and to say what was happening.”* I quote from this witness as he had correctly surmised what was planned, to a large extent. His conclusion is that there was no better way of managing the situation that presented itself. Bearing in mind the limitations already identified in terms of the command structures, I agree with this conclusion.

94. It is submitted that if there is a strong possibility that members of the IRA are about to commit a robbery or a kidnap on the side of the N11 where there is bank holiday traffic, and when there might be a difficulty with numbers of gardaí and resources available, there is an obligation to move in. In the submission itself lies the problem

identified by DS-04 when he sought to put in place an interception: there was not enough time to remedy the deficiencies in resources, given the circumstances, including the traffic. The gardaí at Cullenmore and in Glanbia had not guessed what was going on and did not have time to intercept before the Securicor van was passing them by at the Glanbia yard.

Intervention

95. The term *Intervention* is used here to describe the action of an individual or team from a garda unit who intervenes in a situation in circumstances where there was no order to do so. This can be distinguished from an *Interception*, which is the term I have used to describe a planned event, conducted under direction.

96. In a live operation, the NSU is in charge while surveillance is ongoing and the ERU is in charge when an offence is interrupted or arrests must be made. Any NSU member becoming involved in an incident is risking his position as a covert operative. Ideally, he should watch and report only and should not have to give evidence in a public court. There may be situations where it is necessary to intervene, however, and members of the NSU are unlikely to have time to seek directions before doing so. One such scenario may be to prevent a criminal offence.

97. Chief Supt Kirwan gave two examples, one of a drunken brawl involving a surveillance target in Temple Bar, the other of the mugging of an elderly lady in town. In the first, it would be completely inappropriate for the NSU to intervene. First, they are a covert unit and not just their cover but the cover for the whole operation might thereby be lost. Secondly, they are armed and if disarmed in such a situation, the consequences for them and for anyone present could be very serious. Finally, the crime being committed is at a particular level which does not justify all those risks and it is likely that there are other members of AGS in the vicinity. In contrast, in the second example, the crime is easier to thwart and involves much fewer risks. This is a good example of the kind of daily decision-making expected of AGS members without detailed prescriptive guidelines.

98. In an armed incident, there is a second reason for NSU members to remain out of the scene and this is that the ERU is the unit trained for such incidents; its members usually have better firearms ability and are familiar with each other having rehearsed such operations. There is a

real danger to all at the scene if a member of the NSU, without any of the requisite training, intervenes unnecessarily.

The Intervention of NSU-DS-06

99. When the robbery commenced, NSU-DS-06 and two other NSU officers were in a laneway north of the Bends and left to drive to the scene. They had heard of the approach of the Securicor van and they had heard one message from an NSU colleague who was at the scene, repeating, “*Armed Gardaí*”. As Ms. Nic Gibb points out, they had very little background information and no orders to move. DS-06 told the other one of the NSU operatives to follow him, and they both did. Even though DG-32 had no ERU training, he said he would probably not have remained in the laneway even if his sergeant had not directed him to follow. He knew that staying back was the general rule for the NSU unless it became imperative to move in order to preserve life; in his view, it became imperative to move at that point as there was an armed incident unfolding at the Bends. They drove past NSU-DS-04 and Insp Nyhan at the Cullenmore Hotel. DS-04 spoke to DS-06. Neither he nor the Inspector dissuaded DS-06 or appeared to find his and his colleagues’ advance to the scene inappropriate. DS-06 told DS-04 that he was going to “*have a look*”.

100. DS-06 was a former member of the ERU, which may have made him more confident about giving assistance in circumstances where the likelihood was that they would encounter an armed incident.

101. There were four ERU men north of the scene, also preparing to enter the scene. There is no evidence of any communication between them and the southbound NSU trio. While I do not necessarily agree that DS-06 would have remained in the lane had he known that another team was a few minutes further north of him again, it is certainly possible.

102. The reaction of different NSU operatives to what unfolded on 1st May is instructive in this regard. At the southern end, DG-35 and her colleague turned and left the scene upon being confronted by Steven Carney. On their way north to the scene, DG-06 and D/S Frank O’Neill met and spoke to DG-35 and her colleague, who were coming against them. DG-35 told them what she had seen. DG-06 and D/S O’Neill reacted to this information by intervening: they went straight to the scene. Meanwhile, D/G Peter Brien found himself unexpectedly at the scene and the target of Stephen Carney’s shotgun. He had very little time to react and sat revving his car. Within moments, he saw D/S

Shanahan was there as back-up, and could see that he was armed. D/G Brien then intervened by driving at the Carina to ensure the safe apprehension of Stephen Carney.

103. These gardaí were in entirely different situations. DG-06 had been warned through radio messages and from speaking to DG-35 as to what he could expect before he entered the scene. He did not know that the ERU was behind him, on its way, and had no time to stop and find out exactly where that unit was. He went into an emergency situation as he was obliged to do. His was a conscious decision to enter the scene of an armed robbery. In contrast, DG-02 and DG-35 drove into an armed robbery without time to deploy weapons or to make any preparations. They found themselves the immediate target of an armed raider. Instead of needlessly endangering themselves, they managed to simulate a civilian car, as they had been trained to do, and to leave the scene safely while alerting their NSU colleagues and the ERU backup as to what was happening. Neither of the two reactions was the right or the wrong action; both were sensible and fully justified by the circumstances.

104. Further up the laneway where DS-06 and his colleagues had been, north of the scene, DG-36 also tried to get to the Bends. However, he was prevented by traffic and then received a call to stop traffic. Here is another NSU operative who considered the initial message from his colleague ("*Armed Gardaí*") sufficiently urgent to act upon it, even at the risk of revealing his presence. Only circumstances prevented him following DS-06 and his colleagues into the scene.

105. NSU-DG-40 was directing traffic at the southern end. He had been one of the later cars following the Securicor van into the Bends when he heard DG-35's message saying, "*they are doing it*" and knew that there was a robbery in progress. His response was to stop his car and direct traffic out of the scene. His reaction contrasts sharply with that of DS-06, at the opposite end of the scene. However, there is a material difference between his situation and that of NSU-DS-06, quite apart from the fact that DG-40 had never trained for armed intervention, as DS-06 had. This was that DG-40, who was one of the last, if not the last to leave, the Glanbia car park and almost certainly saw the three ERU vehicles leaving there ahead of him. Thus, he probably knew that the ERU was ahead of him at the scene.

106. In contrast, DS-06 did not, and could not, have known the details of what was happening at the Bends before he entered the scene himself. He did not know that the ERU had engaged or, if so, to what extent

they needed his assistance, or if it was needed at all. In fact, he is likely to have known from speaking to NSU-DS-04 that the ERU team sent north would take some time to arrive. I note that NSU-DG-32, who followed DS-06 south to the scene, later made the comment that he was happy to see Insp Hogan and D/S Gantly at the scene, as he knew that they were ERU trained. This supports the conclusion that the three NSU cars from the north entered the scene not knowing if the ERU was already there.

107. This fully explains and justifies the intervention of DS-06, in my view. For all he and his colleagues north of the scene knew, an NSU operative was at the scene of an armed robbery either alone or with a single teammate. In those circumstances, and much as their colleagues D/S O'Neill and DG-06 did minutes earlier at the southern end of the scene, a member is expected to go to the scene of a crime and has a duty as a police officer to protect life. This is compounded by the fact that DG-32 distinctly remembers that the colleague heard shouting "*Armed Gardaí*" was DG-11, who was in an advanced stage of pregnancy; DS-06 is likely to have known this. Anyone with DS-06's experience and training would have gone to her assistance and to the assistance of his other colleagues, as he did. This is despite the ERU being tasked to intervene and the NSU to remain covert. If he receives an order to stay back, the NSU operative should obey but here, there was no such order, and there was a clear risk to life. Therefore, it was appropriate to intervene.

108. Lawyers for Ms. Nic Gibb are correct in the submission that the failure to hand over this operation from the NSU to the ERU caused a difficulty for NSU personnel as to whether to enter the scene or stay back. In the circumstances, their choices were made based on their positions and abilities. Notwithstanding the lack of direction, however, the evidence supports the proposition that all NSU operatives on the ground made decisions appropriate to their circumstances in this respect. Those who did not know whether the ERU was in control tried to intervene unless disabled (as NSU-DG-35 and DG-02 were), while those who knew the ERU had arrived or were close-by, stayed back.

109. There are caveats to that conclusion. As Alan Bailey recognised in his description of ideal operational decisions, there is often no right or wrong decision. In circumstances where she may not be recognised by the ERU, an individual NSU operative would be better advised to stay back for fear of jeopardising an operation or of accidentally drawing fire from the ERU. These considerations did not apply to DS-06 for two reasons. First, he did not know that the ERU was at the scene. Indeed,

when the first radio messages went out, the ERU units had not yet arrived. Secondly, as he had trained with the ERU, he would not pose the same risk as others might, should the ERU arrive at the scene with or before him. He was familiar with their operational training, had worked with the other sergeants and many of the garda members before and had done firearms training with them on a regular basis. Crucially, he also knew he would be recognised by most, if not all, members of the ERU. The same might not have been true of his two more junior NSU colleagues but their presence with him would have been a good indicator to the ERU that they, too, were NSU.

110. DS-06's firing accuracy is clear from firearms training logs furnished to the Commission and this was borne out by the shot he took while driving which fatally wounded Mr. MacLochlainn minutes later. It is worth also noting that all three arrived before the northern ERU team and helped to prevent the escape of an armed raider in a hijacked car; thus, not only did they intend to assist, but they did so.

The Relevance of Subsequent Events

111. Chief Supt Kirwan was asked about the circumstances in which NSU-DS-06 had been shot and killed by a ricochet bullet. The shot had been fired by a member of AGS, DS-06 was present as a member of the NSU, and armed members of the ERU were attempting to control a scene. Chief Supt Kirwan did not want to go into any detail as he pointed out that every such situation is dangerous, with potentially lethal consequences and no two situations are the same. After the events in question, AGS examined the practice and guidelines governing joint operations by the NSU and the ERU. In particular, there was a focus on a clarifying their respective roles and on a clear handover from the NSU to the ERU. The protocol of 2002 appears to have been a direct result of that process.

112. The incident outlined above may be thought relevant to this investigation. It appears that in both incidents, NSU-DS-06 entered a live scene as a surveillance officer. Is there evidence that he was prone to go towards the action? Even if not, is there a question as to whether his intervention on 1st May was reasonable? Supt Peter Maguire did not think the intervention wise. However, he was not present at the scene on 1st May and since there was no comprehensive debrief after these events, it is unlikely that even he, as head of the Intelligence Section, ever determined the facts leading up to this shooting. Having now established all of the facts surrounding the shooting, his doubts do not

affect my conclusion that the intervention of DS-06 was necessary and reasonable in all the circumstances.

113. Some of the cross-examination conducted on behalf of Ms. Nic Gibb focussed on the intervention of DS-06 and whether or not he should have been there, a matter which I have considered. Inherent in the propositions tested in cross-examination is the premise that, had NSU-DS-06 not driven to the scene when he did, Ronan MacLochlainn would not have been shot. However, it should be recalled that it was largely a matter of chance that Mr. MacLochlainn was killed by a member of the NSU. Two members of the ERU had already, justifiably, shot at him and missed him by small margins; they might easily have killed him.

114. In this context, it is important to point out that the immediate cause of the shooting was the conduct of Ronan MacLochlainn himself, not that of the organisation who conducted surveillance on the raiders, and not that of the gardaí chasing him, or any one of the individual gardaí involved. There was no question of a garda ambush; the RIRA had chosen, and were in control of, the scene until disturbed by the NSU. Mr. MacLochlainn had multiple opportunities to surrender, as Mr. Carney did, in which case he would not have been shot. Mr. MacLochlainn did not do so and chose instead to hijack a civilian car, and point his gun for a third time at an approaching guard. The shooting was justified and his own conduct led directly to his death.

115. Neither do I agree that had DS-06 not entered the scene, this would necessarily have resulted in Mr. MacLochlainn leaving the scene unharmed in the hijacked Mazda. Not only is it possible that he would have injured an NSU operative at the Cullenmore Hotel, a member of the approaching ERU team, or a civilian, in his efforts to flee the scene, but it is likely, in my view, that he would have been shot at by one or more members of AGS on his way out of the scene, had he greeted them as he did every other guard who challenged him.

L. Training and Transfers

1. Training forms part of the Terms of Reference of this investigation. The Commission heard held several meetings with those involved in the delivery and planning of training and received much information about the training received by those involved in Operation Morrison, and the evolution of garda training over the past 17 years. The Commission also visited the Garda Training College in Templemore and held meetings with senior members of the College's staff. There follows a brief summary of the information received.

The National Surveillance Unit

Training in 2015

2. Members of the NSU are selected from the ranks. NSU trainees complete a surveillance course and their overall performance on the course dictates whether they join the NSU or not. Only 30 - 40% of trainees pass the course.

3. In 2005/6 the Senior Investigation Officer course commenced and it addressed methodology and strategy. Supt William Johnston has completed that course and gave evidence about its contents. There is also specific operational training for inspectors and strategic training for officers of the rank of superintendent or above.

4. Surveillance training is now conducted at international level and involves an international exchange of skills. Supt Johnston's team was specifically trained in operational management and decision-making by an external agency in the field and by AGS trainers.

5. Recognising that the NSU may be the only members on the scene, its members now undertake tactical training for intervention, including regular joint operational training with the ERU and tactical awareness training. The evidence from the senior garda witnesses was that this equips the NSU to undertake emergency intervention action in the absence of the ERU, and with the ERU, as safely as possible.

Training in 1998

6. The NSU learned surveillance skills through specialised courses and from their senior colleagues. Members also had firearms training although this was much the same as that provided to other armed

members of AGS and not comparable to the ERU firearms training, which was far more extensive. Surveillance work rarely involved armed conflict and most members of the NSU had never deployed a weapon. NSU-DG-05, who trained NSU operatives in the 1990's, confirmed that there was no specific operational firearms training for the unit at that time. There was some tactical training for the NSU in 1998 but very little, if any, was conducted jointly with the ERU. Most NSU operatives did not recall any training with the ERU.

The Emergency Response Unit

Training in 2015

7. All armed gardaí, including the NSU and ERU, do a basic course of firearms instruction with a set number of refresher courses per annum, including live fire and simulated judgement shooting. To retain a firearms authorisation card, members must do a certain minimum days of training. In practice, ERU members do more than the minimum. ERU members must demonstrate a higher degree of accuracy in each test than other armed members of AGS. Expert policing witness Alan Bailey confirmed that the ERU standard was a high standard in terms of international firearms training.

8. In addition to firearms training and practice, members of the ERU undergo tactical training in firearms, which includes training in elements such as stress shooting, instinctive shooting and reaction to various hypothetical scenarios in which the ERU might potentially be involved.

9. A large percentage of ERU working time is designated for training. However, operational commitments can supersede training duties. Again, Alan Bailey confirms that it compares well with international norms. When members of the ERU are on operational duties but have no particular assignment, they usually undertake further training or practice.

10. Many members of the ERU have trained with international bodies. The ERU belongs to a grouping of specialist policing units within the EU, and they collaborate on training, experience, research and other issues of mutual interest.

Training in 1998

11. There was a lengthy selection course for the ERU followed by specific training over two years. They did far more firearms training than other units, and their training included extensive operational training, rehearsing scenarios time and again. Their training was not dissimilar to military training, given that they were expected to tackle military-type groups.

12. The ERU was trained specifically for armed interdiction and for other common scenarios, such as stopping cars. All of the ERU witnesses confirmed that the constant repetition of firearms practice and training in simulated scenarios was effective and that they noticed on 1st May 1998 how their training “kicked in” as they were reacting to what was happening around them. Tactically, the more they trained, the more mechanical their reaction became until, ideally, it was automatic. They knew from their training what they were supposed to do and go and they did not have to be directed; issuing or waiting for directions would be impossible in a live scenario.

13. The evidence from senior members was that the operational demands far outweighed the opportunities to do training in 1998. There was a certain amount of integration between the ERU and NSU operationally but they did not train together to any significant degree at that time.

“Handing Over” from the NSU to the ERU

14. The 2002 protocol described in Section K of this report was introduced to ensure that the two units complement one another, to streamline the process of handing over an operation, and to minimise risks in joint operations. The protocol requires the strategic or operational commander to decide when one unit should disengage from an operation and the other take over. The evidence from witnesses with training experience was that the ERU and the NSU are much better trained today in hand-over situations and, by providing written guidelines, the 2002 protocol has contributed to that improvement. While the matters set out in the protocol may have been understood by many of the operatives and their senior officers before then, they had not been clearly set out or standardised before 2002.

15. Supt William Johnston emphasised that it was only in training together that the NSU and the ERU could learn to work together safely, knowing the amount of information each unit needed and indeed

knowing the members of the other unit better so that there is less danger to the members. He mentioned the tunnel vision that can arise in a firearms situation, making it very important to know each of your colleagues who might be involved and to have a good sense of where they might be expected to go and what they might be expected to do. I took this to mean that if the ERU do not know their NSU colleagues well, there is a real danger that a member of the ERU could accidentally shoot her colleague in the NSU, elsewhere referred to as the danger of “blue on blue”.

Command Training

16. Supt William Johnston confirmed that, in 1998, there was no formal training in relation to strategy for senior officers. The strategic or managerial training commanders had at that time was by observation and experience on the job. There is now a command training facility at the Garda College. Command training generally applies to all those at the rank of Inspector and more senior levels, and appears to have developed significantly since 1998. The Commission heard evidence about the command training currently provided to senior officers in the ERU and in the NSU; this training is provided by AGS and other international agencies.

Transferring from the ERU to the NSU

17. This issue is relevant to these events as NSU-DS-06 was a former member of the ERU. Hence, while trained as a member of the NSU, he was also trained as a member of the ERU. As such, he had a greater proficiency in firearms than most of his NSU colleagues and had more operational training and experience in terms of armed interventions. The evidence also established that he was more likely to know more of his ERU colleagues than most NSU operatives (the ERU witnesses all knew him, some very well) and, as an NSU sergeant, all of the NSU members engaged that day knew him.

18. The initial training of all members, whether NSU or ERU, is to preserve and protect life and property. It was suggested to the garda witnesses that it might be a disadvantage to transfer from the ERU to the NSU. This suggestion was based on the premise that such an officer, having been enabled by her training to intervene in firearms incidents, may be inclined to engage too quickly in circumstances where it could jeopardise the surveillance operation or her colleagues' identities. Most agreed that this was unlikely because NSU training

becomes a form of muscle memory. The corollary may be, however, that ERU training similarly is a form of muscle memory, the instinct being to intervene. This was the theory tested by Ms. Nic Gibb in cross-examination in respect of DS-06, though she did not contend for a finding of that nature in her final submissions.

19. Supt Peter Maguire, who served in each of the relevant units, confirmed that a transfer between the NSU and ERU would only occur after some time in a different unit. Initially, he saw no difficulty with it but, after time, he changed his view because the operatives were trained very differently. However, if they were properly trained and instructed as to what their individual role was, there should not be a problem.

20. Supt Philip Kelly described the transfer of members between the two units as being similar to the rates of transfer in other countries and commented that in some countries, the equivalent units were headed by the same person, emphasising how much they worked together. The members are not treated as interchangeable between the two units, however. This reflects the cost of training a member who then moves to a separate specialist unit. However, with age, it may be prudent to move a member from ERU to NSU, the former being a more physical and demanding role than the latter.

21. Chief Supt Jennings took the view that transferring members between units was an advantage as the member trained as ERU would have more experience in firearms and might be expected to show more restraint.

Conclusions: Training and Transfers

22. The NSU was appropriately trained in surveillance skills in 1998.

23. The ERU was appropriately trained in operational skills in 1998. By this, I mean that the firearms skills of the individual members were of a high standard and their training in how to react to particular scenarios was rigorous. The effect of this training was apparent in the evidence as to what individual members of the ERU did at the scene and what they noted other colleagues doing. They deployed quickly and efficiently. There was no need for direction as to how to act at the scene. There was no simulated judgemental shooting in 1998. However, AGS outlined the kind of alternative judgemental training that was available then. It does not appear that there was any deficiency in the operational training of the ERU in 1998, by whatever method that was achieved at the time.

24. The training of the individual units should have included joint training, as it does now. The events of 1st May make the argument for joint training very plainly. Recognition of colleagues in both units is crucial, as is familiarity with each unit's operational mode and their respective roles at critical moments.

25. The lack of operational firing experience, shared by many of the NSU members who gave evidence, suggests that the two units require different training to a large extent given their very different roles. However, the introduction of explicit guidelines on defined and regulated "hand-overs", to be employed when a situation becomes dangerous and as set out in the 2002 protocol, was eminently sensible, as was the introduction of regular joint training.

26. The strategic or command training for AGS appears to have been deficient in 1998.

27. The transfer of operatives from unit to unit is appropriate, in my view, as long as the operative is appropriately trained in her new duties. There is nothing in the fact of having trained with the ERU that would make an operative inherently unsuitable for the NSU. Apart from the logic of this conclusion, one can also point to NSU-DS-04 as an example of an operative who successfully made that transition.

28. The events of 1st May 1998, as they have now been established, allow me to draw the following conclusions as to how the deficiencies and comments above affected what occurred on the day.

29. Poor strategic training was evident in the confusion as to who was leading the two units involved and the failure of the senior ranks of the NSU to recognise that this operation had to be handed over to the ERU. At the very least, the NSU should have been in active discussion with the ERU about when that should happen as soon as the men at the blue Transit van started to set out cones and road signs. Liaison between the two units was poor on the day. Despite the ability to hear what was going on and react, there was little by way of planning and there was no co-ordinated response between the units.

30. Despite the lack of joint training, the appearance of three NSU cars at a scene, by then dominated by the ERU, did not unduly hamper the operation; in particular, NSU-DS-06 assisted appropriately and effectively. One of the main reasons for this was that DS-06 had been

highly trained, both in the use of firearms and with these ERU operatives in intervention and firearms incidents.

31. I am satisfied that the training deficiencies identified have been remedied in the intervening years. In particular, the evidence on the current command training and joint training for specialist units was reassuring.

32. As regards the transfer of NSU-DS-06 from the ERU to the NSU, I am satisfied that it was not the fact of his transfer that led to him shooting Mr. Ronan MacLochlainn due to any inappropriate haste to become involved in the scene. He went to the scene to assist his colleagues, as any other member in his position would have done, and as others did, in fact, do. It was the fact of Mr. MacLochlainn pointing a gun at him that caused him to shoot. In those circumstances, the fact of his having transferred was an advantage to him in terms of training, rather than a sign that he should not have been there.

M. Record Keeping and Disclosure

1. The European Court of Human Rights has held that one of the elements of an effective investigation into the use of lethal force by agents of the State is the need for the investigation to be accessible to the victim's family. This is not an absolute right and extends only to the extent necessary to safeguard their legitimate interests. It is recognised, nevertheless, that the disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and access may therefore be provided for in other stages of the procedure.¹⁹

Disclosure and this Commission of Investigation

2. When this Commission of Investigation was first set up, requests for documentation were sent to various bodies and persons. Disclosure was made quickly in most cases. This cannot be said of An Garda Síochána, however, despite the best efforts of individual members of the force who were of considerable assistance to the Commission.

3. Many of the documents sought by the Commission were eventually furnished. However, some were not. A number of potentially relevant documents and items appear to have been destroyed or mislaid.

4. The background to the Commission makes the apparent disappearance of the documents conspicuous. In particular, civil proceedings were instituted by Ms. Nic Gibb against AGS and various other state parties in 1999. In 2003, she requested that AGS make voluntary discovery of a wide range of documents. Voluntary discovery was not made and Ms. Nic Gibb brought a motion for discovery before the High Court. Discovery orders were made, the last in March 2006. The 2006 order covered a wide range of documents. The State appealed, and it took several years for the matter to be listed before the Supreme Court. Meanwhile, the inquest took place. The Coroner's file confirms that multiple requests were made for disclosure by AGS of various documents, up to and including at the hearing of the inquest in 2009, and that Ms. Nic Gibb's representatives continuously complained that there had been a deficit of disclosure.

5. In 2010, still awaiting a date for the hearing of the appeal before the Supreme Court, Ms. Nic Gibb lodged a complaint to the ECtHR.

¹⁹*Da Silva*, see para. 236.

Among the issues raised by Ms. Nic Gibb before that Court was the failure of AGS to make appropriate disclosure. In 2011, when the discovery matter had been given a date for hearing in the Supreme Court, the State withdrew its appeal. In December 2011, an affidavit of discovery was sworn by a Chief Superintendent. Some documents were furnished to Ms. Nic Gibb but privilege was claimed over key documents. A High Court challenge brought by Ms. Nic Gibb to the claim of privilege was resolved largely in her favour in 2013 but that order was the subject of appeal when this Commission commenced its investigation.

6. Against this background, there can be no doubt that AGS was on notice, indeed they were repeatedly notified, of the importance of retaining documents of relevance to the facts at issue. Nevertheless, potentially relevant documents are unavailable. It also seems to be partly a matter of luck that a box of contemporaneous documents, including the NBCI Jobs Book and some of the original statements made by witnesses, was uncovered in Wicklow town Garda Station in 2015. By this I mean luck in the selection of the officer entrusted with the task of obtaining relevant documentation. This garda officer ensured that a thorough, physical search of the premises was carried out and documents that would have been necessary to fulfil the discovery obligations which arose in 2006, were thereby found. It is characteristic of the manner in which those documents were stored that most of the key original statements are missing from that box, including the original signed statement of NSU-DS-06, who died in 2001. It is also characteristic of the approach taken by AGS to discovery of documents in relation to this case that the so-called 'Wicklow Box' was not furnished to the Commission until 31st April 2015, coinciding with the expiry of the Commission's initial six-month deadline.

7. In contrast to the apparently haphazard manner in which some material had been stored, the Commission has seen meticulously preserved material which was kept by the Garda Technical Bureau. The fatal bullet, spent bullets and cartridges retrieved at the scene, the raiders' weapons, and the three official weapons from which bullets were fired were preserved, together with the case-notes of the examining members of the Bureau. It is noted that, in 2000, D/S Quinn wrote to the Member in Charge of the Ballistics Section indicating that he remained in possession of the firearms and ammunition seized as a result of the attempted hi-jacking at the Cullenmore Bends. He said that he had explained to the D/Chief Supt in charge of Finance and Logistics, and to the Superintendent in Wicklow Station, that it was necessary to retain the firearms and ammunition because the inquest had not yet been

held and because of the interest of Ms. Nic Gibb's representatives and British Irish Rights Watch in the case. He recommended that the items should not be destroyed until all pending civil actions had taken place. This was approved by Insp Edwin Handcock of the Technical Bureau. Had the same approach been taken by the NSU, similar action might have been taken as regards a number of critical documents which can no longer be found.

8. Acting on the advice of a senior officer in the Office of the DPP, number of NBCI Superintendents advised the retention of the hijacked Mazda, which remains at Santry Garda Station. However, though carefully stored, it does not appear to have been clear to or ascertainable by other sections of AGS, including those specifically appointed to liaise with the Commission, where this material was or whether it was still available. The fact that the Mazda had been preserved was first notified to the Commission many months after the investigation commenced and the ballistics case-notes were first produced in mid-May 2015, at which stage the Commission's independent expert had already conducted his review of the evidence and reported his findings without the opportunity to inspect the critical pieces of evidence.

9. In mid-May 2015, the Commission received a further batch of photographs marked '*Not For Service*'. Some of these were copies of the photographs provided initially, but there was a large number which had not previously been disclosed either to the Commission or to Ms. Nic Gibb. Among these were photographs of a damaged Isuzu Trooper jeep and a red Seat Cordoba (probably driven by D/G James Ryan and NSU-DG-41), as well as photographs of an apparent reconstruction involving the hijacked Mazda and a green Mazda GLX (probably the vehicle driven by NSU-DS-06). D/S David Conway, who is attached to the Photographic Section of the Garda Technical Bureau, made a statement about photographs. He said these albums were provided by the photographer involved *for investigation purposes only*. Typically, the scene photographer would provide an '*investigation album*' to an incident room, which contained the majority of photographs taken. It would show some image of every aspect of the scene up to that point, as during the very early stages of an investigation the relevance of items in and around the scene is not always clear. In the days before digital photography, these investigation albums were also provided to the ballistics and fingerprints investigators, if requested.

10. That An Garda Síochána has a practice of keeping a batch of potentially relevant photographs aside and marking them as being '*Not for Service*' is surprising. If a decision was taken to withhold them from

the Commission or from Ms. Nic Gibb at any stage, it was most unwise, as these photographs illustrate that, in fact, a greater degree of care was taken in the course of the 1998 investigation into the shooting – at least by the forensic investigators – than is apparent from any contemporaneous documents. No other evidence has been advanced about the reconstruction conducted in Santry, given that both of the members who were involved are unable to assist the Commission; without these photographs, the Commission would have been disadvantaged in its review of the case-notes of the ballistics section which refer to the reconstruction.

11. While there is nothing to suggest that these photographs were deliberately withheld from the Commission, the practice of marking potentially relevant exhibits as being *not for service* leaves AGS open to that accusation. The fact that the booklets are labelled “*Not for Service*” may simply refer to the difference between serving and disclosing documents in criminal proceedings but even if the reason for the label is entirely innocent, it may have led to the delay in furnishing the photographs, perhaps due to a view that they were irrelevant or mere duplication. It is a practice which is far from ideal. The failure to identify and disclose the photographs in this case must give rise to speculation on the part of anyone engaged in litigation against the police force that material has been deliberately concealed, even when ordered by a court. Such a phrase ought not to be used.

12. In summary, while it would appear that there was no awareness at an *institutional* level of the importance of disclosure systems and no established procedure to ensure that material evidence should be retained and stored in such a way as to facilitate its being found and disclosed when appropriate, a number of sections and indeed astute individuals were aware of the imperative of at least retaining relevant documentation and materials generally, and were active in ensuring that this was done.

Missing Records

13. In 2011, due to the civil proceedings referred to above, Supt William Johnston searched the NSU offices for relevant material and found some reports going back to 2009 and duty rosters going back to August 2001. However, few documents have been retained relating to the relevant period. He did not find any floppy disks containing the typed-up duty reports, or the report of Supt Kelly dated 2nd June 1998 at that time. Supt Johnston believed at that time that documentation relating to the death of Mr. MacLochlainn was held at NBCI because

that was where, as he understood it, the investigation had been conducted.

14. After the Commission commenced its investigation, Supt Johnston caused the NSU offices to be searched again. On this occasion, a floppy disk containing duty reports from 1998, the report of Supt Kelly dated 2nd June 1998, and some photographs which were in the photographic section were found. He forwarded those documents to the Commission. He also made enquiries of the Garda Air Support Unit and notified the Commission when he learned that additional documents would be furnished by that unit.

15. In an effort to understand how so many important documents could have gone missing, the Commission heard evidence from various witnesses about the record-keeping practices of the unit over the years. Of particular assistance was the evidence of an administrative sergeant in the NSU offices, NSU-DS-08, who oversaw the filing of duty reports at that time. DS-08 was in charge of ledgers, finance claims, and the paper trail for the unit, among other tasks.

The NSU Duty Rosters

16. The NSU Duty Rosters for the relevant period are missing. These were large books, kept at the NSU offices. Supt Johnston found duty rosters going back to August 2001 but none from before that date. Duty rosters would have cleared up the number of members who were scheduled to be on duty on 1st May 1998. However, the rosters are not vital to the work of this Commission. They would not have revealed where the relevant members went or what they did. There was also evidence of NSU operatives occasionally swapping shifts, which changes would not appear on the roster. Most significantly, every NSU operative who engaged in the relevant surveillance can be identified using the contemporaneous duty reports.

The NSU Ledgers

17. The daily duty reports compiled by the team leaders were generally handwritten or pasted in a ledger, which was like a Day Book in a Garda Station and was described as a “*substantial piece of furniture*”. The reports were filed and numbered chronologically according to the date on which they were received. The Commission heard evidence that these ledgers never left the NSU offices. In 1998, it was kept in the parade room, where it was available to be consulted by members of the NSU. The reports were then typed and three copies of each report was

printed: one went into a file in the NSU office, a second was given to the NSU superintendent and a third went to the *Intelligence Section* where it was placed on the relevant files. A backup system whereby a batch of typed reports was copied at the end of each month onto a floppy disk and transferred to the *Intelligence Section* was initiated by NSU-DS-08 in the late 1990's.

18. The original ledgers cannot be located. Supt Johnston has sought these books but has not found them, nor has he found any paper copy duty reports from 1998. All of the copy duty reports provided to the Commission were taken from a floppy disk which NSU-DG-06 found in a drawer in a cabinet at the NSU offices after the Commission commenced its investigation. These were in numerical sequence. The originals of all those duty reports were within the missing ledgers. These would have been the most comprehensive proof that the reports provided to the Commission comprise a full set, as this was a record which it would be very difficult to alter. The ledger could also have resolved the issue of whether any report was made of the monitoring undertaken of the two vans in Heuston Station between 24th April and 1st May; a “no movement” report, for instance, would corroborate the account given, which is that there are no typed duty reports because the vans did not move.

19. The original ledger containing duty reports for the period of April/May 1998 should have been retained, particularly as there was no system to ensure that its contents were replicated in the intelligence files. Despite this, the digital copy duty reports, together with the evidence of those who recall the events of 1998 and the few comparable documents remaining on intelligence files, is sufficient material to satisfy me that the digital records are full and reliable. The missing ledger does not impede the Commission unduly. It illustrates, however, that AGS has a poor auditing system in general. Ledgers used in surrounding years have also disappeared with no note of when, why, how or by whom they were destroyed or removed. It is also significant that the disks in question did not emerge until they were found in a drawer, where they had clearly been placed without any identification or system, and in particular were not uncovered when a search was undertaken in 2011 in an attempt to comply with a court order.

The Duty Reports – on Disk, not on File

20. The six most relevant duty reports do not appear on any hard-copy intelligence files. There is a separate Ashford file. This does not contain the duty reports either, but it does contain a report which is

identical to Supt Kelly's report of 2nd June but is dated 23rd May. There is also a summary of events from Inspector Hogan's report, dated 5th May, on that file. In the few cases where there was a copy duty report on another hard-copy file, the typed information in each of the duty reports was identical to that on the clean copies received which were downloaded from the disk.

21. It appears therefore that most of the electronic copies given to the Commission have never been printed out and attached to any of the relevant files, or, if they were, they were subsequently removed from those files. It was suggested by way of explanation that the two reports on the hard-copy Ashford file were compiled having regard to the duty reports.

22. The senior garda witnesses agreed that the hard-copy intelligence files were the most natural place for these reports and that it was important that they be kept in the place where one might expect them to be. While the available summaries in Supt Kelly and Insp Hogan's reports might explain why the reports were not also attached, the detail in the duty reports might be needed at a future date and each report should be printed out and in the paper file.

An Internal NSU Report

23. The operational commander, Insp Nyhan, who was on the ground and drove to the scene shortly after the shooting, did not make a written report about the events of 1st May but gave evidence that he would have told his Superintendent (i.e. Supt Kelly) what happened by telephone. Supt Kelly was not, of course, on the ground. Insp Nyhan explained that as it was a crime scene, he did not have any duty to report. Any such reporting had to be done by the investigators, not by him. He added that there was a duty report [457/98].

24. It is surprising that there was no report from, Inspector Nyhan. If he had co-ordinated and compiled a full report for his Superintendent or if the notes taken for the report of Supt Kelly had been kept, either of these two administrative steps could have resulted in a more reliable final report. The internal report of Supt Kelly, while useful, raised questions as to its compilation and it contains assertions which are unreliable. If, as was suggested by AGS, this was the sole record of a debrief, it was inadequate not only because it is inaccurate but because it gives no indication as to the source of its contents and because it offers no insight into the lessons learned or analysis conducted, if any. The evidence of the forensic collision expert engaged by the Commission

demonstrates that the description of collisions outlined in the report cannot be factually accurate. While the detail of which car was involved in a subsequent collision does not affect my view of the facts which led to the death of Mr. MacLochlainn, it is yet another demonstrable failure in the investigation which has generated understandable suspicion and scepticism when examining other, better supported accounts of what occurred.

Authorisations for Tracking Devices

25. Supt Philip Kelly recalled that written authorisations for tracking devices were kept in a folder in the surveillance section. Chief Supt Jennings agreed that there were written notes of any successful application for such a device. Peter Kirwan replaced Supt Kelly, then Kevin Lynch, then William Johnston, who came in after 2009. Neither Supt Johnston nor his direct superior, Chief Supt Kirwan, has any knowledge of a file containing authorisations. Supt Johnston said that a recent search for such documents revealed only records as far back as 2005 and he did not expect to find anything earlier, as that was the year when legislation was introduced regulating the use of tracking devices. He believes that if such records existed, they were shredded years ago. All agreed that there was likely to have been some written record at the time though they could not explain where those records were or when they had been destroyed, if that is what occurred.

26. Thus, two witnesses suggest that there was an audit trail as regards tracking devices. Even if there was a record of successful applications, it is clear that the recording system was wholly inadequate in that it was so secretly maintained (and presumably secretly destroyed) as to be useless. The practice in 1998 was that the applicant had no paperwork to fill out and the administrative sergeant in the NSU had no role in filing such applications or authorisations. This was completely unsatisfactory and it is fortunate that the process has since been replaced by stringent legislative requirements.

CCTV Footage and Duty Reports in late April

27. There was evidence that CCTV footage from Heuston Station was taken on 24th or 25th April 1998 and viewed by NSU operatives. In general, if CCTV footage was received, it would not be viewed by intelligence analysts, it would not leave the custody of the surveillance team, and it would be the subject of a report. NSU-DS-04 moved to the photographic section after these events and commented that CCTV footage was not usually stored, it was returned.

28. Supt Johnston has been unable to locate the tapes of footage that were seized from Heuston Station. He has sworn an affidavit in this respect. He commented in evidence that he wished he “*was sitting here with the CCTV and playing it for all*”. The fact that there were no duty reports relating to Heuston Station in the week following 24th April is relevant in this regard.

29. The fact that there are no duty reports for that week, combined with the missing CCTV footage, was the basis for a line of questioning pursued in cross-examination (though not in final submissions) to the effect that material revealing what occurred that week was deliberately destroyed or, at least, that there is some sinister reason that the footage and reports could no longer be found. If something of interest was on that footage, and was noted in a duty report, as was the practice, there should be a gap in the sequence of reports. The logical conclusion of the submission may also be that the original ledger was destroyed, in order to hide such reports.

30. What could the footage or the reports show that would justify such measures? Weapons? Whatever it was, a conspiracy to conceal it would have had to begin as early as 24th April in order for the numerical duty reports to be filed without exciting attention. There was no need for a conspiracy at that stage. I do not accept that there was one, and I do not find it plausible. However careless or ill-advised, I am satisfied that the CCTV was not stored carefully enough to be still available 17 years later, probably because the events seen on it had been transcribed in the form of a duty report which has been provided to the Commission. I am also satisfied that the duty reports available show the true state of knowledge of AGS at the relevant time. If any duty reports stating that there was no movement were entered in the ledger (and they may not have been), no typed copy was created.

31. I am satisfied beyond a reasonable doubt of these matters, not only from the evidence of Supt Johnston, but also due to the fact that common sense suggests that if there was a conspiracy to this effect, it must have been widespread in the NSU. From the relevant members’ evidence, it is clear to me that the garda witnesses had no prior knowledge of a plot to rob the Securicor van and were genuinely shocked by the events of 1st May. I do not accept that this lack of knowledge was feigned in order to continue a conspiracy to conceal the fact that a member of AGS saw a weapon in a video, or some other evidence which revealed the plan. Many witnesses would have had to lie

to their colleagues, to the Commission and to others to hide the truth of what they saw if this were so, and maintain that lie for over 17 years.

The Airplane and The Flight Video

32. The video taken from the GASU aircraft on 1st May 1998 should have been stored in the photographic section of the NSU offices. Supt Johnston searched that section along with the Sergeant in charge of photographs. They found one piece of data from 1996, two others from 2000, and the remainder from 2000 on. None was relevant to this investigation. They did not find the video. Supt Johnston also caused searches to be undertaken at the GASU for any relevant flight video. GASU did not retain a copy of the video from the second flight, which had been given to the NSU officer on board, NSU-DG-17. He recalls watching the footage with Supt Kelly but does not know what became of the flight video.

33. I accept the evidence of DG-17 that the aerial footage was not of evidential value owing to the height at which the aircraft was flying. Nevertheless, all documentation and records of potential value, however slight, should have been retained. Even if it only showed the events from a considerable distance away, and no detail was available, it could have been of some corroborative value. The fact that the NBCI investigators were not provided with a copy of the footage is also unfortunate and confirms the bias that the NSU had in favour of retaining the secrecy of their own operations over the rigorous investigation of a fatal shooting.

34. I am also satisfied that, if NSU-DG-17 did know on the night of Thursday, 30th April that he was supporting Operation Morrison the next day, he knew only that it would be duty in the south of the city and not that he was going to Wicklow. This is borne out by the flight plans for the two flights, only the second of which noted Wicklow as the destination. Had the flight destination changed, this had to be recorded for air traffic control purposes. This is the most cogent evidence that the NSU did not know the destination of the two vans on the morning of 1st May 1998. The flight plans were created before take-off and they must reflect alterations; this is extremely important information for safety purposes. These are not documents created afterwards, they came from GASU and not the NSU and I am satisfied that they were not doctored or amended. It is impossible at this stage to determine whether the earlier flight went up in support of Operation Morrison or was diverted to it later, when the Clondalkin run occurred; either way, it was not Wicklow bound.

Destruction of Records

35. Supt Johnston is sure that he had no documents going back further than 2005. He distinguished between the surveillance section and the intelligence section when it was suggested to him that material of even the slightest relevance to state security should be retained for years.

36. While Supt Johnston feels there must have been a general disposal of documents, no specific records showing the destruction of documents appear to have been kept, even in the financial section of AGS. He described how trucks came to the offices to shred documentation on a regular basis. He made enquiries of the Finance Section of AGS, which should have records of payments made for the shredding of materials. They told Supt Johnston that they have no records of anything relating to destruction of documents between 1998 and 2011. Supt Johnston has been the Supt in charge of the NSU since 2010 and no relevant documents have been destroyed since then.

37. A circular was issued in 2009 within AGS in relation to the destruction of non-essential documents. It sets specific periods after which non-essential documents are suitable for destruction. Documents which are considered essential are kept for a longer period. A written record has to be kept relating to their assessment and the process is ratified by the relevant Chief Superintendent.

38. It is most likely that the missing records, including the 1998 ledger, the CCTV footage and the flight video, have been destroyed. No record has been found which indicates when or by whom the documents were shredded or who, if anyone, assessed their suitability for destruction. None of the witnesses could assist as to how this might have occurred or what record would have been retained before the circular issued in 2009.

39. It is difficult to believe that AGS would adopt a policy whereby large books of significant and confidential material and videos containing information of interest to the NSU could be destroyed without a single note to indicate when, why and by whom the destruction occurred, but this appears to be what happened. While NSU-DS-08 was diligent in creating an efficient system as regards duty reports, it did not survive intact in the transition to digital records, and no system whereby the destruction of documents generally was monitored and recorded.

Conclusions: Record-Keeping

40. It is unfortunate and disappointing that much of the contemporaneous documentation or evidence, which might have assisted me in this investigation, is not available. However, the fact remains that numerous witnesses have been able to substantiate the matters which might have been set out in the missing reports and ultimately it has proved possible to be satisfied beyond a reasonable doubt of the main issues of fact set out in this report.

41. The failure to conduct even the most basic internal inquiry within the NSU into the facts and the absence of any debrief of ERU personnel caused a dearth of information within AGS as an institution about what actually occurred when one of its members fatally injured Ronan MacLochlainn. Most of the vital information has emerged in the course of this Commission's investigation, but it is impossible to discover where some of that information came from in some cases. For instance, photographs of an attempt to reconstruct the shooting in Santry Garda Station are reassuring insofar as they record a genuine effort to understand the ballistics of these events, but they only document which casts any light on that scene was buried in the ballistics case-notes which were furnished to the Commission months after the expiry of its initial timeframe. Moreover, the NSU seems to have been unaware that such a reconstruction took place, nor were these attempts described to the NBCI (or at least there is no record of this, if they were).

42. While it ought to have been clear to all concerned that the matter required a full, independent investigation, everyone involved in the NBCI investigation considered that the inquiries made by them were sufficient. This was partly because the broad conclusions of Chief Supt Camon were borne out by the ballistics results, partly due to the natural bias described in Section F, above. Those that did not take part in the investigation assumed, incorrectly, that a full investigation had indeed been carried out. This assumption was based partly on the seniority and reputation of Chief Supt Camon. Once that background is understood, the whole narrative of the investigation, the subsequent destruction of records, and the general approach of AGS makes more sense.

43. Ms. Nic Gibb submits that it is inconceivable that all of the documentation surrounding the events of 24th April and the following week would be missing in the context of a fatal shooting. She is sceptical as to whether this can be innocently explained. She asks: *Is it mere coincidence that such a volume of documentation of various types which*

are particularly relevant to this issue go missing? The difficulty with that question is in its premise that all of the documentation relating to the shooting of Mr. MacLochlainn, *and no other documentation*, is missing. That is not the case. The general process whereby records in AGS are identified as relevant, maintained and stored in an organised system, and are thereby easily recovered and disclosed, is very weak. The evidence has revealed that there is little original documentation *of any sort* available from the time period before 2001. The earliest ledger available dates from 2009. It is not just the records relevant to this particular incident that are missing; large amounts of documentation covering a wide timespan have been destroyed. As set out above, AGS did not realise or believe that its investigation had been sub-standard, thus there was no identification of relevant papers or materials as being potentially required. Further, the current NSU management assumed, in error, that the NBCI had all of the documentation relevant to this shooting, as it had conducted the investigation.

44. I must disagree with the submission that it is inconceivable that the documentation in the NSU offices is missing; seen against this background, it is somewhat surprising that the duty report disks were found at all. It is also important to note that the NSU offices are not the only source of such original information. The *Intelligence Section* contains much contemporaneous information. While it is not surprising, in light of the NSU's omission to implement proper systems of recording and retention, it is very disappointing to see the poor records systems in place in the *Intelligence Section*. The Commission understands that the Intelligence Section had a parallel electronic system but no evidence was received to suggest that its contents were routinely consulted by management in 1998. It is clear that the *Intelligence Section* did not place the relevant duty reports on all of the appropriate hard-copy intelligence files. However, while this was poor practice, it is not sufficient to raise a doubt in my mind as to whether there was a conspiracy surrounding the events of 1st May. The production of all original files sought and the multiple reviews conducted by the Commission of that material, together with a comparison of the files with the electronic reports generally, satisfy me beyond a reasonable doubt that there was no doctoring of files, no deliberate removal of duty reports and no malicious tampering with the material relevant to this case.

45. It appears that there was no rigorous system whereby hard-copy documents were stored or retained in the long term, in either or both the NSU or the *Intelligence Section*. It was pure luck that the 1998 disk survived in a drawer. All in all, most of the hard-copy material was there when the two sections were thoroughly searched, but it would be

difficult to find it without knowing where to look and what files to request. Perhaps the NSU and the *Intelligence Section* consider that this is a safer way to hold such sensitive material but in the unlikely event that this is a deliberate security measure, it is very unwise. As has occurred in this case, it leads to concerns about the accuracy and comprehensiveness of the information itself and can lead to theories of serious wrongdoing on the part of one of the most powerful agents of the State. Ensuring that such files are ordered and accessible would not in any way decrease the security of the files and would allay concerns about documents being wrongfully hidden or withheld. Noting the date of receipt would also strengthen the accountability of this section as would a more comprehensive recording of information and analysis rather than relying on verbal discussions about NSU reports. Reliance on the knowledge and memories of key personnel rather than on ordered documentation also leaves the units vulnerable when, as is inevitable, memories fail or are distorted as described in Section F, when long-standing or high-ranking individuals are unexpectedly and unavoidably absent, or when members die.

46. Vital information was also contained in the original ballistics file, but again the system whereby documents are stored and retrieved meant that this was only produced during the course of this Commission. Likewise the Wicklow Box, diligently sought out by one of the liaison officers to the Commission and found in Wicklow Garda Station, was not found in the course of fulfilling the earlier High Court order. Perhaps most surprising of all was the fact that the hijacked Mazda had been retained but that nobody thought to mention this to the Commission until after its ballistics expert Mr. Mastaglio had already prepared his first report. As I list these items and recall the reassurances they offer in various respects when assessing the evidence, I am conscious of how galling it must be for Ms. Nic Gibb to have sought much of this material since 1999, to have obtained an order for much of it in 2006 and to see it emerge nearly ten years later in a different forum. It must be hard for her to reach any conclusion other than that material has been deliberately withheld from her.

47. While I do not think it was deliberate, the failure to maintain and disclose the relevant material was careless management to such a degree as to be culpable. The impression is also strongly given that no section of AGS has control over any other and few know what material is stored in other sections. The loss of so much documentation and the lack of communication between sections as regard records certainly deserve criticism, but it does not lead me to suspect a deliberate attempt to

suppress documents. It is too wide-ranging a loss to have been specifically engineered for this case alone.

48. To directly answer a question posed by Ms. Nic Gibb: has there been a satisfactory explanation presented to the Commission as to how this documentation came to be unavailable? There has not. It has been explained in each case, as set out above, but the explanations are not satisfactory. The explanations are, however, credible, which is a different issue. While the destruction of documents through ignorance of their potential importance and relevance was culpable, I believe the witnesses who gave evidence in relation to these issues. In particular I note that Supt William Johnston was clearly unhappy at being unable to assist the Commission further and made genuine efforts to retrieve documents or explain their absence. The loss or destruction of this material was not malicious, in my firm view.

49. The way in which material slowly emerged over the course of months of requests, shows that AGS has a poor approach to filing and storage of documents and exhibits, and sharing of information within the organisation. It must make any litigant against AGS fear that her success in proceedings against the police force will depend more on the diligence and experience of the particular officer who is chosen to seek out the documentation ordered, than on the content of any discovery order made by a court. That is a shameful situation and must be remedied by AGS if it is to retain its credibility as a State body.

50. One of the main issues in this investigation was the theory that there had been a conspiracy to hide wrongdoing on the part of one or more members of AGS. That theory was exacerbated and fed by the approach taken to the disclosure of documents. However, in order to make that theory tenable, there must be some wrongdoing in the first place. One theory was that there was an unlawful killing; another suggested that AGS knew of the plan to rob a van and incompetently managed the operation instead of safely intercepting the raiders before the attack began. What came through very clearly from the evidence of individual garda witnesses who were there on the day or part of the NBCI investigation was that they were surprised by events in the Bends. The evidence therefore did not sustain either conspiracy theory; it pointed instead to a systemic failure to maintain careful records rather than to deliberately destroy suspicious documents. As Alan Bailey, the expert retained by the Commission, commented: *“Conspiracies are difficult to maintain, particularly when they involve many people from a number of organisations and last for 17 years, because they are only as strong as their weakest link.”*

51. Poor auditing in the *Intelligence Section* and the NSU has emerged as the explanation for anomalies and omissions in the records. The importance of this conclusion was well summarised in Alan Bailey's evidence. He emphasised the need to explain one's actions not only in a court of law, but also to the families of those killed or injured, to their communities, and "*to ensure that the public in general can maintain confidence in the police by the ability of the police to explain what they did and why they did it.*" When that audit trail does not exist, people will form their own views as to what happened, often erroneously, and the consequences can be significant in terms of community disturbance, loss of morale in the police service, and legal challenges. Every failing becomes suspicious and missing documents, seen in the light of a secretive approach and a failure to document, are very easily characterised as documents which have been deliberately destroyed. This can be avoided if senior officers explain their actions and, even better, can point to a contemporaneous, documented account of the evidence upon which they acted.

N. Conclusions and Recommendations

1. There follows a synopsis of the facts established by this Commission of Investigation, for ease of reference. The degree to which the Commission is satisfied on each fact - e.g. likelihood, probability, or certainty beyond a reasonable doubt - is highlighted in the body of the report.

2. The law in 1998 regarding the justified use of force in this State set out the applicable rules and guidelines for all citizens regarding the use of force. The Garda Code in 1998 clearly set similar standards, in particular regarding the use of firearms. Both the law and the Code were well known within AGS and both were robust statements of the applicable principles and rules as to when force, including lethal force, could be used in policing. In the language of the ECtHR, both the administrative and the legal frameworks within which the police acted were of an appropriately high standard.

Prior Knowledge

3. AGS had no information as to what was planned as regards the two vans, or when it might happen. They had no information that weapons had been placed in a van or removed from a van or that they had been collected from Clondalkin. Concerted efforts were made to discover what was planned but only when the Securicor van was spotted was it identified as the probable target of a robbery. One sergeant guessed, when the blue van and the gold Carina had stopped in the Bends, that a road block of some description was being prepared, but no more details of the plan.

4. The increased intensity of the operation in terms of the ERU being placed on standby was due to the numerous observations made by the NSU at Heuston Station on 24th April, not just the change in colour of the Transit van. It was not caused by the vans being spotted in Wicklow or near Ashford. There were no significant extra numbers of NSU operatives rostered for the early shift on 1st May.

5. I have received and considered a combination of sworn testimony, contemporaneous records and computer files which do not appear to have been edited since May 1998, all of which evidence taken together establishes to my satisfaction, and to the extent that I have no reasonable doubt on the issue, that AGS did not have prior knowledge of the plan to rob the Securicor van in Wicklow on 1st May 1998. Nor did

AGS have cogent evidence that either of the vans contained weapons as they left Heuston Station on the afternoon of the 1st May. The evidence as to what AGS had predicted centred on Heuston Station.

6. I am satisfied that it was not a failing on the part of AGS not to predict the plan in advance. The robbery of an unescorted security van was one of the least likely of the several possibilities open on 1st May. The most likely scenario at that time was the movement of explosives.

7. A greater amount of analysis would not necessarily have resulted in AGS predicting the robbery. The information on file as regards Pascal Burke (including the fact of his having been connected to a list of garda escort vehicles nine years previously) did not suggest and should not have suggested to AGS that they should consider an unescorted security vehicle as a target.

8. Communications between the surveillance and intelligence units in 1998 were not ideal but there were daily meetings and, at all times, the potential for a direct flow of information. While the information from duty reports in April 1998 might not have been copied to the *Intelligence Section* immediately, this had little or no effect on the outcome on 1st May. It has not been established that there was insufficient communication and cooperation between these two units. It would be unfair to criticise AGS unduly in this regard, in light of the multiple issues they faced at that time.

9. There was no blameworthy failure of analysis on the part of AGS. The information available to AGS on 1st May did not lead inexorably, or even as a matter of probability, to the conclusion that a robbery was planned. However, contingency plans should have been in place. Robbery was one possibility, among many. The failure to plan is a direct result of the failure to train and nominate an appropriate strategic commander, or any commander, for this operation.

10. While I conclude that AGS did not know that an armed robbery was planned, and cannot be faulted for not predicting it, I am satisfied that AGS should have identified a commander for this operation, who would ideally have led a more thorough briefing in which contingency plans for various different scenarios were considered. Such a commander would also have been in a better position than those on the ground to assess the changing situation as events progressed, and to direct reactions accordingly. These decisions should all have been documented so as to make the process transparent, to ensure that all

involved were accountable for their decisions and to provide material for a debrief, which would enable lessons to be learned for future operations.

The Shooting of Ronan MacLochlainn

11. It is certain that Ronan MacLochlainn was carrying a revolver, not only by a process of elimination (we know what the other raiders were carrying) but also by assessing the other evidence of what occurred, including events at the Mazda.

12. I am satisfied beyond a reasonable doubt that Ronan MacLochlainn still had a revolver and was pointing it at NSU-DS-06 when DS-06 fired at him. There are numerous surviving eye witnesses to this fact and it is in line with the behaviour of Mr. MacLochlainn in the preceding minutes when he had pointed the same gun at two other officers who were chasing him, and had forced an elderly civilian from his car, while holding the same gun to his head. The gun was found in the hijacked car. It was loaded. Mr. MacLochlainn showed a determination to flee the scene; even the pleas of an elderly woman to spare her infirm husband fell on deaf ears. Pointing a gun at the driver of the car driving towards him was consistent with Mr. MacLochlainn's conduct throughout this episode, whether confronted by a garda or civilian obstacle, his reaction was the same.

13. As noted, the driver's window of the Mazda had been rolled down completely by Mr. MacLochlainn. This was to enable Mr. MacLochlainn to point his gun out of it, so as to ensure that he was not opposed by oncoming traffic, civilian or otherwise. The position of his head when he was shot also supports this proposition.

14. The factual matters regarding the shooting as set out in DS-06's statement have been confirmed, insofar as that has been possible, by the ballistics evidence. His presence there has been corroborated, both by witness testimony and by the forensic evidence, in that the fatal bullet came from the personal issue firearm assigned to him. I am confident that the contents of his statement are reliable.

15. This statement made in 1998 by DS-06, the witnesses who met him on his way to the scene, the physical evidence regarding the window of the Mazda, and the surrounding evidence as to how DS-06 and his colleagues viewed the incident - convince me beyond a reasonable doubt that DS-06 believed that he was in mortal danger. DS-06 had an honest belief that his life was in immediate danger. He held that belief for good reasons, and his use of force was proportionate and necessary.

Assault of a Suspect

16. One of the suspects arrested at the scene was gratuitously assaulted by another member of AGS while the man was being restrained at gunpoint. The suspect was kicked in the head. It is difficult to say how much of the suspect's injuries resulted from this kick or from an earlier struggle during which he was arrested. The assailant has never been identified. The assault was witnessed by at least two other members of AGS. The ERU operative standing guard over the suspect must have been aware of this, though he has denied that it occurred. One of the two citizens who witnessed this tried to report it but her complaint was not included in the statement of her evidence prepared for the garda file and was not investigated by AGS. The assault was either concealed or ignored by various members of AGS, which is deplorable.

The Operation

17. It has not been established that the State could reasonably have organised this operation in such a way as to avoid killing Mr. MacLochlainn, without danger to the general population or specifically to DS-06. I am not satisfied that, in the light of the facts as known to the authorities at that time, such reasonable arrangements could have been made. In fact it would have been extremely difficult for the State to avoid the outcome of this operation, given what its agents then knew.

18. AGS considered the investigation in 1998 a thorough one. The unspoken premise on which the view of AGS was based is that the main witnesses as to fact were all guards themselves, which meant that their mutually-consistent account went totally unquestioned. Their account was not contradicted by anybody else, including the civilian witnesses, and was supported by the ballistics evidence. While it was wrong and inappropriate to allow the investigation to proceed without any rigour due to this inherent bias, this was not as egregiously culpable as a conspiracy to cover up an unlawful act would have been. The NBCI trusted the accounts given by the main garda witnesses, partly because they trusted them as colleagues. It was wrong and inappropriate to do so.

19. Even with stricter command structures and a calmer analysis at a remote location, given the extremely busy day for the public and the huge pressure on resources in AGS due to the Blue Flu, it is entirely

possible that this daylight robbery would still not have been anticipated, dependant as it was on knowing that there was an unescorted Securicor van on its way to the scene and that the raiders were intent on carrying out such a dangerous raid in full public view, in a location in the Republic of Ireland, not in their more traditional target areas, and with an extraordinary risk to the members of the public who would inevitably be caught up in this violent incident.

20. The gardaí at Cullenmore and in Glanbia had not guessed that a robbery was planned and did not have time to intercept before the Securicor van was passing them by at the Glanbia yard. By the time the van was spotted, it was too late to intercept safely.

Preservation of the Scene

21. The immediate aftermath of the shooting of Ronan MacLochlainn comprised two scenes at the Cullenmore Bends. One was the scene of the attempted robbery, and the Securicor van was at the centre of that scene. The second was the scene of a shooting. Here, the hijacked Mazda should have been the focal point. At that time there was no protocol specifically dealing with the identification of a separate scene when a person had been shot by a member of AGS.

22. There was confusion over who was in charge of preserving the scene until Supt Basil Walsh nominated D/S Carney, who took over that duty. While D/S Carney understood Supt Walsh to mean the whole scene, from the Carina to the Mazda, and knew that he should prevent interference with it, this was difficult, given the nature and size of the scene. By the time the ballistics team arrived, most members of the NSU had left with the vehicles, all of the prisoners had been removed, and the ambulance had left.

23. The items in and around the Securicor van were meticulously noted and mapped, as was the hijacked Mazda, including its registration number, but the revolver in the Mazda – which should have been central to the investigation of the shooting – was not mentioned. By contrast, the gold Carina was labelled both by registration and the fact that it was “The Motor Car with Shotgun in it”.

24. In the days following the incident, there was an extensive search in the fields surrounding the Bends. This was conducted by the Divisional Search Team and was very thorough.

25. Efforts were made to preserve this difficult scene but two factors conspired against the achievement of that aim. One was that the NSU prioritised the maintenance of their cover over the maintenance of the integrity of the scene and they left, most of them taking their cars. The other factor was the general view that the scene around the shooting did not have to be approached in the same way as a crime scene, the shooting having been carried out by a member of AGS. This approach may not have been taken by all involved, but was taken by a sufficiently large numbers of AGS that all of the cars involved with the hijacked Mazda were moved before anybody thought to stop this. The gun in the Mazda was not preserved or treated as the crucial evidence it clearly was. Two of the most immediate witnesses to the shooting left before any investigation could begin, the man who fired the shot having also left or been redeployed. By the time the photographs were taken, they no longer reflected the scene in a meaningful way.

26. The result of these failings was that key reference points were lost and evidence was likely to be destroyed or moved. It is possible that no damage to the integrity of the scene was done by moving the vehicles, but it is difficult to know. Most significantly, this failure to recognise the area as an important scene and to preserve the area around the hijacked Mazda has encouraged allegations of a conspiracy, which have been difficult to dispel. Nobody was detailed to preserve the hijacked Mazda or the scene around it, including the cars most closely involved in the shooting. There should have been more concern for the preservation of this vital part of the scene.

27. While the theory that there was deliberate wrongdoing has not been substantiated in this case, clearly such errors made it more difficult to explore the allegations and much of the Commission's work has comprised considering and explaining anomalies that would never have arisen had the investigation been adequate.

28. An NSU sergeant told NSU members at the scene to take their cars away despite a Superintendent having told him to leave all the NSU cars *in situ*. He countermanded the Superintendent's order without reference to his own superior officer, or any of the other sergeants. He did not know what the facts were or where his colleagues and their cars were, particularly at the northern end of the scene. While he may have intended to address only the NSU operatives near him at the southern end of the scene, he did not specify that at the time.

29. The sergeant was never questioned about this by his superior officers, or if he was, there is no record of this and no witness mentioned

it. The effect of his order was to undermine the integrity of the scene and make it difficult to reconstruct these events.

30. NSU-DG-41's red car (into which the Mazda collided) was used to transport a prisoner and had probably left even before Supt Blake ordered that all cars remain in place. However, NSU-DG-32's departure from the scene (in a car that had been directly behind NSU-DS-06 at the moment of the shooting) may have been as a direct result of this order. NSU-DG-32 recalls receiving a direction to leave *after* uniformed guards had arrived. These cars should have been left where they were.

31. More significantly, the removal of cars was one of the main factors that led to years of suspicion on the part of Mr. MacLochlainn's family as to what had happened in the Cullenmore Bends. It was obvious to those who were there that many of the guards involved had disappeared and that cars had been moved. Yet AGS has persisted in claiming that the investigation was thorough and that the scene was appropriately preserved in that respect. It was not.

32. It was not appropriate that NSU-DS-06 be redeployed to make an arrest having been involved in a shooting incident, if that is what happened. It would have been best practice for DS-06 to remain at the scene, to account for what happened to his senior officer. His vehicle should also have remained where he stopped it after the shooting, in order to preserve the scene.

33. One of the most unfortunate errors was the failure of the investigation team to explore discrepancies in the accounts given by the paramedics. One paramedic thought that Mr. MacLochlainn had been face down when he arrived and this led to the theory that no efforts were made to revive the injured man. That was a matter of grave concern to Ms. Nic Gibb. However, the evidence of attempts by members of the ERU to revive Mr. MacLochlainn given to this Commission is very strong and consistent. Disinterested witnesses confirmed the efforts that were made, and it is clear that these attempts continued for some time. The witnesses' evidence is supported by medical paraphernalia around the body, which was there when the paramedics arrived.

Command Structures

34. No officer was identified as being the overall commander of Operation Morrison. Tactical commanders for each unit were not clearly identified. As a result, the impression of individual autonomy attaching

to each garda operative on the ground was enhanced when such autonomy ought to have been minimised. The experience and training of the NSU and the training of the ERU stood them in good stead on the day. However, this does not excuse the fact that garda management had not put in place a proper command structure, which would have prompted the formation of contingency plans and should also have led to a better understanding about who would command at what point, and when a handover might take place.

35. Instead of engaging in planning, senior officers expected that the ERU and the NSU would simply go about their business without coordination, instruction or orders. There is no record anywhere of participation by the senior officers in the management of this operation or in planning or debriefing.

36. The gaps in the strategic planning for this operation did not arise because of a lack of resources on that particular day; they could have been remedied if formal planning and control procedures had been put in place at an earlier stage.

37. There had been no joint training at that time and it would be four years before a protocol was put in place outlining the specific roles and expectations of each unit in a joint operation of this sort. The ERU had been trained to be conscious of each other's roles and of the risk to civilians. Individual witnesses showed an excellent understanding of how their ERU colleagues would react and how they accordingly concentrated on tasks appropriate to where they were themselves. However, most of the NSU officers at the scene had never received operational training and there is no evidence that the NSU had been given any guidance about what to do if they found themselves in the middle of an ERU intervention. In the circumstances, it was inappropriate and potentially dangerous for senior management to rely on them to deploy without strategic direction.

Investigation in 1998

38. The 1998 investigation was deficient in many respects. The damage caused by the failure of the investigation team to identify witnesses, documents and material as being relevant to the investigation and the deficiencies in the evidence to which this led, have all resulted in an avoidable and very lengthy battle between the family of Mr. MacLochlainn and the State. The misplaced loyalty shown by AGS to each other as colleagues has resulted in a total lack of trust in members of that organisation by Mr. MacLochlainn's family. The failure of that

organisation to understand and remedy the bias they quite naturally felt in favour of one of their sergeants (in terms of his actions) and one of its most senior officers (in terms of his investigation) has led to this protracted battle. It remains the case that AGS has still not conceded that there were failures in the investigation in any respect.

39. The remedy for this institutional bias is already in place in that GSOC has taken over the function of investigating alleged wrongdoing by a member of AGS. There appears to be a natural resentment of that body's functions in AGS, but this is human insofar as no person likes to be the subject of a sceptical investigator's attention. If nothing else, this report should highlight to members of AGS how fortunate they are to have such an independent body to allay any concerns of wrongdoing on their part and to allocate blame where it is fair to do so.

40. By the time the NBCI arrived, it was already too late to preserve the scene of the shooting, but the investigators never discovered this. The members of the NSU who had been present were gone, and most of them had taken their cars. The NBCI never discovered how many of the NSU had been there.

41. Responsibility for the investigative failings must be shared by the units involved, their senior management, and the Chief Superintendent who managed and directed the investigation.

42. The investigation conducted from the Incident Room in Wicklow town Garda Station focused, in the main, on the armed robbery. This was excellent, meticulously careful and professional investigation. It had all the hallmarks of a thorough and fair approach. However, scant attention was paid by those in the incident room to the shooting of Mr. MacLochlainn.

43. There is no evidence that even a basic inquiry was made as to what NSU members had seen of the shooting. Obvious questions were never asked and vital information was never uncovered. The NBCI should have made these inquiries but did not.

44. NSU management knew the numbers of NSU involved on the day and knew how heavily involved they had been. If they did not know these details, they should have done. They took the entirely inappropriate view that because there were garda witnesses to the shooting who were telling a similar story and because the NSU generally act in a covert manner, there was no need to identify any

further witnesses. A casual approach was also taken to the surrender of weapons by NSU.

45. The shooting was not treated with the healthy scepticism that should attend all independent investigations. The NSU was not inclined to offer its members as witnesses and the NBCI did not take any trouble to seek additional evidence about the shooting once they had three or four guards saying much the same thing.

46. The approach of the investigation team lacked rigor due to their view that there was no wrongdoing involved, as it was a member of AGS who had fired the shot and they had some evidence to support his account. No independent investigation was expected. While understandable, this is evidence of wholly unacceptable loyalty or trust that no garda will act wrongfully. Members of AGS do not enjoy immunity from suspicion, let alone from prosecution.

47. While NSU witnesses should be protected from unnecessary exposure, direct witnesses to the robbery and those who made arrests were named and gave statements. The covert nature of the NSU was not what prevented the witnesses from being identified in the first place; it was the institutional and individual blindness to the fact that the NBCI was supposed to be testing, and not simply endorsing, the accounts given by those who had fired shots.

48. Those who involved in, and witnesses to, any deployment of firearms should have been interviewed about the details of what they had seen and done, and why, at an early stage. In several cases, no account at all was sought or taken from witnesses who were within yards of the fatal shooting.

49. The existence of an independent investigation (such as, for instance would now be undertaken by GSOC) does not prohibit any kind of internal inquiry. The NSU should have conducted such an inquiry.

50. While the Chief Superintendent charged with conducting the investigation is partly responsible for the investigative failings, he adopted an approach that was shared by many of his colleagues in terms of trusting his colleagues. There was also an institutional and systemic deficiency within AGS, in that no member recognised what ought to be done in a case of a fatal shooting by one of their colleagues. There was no method whereby it could be ensured that relevant witnesses were identified, the scene preserved and the best practice adopted in every respect.

51. The NBCI team was passive when it came to investigating the shooting, receiving evidence proffered by others but not seeking any out. The NSU and ERU were permitted to offer what witnesses they liked. The ballistics investigation was thorough, complete and meticulously recorded. The ballistics team undertook forensic examination and comparison, in conjunction with the State Pathologist, to satisfy their own rigorous standards rather than to answer any questions posed of them by the NBCI. They carried out reconstructions, which were not outlined in their statements, and the NBCI seems not to have been aware that such examinations took place. Had the reconstruction been better documented, it might have allayed some concerns as to who was responsible for the shooting and how, physically, it had occurred.

52. The fact that the ballistics investigation was of a high quality does not mean that a proper and thorough overall investigation was carried out.

53. There was a thorough investigation into the attempted robbery. As a part of that investigation, some information came to light about the shooting, which suggested that it had been justified. There was no active investigation into the shooting, other than that carried out by the ballistics team.

Debrief

54. There was no comprehensive debrief involving both the NSU and the ERU. There should have been a structured meeting, at which all were present. A note should have been taken of the contributions made. There was a debrief or meeting of the NSU, but it was not comprehensively documented. The fact that the ERU did not take part in the debrief led to factual inaccuracies, the most obvious being that the hijacked Mazda had collided with a particular garda jeep.

55. The debrief meeting was not particularly contentious or memorable because the shooting was not analysed. There are two possible reasons for this: first, some mistakenly thought that an internal investigation was prohibited because of the ongoing NBCI investigation, and second, there was no expectation that there a rigorous investigation into the shooting was necessary.

56. A report signed by Supt Kelly on 2nd June was probably based on third-hand information, compiled at or recalled from a meeting on 2nd

May. It recorded events which could not have occurred, i.e. that the hijacked Mazda crashed into the ERU jeep. As a result, this report – one of the few contemporaneous accounts of what happened on 1st May – cannot be relied upon for events or for their sequence. While broadly correct, it sets out details that are demonstrably wrong and is a good example of the infirmity of hearsay evidence and the importance of a comprehensive and properly recorded debrief.

Training

57. The NSU was appropriately trained in surveillance skills in 1998. The ERU was appropriately trained in operational and firearms skills in 1998. The individual members of both units, including their sergeants, acted with great bravery and skill on 1st May 1998. Inspector Hogan proved himself to be a brave and competent operational commander, despite the lack of specific strategic training for senior officers at that time.

58. The introduction of explicit guidelines on defined and regulated “hand-overs”, to be employed when a situation becomes dangerous and as set out in a 2002 protocol, was eminently sensible, as was the introduction of regular joint training.

59. The transfer of operatives from unit to unit is appropriate, as long as the operative is appropriately trained in her new duties. There is nothing in the fact of having trained with the ERU that would make an operative inherently unsuitable for the NSU.

60. The strategic or command training for AGS was deficient in 1998. Poor strategic training was evident in the failure to nominate a commander, in the confusion as to who was leading the two units involved and in the failure of the senior ranks of the NSU to recognise that this operation had to be handed over to the ERU. Liaison between the two units was also poor on the day. There was little by way of planning and there was no co-ordinated response between the units.

61. NSU-DS-06 assisted appropriately and effectively. One of the main reasons for this was that DS-06 had been highly trained, both in the use of firearms and with the ERU operatives in intervention and firearms incidents.

62. The fact that DS-06 had transferred from the ERU to the NSU did not lead to him shooting Mr. Ronan MacLochlainn due to any inappropriate haste to become involved in the scene. He went to the

scene to assist his colleagues, as any other member in his position would have done, and as others did, in fact, do. It was the fact of Mr. MacLochlainn pointing a gun at him that caused DS-06 to shoot.

63. The training deficiencies identified have been remedied in the intervening years. In particular, the evidence on the current command training and joint training for specialist units was reassuring.

Record Keeping and Disclosure

64. Through inadequate systems and management in AGS, much contemporaneous documentation or evidence from 1998 is not available. However, the fact remains that numerous witnesses have been able to substantiate the matters which might have been set out in the missing reports and ultimately it has proved possible to be satisfied beyond a reasonable doubt of the main issues of fact set out in this report.

65. The general process whereby records in AGS are identified as relevant, maintained and stored in an organised system, and are thereby easily recovered and disclosed, is very weak. There is also little original documentation of any sort available from the time period before 2001. It is not just the records relevant to this particular incident that are missing; large amounts of documentation covering a wide timespan have been destroyed. As set out above, AGS did not realise or believe that its investigation had been sub-standard, thus there was no identification of relevant papers or materials as being potentially required. Further, the current NSU management assumed, in error, that the NBCI had all of the documentation relevant to this shooting, as it had conducted the investigation.

66. This destruction of documents was poor practice, not a conspiracy surrounding the events of 1st May. The production of all original files sought from the *Intelligence Section*, together with a comparison of the files with the electronic reports generally, satisfy me beyond a reasonable doubt that there was no doctoring of files, no deliberate removal of duty reports and no malicious tampering with the material relevant to this case.

67. There was no rigorous system whereby hard-copy documents were stored or retained in the long term, in either or both the NSU or the *Intelligence Section*. This does not appear to have changed significantly. Perhaps the NSU and the *Intelligence Section* consider that this is a safe way to hold such sensitive material but in the unlikely event that this is a deliberate security measure, it is very unwise. As has

occurred in this case, it leads to concerns about the accuracy and comprehensiveness of the information itself and can lead to theories of serious wrongdoing on the part of one of the most powerful agents of the State.

68. Vital information was contained in the original ballistics file, extra booklets of photographs, the Wicklow box and in Santry (in the form of the hijacked Mazda). However, the system whereby documents are stored and retrieved in AGS meant that this material was only produced months after this Commission began its work.

69. While I do not think it was deliberate, the failure to maintain and disclose the relevant material in a timely way was careless management to such a degree as to be culpable. The impression is also strongly given that no section of AGS has control over any other and few know where material is, or should be, stored. The loss of so much documentation, the reappearance of some of it, and the lack of communication between sections as regard records certainly deserves strong criticism, but it does not lead me to suspect a deliberate attempt to suppress documents. It is too wide-ranging a loss to have been specifically engineered for this case alone.

70. Much more significantly, Ms. Nic Gibb has sought much of this material for many years. However frustrating this experience was for the Commission, it must have been galling for Ms. Nic Gibb.

71. A litigant against AGS would be justified in fearing that her success in proceedings against the police force will depend more on the diligence and experience of the particular officer who is chosen to seek out the documentation ordered, than on the content of any discovery order made by a court. That is a shameful situation and must be remedied by AGS if it is to retain credibility as an organisation.

72. One of the main issues in this investigation was the theory that there had been a conspiracy to hide wrongdoing on the part of one or more members of AGS. That theory was exacerbated and fed by the approach taken to the disclosure of documents. However, in order to make that theory tenable, there must be some wrongdoing in the first place. One theory was that there was an unlawful killing, another suggested that AGS knew of the plan to rob a van and incompetently managed the operation instead of safely intercepting the raiders before the attack began. What came through very clearly from the evidence of individual garda witnesses who were there on the day or part of the NBCI investigation was that they were surprised by events in the Bends.

The evidence therefore did not sustain either conspiracy theory; it pointed instead to a systemic failure to maintain careful records rather than to deliberately destroy suspicious documents.

73. Poor auditing in the *Intelligence Section* and the NSU is the main explanation for anomalies and omissions in the records at those units. This is an important conclusion, as AGS must explain its actions not only in a court of law, but also to the families of those killed or injured, to their communities, and to ensure that the public maintains confidence in the police. This can only happen when members of a police force, and the policing body as an institution, can explain what happened and why it happened. When there is no audit trail, people will form their own views as to what happened, often erroneously, and the consequences can be significant in terms of community disturbance, loss of morale in the police service, and legal challenges. Every failing becomes suspicious, and missing documents, seen in the light of a secretive approach and a failure to document, are very easily characterised as documents which have been deliberately destroyed. This can be avoided if senior officers explain their actions and, even better, can point to a contemporaneous, documented account of the evidence upon which they acted.

Recommendations

74. It would be helpful if AGS ensured that its approach to such incidents has been informed and changed by these events; the preparation for the operation, the management of the scene, the preservation of the scene and the focus of the investigation. Central to achieving progress as regards most of the recommendations below, will be the recognition by AGS that the police force will be helped, not hindered, by adopting more rigorous systems and by recognising that its members share the limitations of all human beings: they are loyal to each other and not best-placed to investigate each other. We must all be encouraged to act in accordance with what is right, particularly when it involves criticising a colleague and, even more crucially, when that colleague has engaged in misconduct. Members of a police force are no different to the rest of society in this respect, but the consequences for the rest of society can be devastating when gardaí, of all people, fail to achieve the high standards of conduct that must be expected from any body entrusted with the right to use force against civilians.

75. In order to properly investigate a shooting by a member of AGS and to cater for the welfare of the persons concerned, ideally, any garda who has discharged his firearm in circumstances where it may have resulted in injury or death, should be taken to a controlled environment, away from the scene and away from the media. Any other garda who was directly involved and witnessed the traumatic event, should be similarly treated. There, witnesses can receive medical attention if required and their welfare can be catered for. They may then be asked to give informal first accounts to investigators as to what happened. While GSOC will almost invariably manage such a situation now, it is important that AGS recognise how important these measures are pending the arrival of the independent investigators at the scene.

76. Joint training is now undertaken by the ERU and the NSU. One of the aims of this training should be to instil in the NSU in particular the importance of communication between the units and the fact that in cases where the NSU becomes involved, as is almost unavoidable in circumstances like those of 1st May 1998, both units know not only how to behave during an interception but how scenes should be approached after the event and what their priorities should be.

77. The record keeping of AGS must be significantly improved. Careful and contemporaneous notes should be made of all significant decisions and in relation to all operations. Operational orders should be

introduced in practice in line with the template referred to in evidence before the Commission.

78. All records must be kept in such a way that they can be identified and accessed when necessary. This involves streamlining and co-ordinating the record-keeping between sections of AGS. If more careful auditing systems were introduced arising from the findings of this Commission's investigation, it would be hugely beneficial for AGS and for all who deal with AGS as an organisation.

79. Ensuring that NSU and Intelligence files are ordered and accessible would not in any way decrease the security of the files and would allay concerns about documents being wrongfully hidden or withheld. Noting the date of receipt would also strengthen the accountability of these sections as would a more comprehensive recording of information and analysis rather than relying on verbal discussions about NSU reports. Reliance on the knowledge and memories of key personnel rather than on ordered documentation is very unwise and unreliable in terms of the long-term availability of accurate information.

80. The practice whereby statements are not dated is unhelpful and inexplicable unless by reference to a garda unwillingness to be accountable generally. It should cease.

81. This report may be simply summarised by saying that AGS should have adopted and practised more rigorous training for its senior management. This would have encouraged recognition by its members of the need for accountability and real independence in an investigation. It might also have prompted AGS to maintain better records and systems, which would have ensured that full and appropriate disclosure was made by the organisation. These measures could have saved the family of Mr. MacLochlainn the long ordeal of seeking answers that this has become. Further, the civilian witnesses and the members of AGS, in particular the members who fired shots and the family of the late NSU-DS-06, would not have had to endure such a distressing investigation, so very long after these events.

Appendices

Appendix 1: Biographies of the Experts

Mr. Alan Bailey

Mr. Bailey was a member of the UK police force from 1971 until 2001. He has many years of experience as a police firearms instructor. He spent five years as the Chief Firearms Instructor of West Mercia Police and at the time of the shooting of Mr. MacLochlainn he was the Commander of the National Police Firearms School for the UK Police Service. As such, he was responsible for delivering advanced weapon skills, tactical, judgmental and command training. He subsequently served both as the Head of Police Training and as the Head of Critical Incident Command Training in the UK. Since his retirement from the police force, he has acted as a consultant in the police use for firearms. He has provided expert evidence on officer-involved shootings in a number of forums both in the UK and internationally, including for the Barr Tribunal in this jurisdiction. He has academic qualifications in the management of police firearms training, and in teaching judgment for police firearms incidents, and is currently engaged in doctoral research on the psychology of deadly force training, in the USA.

Mr. Michael Burdis

Mr. Burdis was a member of the UK police force from 1962 to 2002. He spent many years as a detective, and was involved in many high profile investigations and prosecutions, including into terrorist offences. At the time when Mr. MacLochlainn was shot, he held the rank of Detective Chief Superintendent. Among his many roles, he was involved in the creation of the first official manual dealing with the investigation of murder, and in the rewriting of the ACPO Major Incident Room Standardised Administrative Procedures Manual; these are the recognised standard texts on the process of homicide and major crime investigation in the UK. Throughout his career, he was involved in more than 300 homicide investigations with almost 200 as the Senior Investigating Officer. He was a Special Advisor to the MacPherson Inquiry and he was subsequently appointed to assist in a review of over 230 undetected cases of murder ranging over a ten-year period in the London area. He is highly trained in the area of criminal investigation and has received specialist training in a wide range of areas. He was also qualified in the use of firearms and in the management of the scenes of incidents where firearms were being used. Since his retirement he has

been appointed in a variety of consultancy roles and has delivered training to a range of bodies, including GSOC in this jurisdiction. He, too, gave expert evidence to the Barr Tribunal.

Mr. Mark DeGiovanni

Mr. DeGiovanni is the Technical Director of *Advanced Laser Imaging Ltd*, a UK-based company. He has a Masters degree in Mechanical Engineering and is an expert in 3D modelling. He has created 3D models for various courtroom and investigative purposes, including for the Metropolitan Police Service in London. He provided advice to the Commission on the value of conducting a virtual reconstruction of the scene at the Cullenmore Bends. He reached the view that such a virtual reconstruction would only aid the clarity of the events of 1st May 1998; in effect, it would simply depict in visual terms what was already known. It would not advance the Commission's understanding of the main issues for the investigation. In the circumstances, the Commission opted not to undertake a reconstruction.

Mr. Mark Mastaglio

Mr. Mastaglio is an internationally renowned expert on firearms. He has been working in the field of forensic firearms investigation since 1989. Before that, he was a member of the UK Ministry of Defence. From 1989, he worked with the Metropolitan Police Service Laboratory as a forensic scientist in ballistics examination. In 2005, he became the principal scientist for firearms in the UK Forensic Science Service, and he remained in that position until 2012. He is now a consultant attached to the *Forensic Firearms Consultancy Ltd*. He has over 26 years' experience in giving expert testimony in court, and is a Senior Technical Advisor to the UK on forensic ballistics examination.

Mr. Mark Nangle

Mark Nangle is a consultant engineer and motor assessor based in Summerhill, Co. Meath. He prepared a report for the Commission after conducting an inspection of the hijacked Mazda and a review of the photographs available to the Commission of vehicles which may, or may not, have been involved in a collision or collisions with the green Mazda

Appendix 2: Selected Photographs

Photograph of Revolver in Mazda



Photograph of the reconstruction at Santry



Aerial Photograph: Overview



Aerial Photograph: Scene of Shooting



Aerial Photograph: Scene of Attempted Robbery (1)



Aerial Photograph: Scene of Attempted Robbery (2)

