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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY MARTIN MARCHANT FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

IN THE MATTER OF AN APPLICATION BY JR347 FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

IN THE MATTER OF THE ESTABLISHMENT AND CONDUCT OF THE BARNARD REVIEW BY THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND

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John Larkin KC with Emma McIlveen (instructed by McIvor Farrell, Solicitors) for Martin Marchant
Richard McConkey KC with Janice Gilkeson (instructed by McIvor Farrell Solicitors) for JR 347
Oliver Sanders KC with John Rafferty (instructed by the Crown Solicitor's Office) for the Chief Constable, PSNI and Sir Iain Livingstone, Head of Operation Denton
Karen Quinlivan KC with Aidan McGowan (instructed by Madden & Finucane Solicitors) for Edward Barnard, Notice Party
Stephen Toal KC with Mark Bassett (instructed by KRW Law LLP Solicitors) for Mr Patrick Joseph Askin, Notice Party

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McLAUGHLIN J

Introduction

[1] This is a rolled-up hearing of a single ground of challenge in two related applications for leave to apply for judicial review. Both applications raise materially identical grounds of challenge and relate to the lawfulness of the Barnard Review established by the Chief Constable of the PSNI and which has become known as Operation Denton. The Barnard Review comprises a thematic review of 98 terrorist incidents (88 in Northern Ireland and 10 in the Republic of Ireland) involving 127

murders which are suspected to have involved loyalist terrorists in the Mid-Ulster area during the mid-1970s. These incidents have raised suspicions of differing forms of security force collusion or involvement. The background to both the Barnard Review and to both sets of proceedings is set out in more detail below. This ground of challenge relates to the *vires*, conduct and reporting of Operation Denton and both cases have been case managed together from the outset.

[2] The applicants are both children of individuals who appear to be suspected by the Operation Denton team of having played a part in the Dublin and Monaghan bombings of 17 May 1974. The first applicant is the son of William Marchant and the second applicant is a family member of another person who may be implicated in the bombings. Anonymity was granted to the second applicant at an early stage of these proceedings. No application for anonymity was made by Martin Marchant. Both applicants are concerned that their family members may be named in the final review report and they now challenge the legality of the entire review process. The wider proceedings include challenges to both the *vires* of the review itself and also to its power to name individuals suspected of involvement in one or more of the incidents. For the reasons set out below, the *vires* challenge has been considered first and separately from the other grounds.

[3] At a case management hearing on 20 March 2026, the court distinguished the proposed grounds of challenge which related to the legality of the review process itself from those which may be dependent upon the ultimate content of the final report. It therefore directed that the challenge to the *vires* of the Barnard Review should proceed first by way of a rolled-up hearing and that the leave applications on the remaining grounds of challenge in both applications should be adjourned, pending the outcome of the *vires* challenge. The purpose of doing so was to provide clarity on the vires of the entire review process at the earliest time and in parallel with the process of finalisation of the report, which the respondents indicated was underway. Furthermore, challenges which were dependent upon the content of the report could not realistically be determined until there was greater clarity about the proposed content.

[4] At a further case management hearing on 27 March 2026, with the agreement of all parties, the Ground 1 challenge was distilled into the following two issues:

> "**Issue 1: Can there lawfully be an "Operation Denton?**"
>
> (i) Whether the Chief Constable of the PSNI had a common law or statutory power to establish Operation Denton and to carry out the matters provided for in its Terms of Reference in accordance with those terms?

Issue 2: Can the PSNI lawfully publish an "Operation Denton" Report?

(ii) If so, whether the Chief Constable of the PSNI has a common law or statutory power to publish a report which sets out the findings and conclusions of Operation Denton?"

[5] In both proceedings, the court granted notice party status to Mr Patrick Askin, son of Patrick Askin (Snr) who was killed in the Monaghan bomb attack on 17 May 1974, one of a series of bombs which exploded on that date in both Dublin and Monaghan. Those attacks are one of the many incidents within the scope of the Barnard Review.

[6] The court also granted notice party status to Mr Edward Barnard. He was the applicant in previous proceedings (*Re Barnard* [2017] NIQB 82 and [2019] NICA 38) which led to the establishment of the Barnard Review.

Re Barnard [2017] NIQB 82; [2019] NICA 38 and the Establishment of the Barnard Review

[7] It is impossible to divorce the events giving rise to these proceedings from the decisions of both the High Court and the Court of Appeal in *Re Barnard* [2017] NIQB 82 and [2019] NICA 38. Edward Barnard is the older brother of Patrick Barnard who was murdered, aged 13, on 17 March 1976. He had been playing in the street outside the Hillcrest Bar, Dungannon, when a no-warning bomb exploded, killing Patrick and three other innocent people. In his judgment in the High Court, Treacy J summarised the background to the murder and the subsequent RUC investigation in the following terms:

> "[2] Patrick James Barnard was a 13 year old schoolboy (born 7/12/63) who lived with his mother Mary and his four siblings at 9 Fairmount Park Dungannon.
>
> [3] At approximately 8.20pm on 17 March 1976, a "no warning" bomb, planted by the UVF, exploded outside the Hillcrest Bar, Donaghmore Road, Dungannon. Patrick Barnard was playing in the street outside the bar. He was taken to Craigavon Hospital for treatment but died the next day at 12.45pm. A post-mortem examination was performed on him on 18 March 1976. The cause of death was given as multiple injuries due to a bomb explosion. James Francis McCaughey, Andrew Joseph Small and Joseph Kelly were also killed in the attack.

[4] Examination of the scene by Scenes of Crime Officers and members of the Northern Ireland Forensic Science Service determined that a bomb had been planted in a vehicle parked outside the Hillcrest Bar. The bomb was believed to have contained 60-80lbs of homemade explosives. The vehicle, a green Austin 1100, had been reported stolen on 9 March 1976. Forensic exhibits recovered from the scene were destroyed in a fire at the forensic centre on 18 September 1976 before a report could be prepared.

[5] On 8 December 1980, Garnet James Busby was arrested for the bombing. During interview he admitted to his involvement in the Hillcrest Bar bombing and to his membership of the UVF. He admitted having met [A], [B] and [C] and that the bomb was loaded into an 1100 car and that he was told to drive it to the Hillcrest Bar. He said that [C] scouted the road in front of him. Busby admitted parking the bomb laden car outside the Hillcrest bar and getting into the car driven by [C] and leaving the scene.

[6] An inquest into the death of Patrick Barnard (and the other victims of the Hillcrest bombing) was held on 20th December 1976. An open verdict was returned.

[7] On 23 October 1981 Busby was convicted at Belfast City Commission to a total of 14 offences including the Hillcrest Bar bombing. He was sentenced to life imprisonment for the murders and concurrent sentences for the other offences. He was released on life licence in February 1997.

[8] [A], [B], [C] and two other named individuals were also arrested and interviewed in relation to the bombing. While never charged in relation to the Hillcrest attack, they were later charged with other offences.

[9] During his interviews in custody on 10 and 11 December 1980, Busby also admitted his involvement in the following incidents:

(a) The murders of Peter and Jane McKearney at Moy in October 1975;

(b) The placing of a car bomb outside O'Neill's bar, Dungannon on 16 August 1973;

(c) The placing of a car bomb at Quinn's public house, Dungannon, on 12 November 1973."

[8] Between 2007 and 2008, families of the victims of the Hillcrest Bombing were provided with Review Summary Reports ("RSR") into the bombing and RUC investigation, which were prepared by the Historical Enquiries Team of the PSNI ("HET"). The HET was a branch of the PSNI, under the ultimate direction and control of the Chief Constable tasked with reviewing all Troubles related deaths in Northern Ireland. The background to the HET and the circumstances leading to its winding down are set out in detail in the judgment of the High Court in *Re Barnard* (at [10]-[40]). At various points within the Hillcrest RSR reports, the HET stated that there was no evidence of security force collusion in the Hillcrest bombing, but that this issue would be considered as part of subsequent analytical reviews. The reports also stated that the HET would continue to review the connections, if any, between the Hillcrest bombing and other terrorist atrocities which occurred in the mid-Ulster area during the mid-1970s which were collectively referred to as the "Glenanne Series." The HET reports highlighted the possibility that the Hillcrest attack was connected to other cases on account of links such as the involvement of Busby. Treacy J recorded a number of commitments within the RSR reports regarding future work and reports in relation to the "Glenanne Series." At paras [54] and [56], he recorded the following commitments from the HET:

> "[54] … The HET is conducting on-going analysis into the 'Murder Triangle' and 'Glenanne Gang' related incidents. The HET findings and conclusions regarding the 'Glenanne series' will be reported in an overall report to be published later.
> …
>
> [56] … as discussed in the report, the HET will continue to examine a series of murders and terrorist offences commonly called the 'Glenanne series.' The murder of Andrew will be considered as part of that series and the HET is examining the role of certain individuals and organisations in these events. You will be updated of any developments."

[9] In 2014, Mr Barnard's representatives wrote to both the Chief Constable and the HET, enquiring about the commitment to prepare a further overarching report relating to the Glenanne Series, the potential connection between cases and the issue of collusion. In June 2014, the Chief Constable informed Mr Barnard that the HET no longer proposed to prepare such a report. The reasons included the police view that it would divert HET resources and would not provide any evidential

opportunities which were not currently being considered ([2017] NIQB 82, at [69]). Mr Barnard challenged the decision on a number of grounds including common law investigative obligations, breach of a legitimate expectation and article 2 ECHR.

[10] In the course of those proceedings, PSNI disclosed that the HET had commenced, but not completed, work on an overarching report on the Glenanne Series.

[11] Treacy J found, *inter alia*, that there had been a breach of the state's article 2 investigative obligation due to a lack of independence on the part of the PSNI (at [202]). He also found that there had been an unjustified departure from a binding legitimate expectation to complete an overarching thematic report on the Glenanne Series (at [205]).

[12] On appeal, the Court of Appeal allowed the appeal on article 2 ECHR but upheld Treacy J on legitimate expectation. It concluded:

> "[74] We have found that the legitimate expectation generated was procedural. That will require a fresh approach by independent officers determining the appropriate response to the expectation generated. It is not the function of this court to direct how those independent officers should proceed. The Chief Constable's task is to appoint independent officers who should then determine how to respond to the expectation. We do not consider that this is an appropriate case for an Order of Mandamus since we can give very limited meaningful direction to the independent team so appointed. If, however, the Chief Constable unduly delays in appointing independent officers he would be at risk of further proceedings challenging such a failure."

[13] On 5 July 2019, the Court of Appeal made a declaration in the following terms:

> "THE COURT DECLARES that the impugned decision breached Mr Barnard's legitimate expectation that independent police officers would analyse the Historical Enquiries Team's Analytical Database to assess whether the analysis pointed to wider collusion between terrorists and the security forces in the Glenanne Series than that identified in the examination of the individual cases."

[14] Around this time, two other cases before the Court of Appeal raised the issues of PSNI independence to conduct reviews and investigations in Troubles related cases and also the temporal application of article 2 ECHR investigative obligations

under the Human Rights Act 1998 (*Re McQuillan* [2019] NICA 13 and *Re McGuigan* [2019] NICA 46). Both of those cases were appealed to the Supreme Court, with a conjoined judgment handed down on 15 December 2021 (*Re McGuigan* [2021] UKSC 55; [2022] NI 34). The Chief Constable PSNI elected not to appeal the Court of Appeal's decision in *Re Barnard*. On 15 February 2020, the Chief Constable published Terms of Reference for an independent review of the Glenanne Series, further to the decision of the Court of Appeal. An application by Mr Barnard for permission to appeal to the Supreme Court was refused on 17 December 2020.

[15] Since its establishment, the Barnard Review has been known colloquially as Operation Denton. The legal basis for its establishment and its Terms of Reference are examined in more detail below. At that time, independent officers were already conducting a major criminal investigation arising out of the activities of an agent known as Stakeknife. That investigation was known as Operation Kenova and the same team of officers agreed to undertake the Barnard Review in addition to its existing work.

[16] Two events appear to have been the catalyst for the present proceedings. First, a family liaison meeting undertaken by the Operation Denton team with the Dublin/Monaghan families on 8 October 2025 and second, the publication of a summary of the Barnard Review findings as part of the final Operation Kenova report.

Operation Denton – Dublin/Monaghan Family Liaison Meeting – 8 October 2025

[17] At the outset of its work, the Operation Denton team analysed a large number of terrorist incidents for possible inclusion within the review. A total of 98 incidents were ultimately included (88 in Northern Ireland and 10 in the Republic of Ireland) which involved 127 murders. Among the selected incidents were the Dublin and Monaghan bombings which were perpetrated on 17 May 1974. These coordinated bombings represented the single largest loss of life arising from a terrorist attack on the island of Ireland during the Troubles. In the period leading up to the completion of its work, Operation Denton officers arranged a series of meetings with victims' families to provide an advance briefing on their progress. A meeting with the Dublin and Monaghan families took place in a Dublin hotel on 8 October 2025.

[18] The first applicant's affidavit evidence exhibited a document which purported to be a transcript of the family meeting. In its pre-action response, Operation Denton officers confirmed that the families who attended the meeting had not been provided with any written or other materials. The precise provenance of the first applicant's document was therefore unclear. He averred that the document was provided to him on 5 December 2025 by Mr Jamie Bryson who had been acting as his consultant. Mr Marchant averred that Mr Bryson had not disclosed to him the source from which he obtained the document for reasons of journalistic privilege. However, Mr Bryson had explained to him that he believed it to be an unofficial transcript, which had been prepared from an audio recording of the meeting and

which was subsequently circulated amongst various groups and persons. The respondents' evidence at this stage of proceedings is largely silent about events on 8 October 2025, other than to confirm that the family meeting took place. In particular, it was not contended by the respondent that the document was inaccurate or that it presented an unreliable account of the meeting on 8 October 2025. No contrary evidence regarding events at the meeting was filed by the respondent. I have therefore proceeded on the basis that the document contains a reliable account of events and the briefing given to the families on 8 October 2025.

[19] In light of the potentially contentious conclusions communicated to the families during the meeting and the fact that the court has granted anonymity to one applicant on the basis of those communications, it is not proposed to repeat in this judgment the contentious aspects of the briefing. However, the purported transcript contains a number of general comments about the work of Operation Denton and its methodologies which are relevant and explain the review process. They include the following comments which are attributed to one of the Review team:

> "Sir George Hamilton asked John Boucher [sic] to do it. John Boucher took it within the umbrella of Operation Kenova. John asked me to come in and lead the Operation Denton Review as part and parcel of the overall Kenova work. So that is when we started in 2020.
>
> Operation Denton is not a criminal investigation, it is not a criminal reinvestigation, it is distinct from all the other investigations that Kenova undertook and still to report on. So, what's the difference? The difference can be quite significant in terms of police powers, in terms of what we do, in terms of witnesses, in terms of forensics. However, the work we have adopted or the work we have done has gone way, way beyond what would be recognised as the conventional, thematic or review into a series of criminal offences.
>
> I would say we have gone further, we have gone wider, we have gone deeper in terms of seeking material, seeking information, seeking intelligence where the word is sensitive, where the word is top secret than any previous review that I have ever been part of, party to or aware of. So, basically, we are not an investigation, but we have adopted an investigative posture in terms of following where the information, the intelligence and the evidence has taken us to the point from where we have gathered evidence, we have recourse to dealing with the Chief Constable of the PSNI or the Commissioner of An

Garda to undertake criminal investigations and that has happened in the work that we do.

I will say here and now that there are some of the cases that we have looked at, that we have reviewed, that are currently subject to criminal investigation whether that is through the Police Ombudsman for NI, or whether that is through An Garda. So, we are obviously, we are restricted in some cases in terms of what we can report publicly, however, please, please be reassured that whatever restrictions are placed upon us in terms of details, then those restrictions will not dilute or restrict us in terms of what we say in terms of general findings. So that is the difference. …

We obviously looked at and reviewed and assessed all the previous work that has gone on, both from an investigation perspective and a review perspective, starting with PFC's Case to Answer through to Barron, Lethal Allies, publications, broadcasts, Garda investigations, PONI investigations, HET investigations. We established a team who, to use the expression, got into MI5, MI6, the military …

Hopefully, we may be able to answer the questions that you have asked. Some of our findings you may disagree with. Some of our findings you might think are incomplete. Some of the gaps in information and intelligence that have led to our final assessment you might raise your eyebrow at, scratch your head – you may do that.

We can only go on what we have seen and what we have found but please rest assured we have gone far, wide and deep to the point, quite frankly, we have had positive relationships with all the authorities, with all the agencies and all those departments that I have talked about, but there have been grown up conversations all the way to ensure that we are not going away and that they know we are not going away until we have got what they have got or what we think they have got and what we know they have got …

So, we looked at and considered 127 offences and we have formally reviewed 98 offences, 88 in NI and 10 in RoI – between predominantly 72 and 78 and one offence

> in 1980 in Belfast that sits outside of those timeframes, based on ballistic links to a firearm that was used in a shooting in NI. So, the report will talk around thematic findings and will talk about thematic findings around victims and families in the north and the Republic. …
>
> So, today is where you are going to receive, hopefully, the detail of what we have found out around Dublin and Monaghan. So, today we will share with you that detail and answer the questions and I have said before, you may not agree with some of our findings and there is the issue of some of the material not being there and this is based upon what we have gleaned and assessed. We have not got all of the answers, but we are confident and we want to assure you we have seen material that has previously not been viewed, has been viewed and not acted upon, or has not been reported on. I think it is important to just put it in context and the complexities frankly of the work undertaken and it has not been easy … but if we can write a report and we can come out at the end of it whether people agree or disagree with our findings …"

[20] After providing the families with an oral summary of the team's assessment of the events leading up to the bombings, including the pre-bombing intelligence, the following comment is attributed to the speaker:

> "… Iain [Livingstone] and Liam [O'Brien] have made the decision that it is quite right in the interests of the families that these people are named."

[21] The remainder of the document records the summary of the review process, the assessments made and the overall conclusions reached which was communicated to the families during the meeting. The document includes reference to the review team attributing certain acts to specific named individuals, by way of participation in the attacks. I do not propose to repeat those details in this judgment.

[22] In the weeks that followed the 8 October 2025 briefing, a prominent newspaper article was published in Northern Ireland which purported to summarise the outcome and conclusions of the Barnard Review, insofar as they related to the Dublin and Monaghan bombings. A copy was included in the first applicant's evidence. In order to reduce the risk of undermining the anonymity order, I have not referred to the date of the article or the newspaper. The article bears a clear similarity to the contents of the document submitted in these proceedings about the 8 October 2025 briefing and also purports to attribute specific acts of involvement in the bombings to specific individuals.

[23] The evidence of both applicants was that the newspaper article was the first indication that their relatives may feature in the conclusions or report of Operation Denton. The document which appears to have been prepared from an audio recording of the family meeting was not made available to them by Mr Bryson until December 2025.

Publication of Operation Kenova Final Report

[24] On 27 November 2025, Baroness Anderson, Parliamentary Under-Secretary of State for Northern Ireland, answered a question in the House of Lords from Baroness Hoey about whether Operation Denton officers had travelled to Dublin on 8 October and "*whether they briefed campaign groups on their findings and confidential material.*" Baroness Anderson responded by stating that it was her understanding the Operation Kenova and Operation Denton reports were "*nearing completion and will be passed to the PSNI soon. The PSNI will then consider the final details around publication of the reports*."

[25] Mr Marchant averred that on 2 December 2025 he "*became aware*" of an email sent by a representative of Operation Denton. The email was provided to him by Mr Jamie Bryson. Once again, it was not clear how Mr Bryson obtained the email, however its authenticity was not disputed by the respondent. The email states that the final Kenova report and the Operation Denton report had been submitted to the PSNI Chief Constable. In relation to Operation Denton, the email states:

> "The report on Operation Denton, which is an extensive review of the Glenanne Series, will not be published until sometime next year. You may have seen some recent press reports of legal challenges we and the PSNI have received, relating to the naming of certain individuals within the report. The PSNI will need time to assess these legal challenges and conduct relevant community impact assessments before publication. However, within the Kenova final report, I have included a summary of Operation Denton and its findings but have not named specific individuals due to the legal challenges mentioned above."

[26] The first applicant commenced these proceedings on 25 November 2025. On 8 December 2025, he moved an urgent interim relief application to restrain publication of the entirety of the Operation Kenova final report, which was scheduled for the following day. The basis of the application was a concern that the Operation Denton summary within the Operation Kenova report would contain some of the details about individual involvement in the Dublin and Monaghan bombings which appear to have been given to the families during the 8 October 2025 briefing. In a pre-action response, both PSNI and Operation Denton informed the first applicant that the Operation Denton summary to be included within the final

Operation Kenova report did not identify any individual or attribute responsibility for any specific terrorist act to any individual. In the light of that assurance, the application for interim relief was dismissed. The final Operation Kenova report, containing a summary of the Operation Denton findings was published on Tuesday 9 December 2025 and did not attribute responsibility to any individual for any of the 98 incidents considered in the review.

[27] On 16 December 2025, the second applicant commenced proceedings on grounds materially identical to those advanced by the first applicant. Anonymity was granted shortly thereafter.

Grounds of challenge and case management

[28] The grounds of challenge in each case may be summarised as follows:

(i) **Ultra vires**. It was contended that PSNI had no common law or statutory power to establish Operation Denton or conduct it in accordance with the Terms of Reference, including the publication of a report.

(ii) **Ultra vires.** It was contended that PSNI had no common law or statutory power to publish a report containing "adjudicative findings" regarding the conduct of individuals which may amount to a finding that they had committed criminal offences.

(iii) **Procedural unfairness/legitimate expectation**. It was contended that the applicants had a legitimate expectation or a common law right to prior notice and the opportunity to make representations in advance of publication of findings affecting their relatives (ie a "Maxwellisation process").

(iv) **Article 2 ECHR**. Publication of a report in the above form would give rise to a breach of a positive article 2 obligation to take reasonable operational measures to avoid risk to life to the applicants in accordance with *Osman v UK*.

(v) **Article 8 ECHR**. Publication of a report in the above form would be an unjustifiable interference with private and family life of the applicants.

[29] As appears from the above, Grounds (ii)-(v) are all dependent upon the final content of the Operation Denton report and the procedures followed by PSNI prior to publication. The respondent therefore contended that the entire judicial review was premature. Following case management hearings on 20 and 27 March 2026, it was accepted that the Ground 1 challenge to the *vires* of Operation Denton was different in character. The court was assured by both applicants that this ground was not dependent upon the content of the report but was a freestanding challenge to the power of police to establish and conduct the Barnard Review. This ground therefore proceeded as a rolled-up hearing, with the remaining grounds of challenge

adjourned for later determination. I also considered there was a strong public interest in determining, at the earliest possible opportunity, whether or not the Chief Constable of the PSNI had power to establish the Barnard Review, in accordance with its Terms of Reference. It was agreed by all parties that this required the court to answer the two issues set out at para [4] above.

Operation Denton: Terms of Reference

[30] On 15 February 2020, the Chief Constable of the PSNI published the Terms of Reference for the Barnard Review.

[31] Relevant extracts from the Terms of Reference are as follows:

> "**1.0 Background**
>
> 1.2 The Glenanne Series included a significant number of murders and other terrorist offences committed in both Northern Ireland and the Republic of Ireland during the Troubles between circa 1972 and 1978.
>
> 1.3 The cases within the Glenanne Series are connected by common features, such as individuals, weapons, areas or targets involved. In some of these cases, direct evidence has already demonstrated the collusion of police or security force personnel.
>
> 1.4 Various parties, including families, have significant concerns about the rigour and professionalism of previous investigations into these cases and have for many years sought a comprehensive, overarching, thematic analysis of the Glenanne Series and the extent of any state collusion. In the *Barnard* case, the Northern Ireland Court of Appeal held that those families have a legitimate expectation that an independent police team carry out and report upon such an analysis …
>
> …
>
> **2.0 Externally led independent review**
>
> 2.1 The Chief Constable of the PSNI of Northern Ireland ("PSNI") has asked for the assistance of former Chief Constable Jon Boutcher of Bedfordshire Police to lead and report upon an external and independent review of the above

matter pursuant to the *Barnard* judgment ("the Glenanne Series Review").

…

3.5 The review team: …

(iii) will operate under section 98(1) of the Police Act 1996 and will therefore have all the necessary powers and privileges of PSNI police officers to ensure that their review is effective and achieves its objectives;

3.6 The Review Team will undertake a comprehensive information collection process seeking information and the materials held by PSNI and from families, security forces and agencies and any other body, organisation or individual that may be able to assist. This information collection process will extend to witness accounts, documents, records, intelligence and forensics.

…

3.8 The Review Team will then conduct a detailed analysis of the information and materials collected as the basis for an open report satisfying the conditions set out in the *Barnard* judgment which will be published by the PSNI ("the Report").

3.9 Without prejudice to the above, the report will set out:

(i) A narrative of the review;

(ii) The origins, composition, activities and accomplices of the Glenanne Gang;

(iii) Findings on each case found to fall within the Glenanne Series, including the Hillcrest Bar attack;

(iv) Any deficiencies in any previous investigations into or official responses to each of those cases; and

(v) The extent of any state collusion.

3.10 The OIOC [Officer in Overall Charge] will retain full editorial control over and be solely responsible for the content of the report and PSNI will be responsible for its publication.

3.11 Subject to paragraph 8.3 below, the discovery of matters amounting to possible criminal misconduct which may be amenable to further criminal investigation will be brought to the attention of the Chief Constable of the PSNI by the OIOC.

…

8.3 The discovery of matters [falling outside the remit of the Glenanne Series Review] amounting to possible criminal conduct or professional misconduct by serving or retired police officers will be brought to the attention of PONI and the Chief Constable of PSNI by the OIOC."

Applicants' submissions

[32] When indicating their agreement to progressing the Ground 1 challenge separately, the applicants informed the court that its determination was not dependent upon the potential content of any future report arising from the Barnard Review. Notwithstanding this aspiration, some aspects of the applicants' submissions included issues which related to potential content. To the extent possible, issues of content have been excluded from the consideration of this ground.

[33] The applicants' key submission was that the Chief Constable of the PSNI had no common law or statutory power to conduct a "non-criminal investigation of historic events." The applicants relied upon section 32(1)(d) of the Police (Northern Ireland) Act 2000 ("the 2000 Act"), which provides that it is the duty of police officers to bring offenders to justice, where a crime had been committed. It was submitted that this precluded the use of police powers for "non-criminal" purposes and that the statutory provision "occupied the field" by superseding any contrary common law powers. The applicants contended that Operation Denton officers had adopted an "investigative posture." Hence, it was submitted that the entire review process consisted of an impermissible non-criminal investigation of historic events. The applicants accepted that police were entitled to undertake a "cold-case review" of historic crime but contended that this was only lawful if the objectives were for the purposes of deciding whether to re-open an investigation or to learn lessons from previous investigations. It was contended that in this case, the Barnard Review had adopted an "investigative posture" for a non-investigative purpose which was an improper policing purpose and contrary to the section 32(1)(d) duty to take measures to bring offenders to justice.

[34] The applicants also contended that there was no proper policing purpose in an investigation into deceased persons since, by definition, if such person had committed a criminal offence they could no longer be brought to justice. It was also submitted that it was not lawfully open to PSNI to investigate offences committed in the Republic of Ireland. Accordingly, it was submitted that, insofar as the Barnard Review considered such offences, including the Dublin and Monaghan bombings, it was *ultra vires*.

[35] The applicants also questioned the legal basis upon which the Barnard Review had been established, but their submissions on this issue did not ultimately add to their key submissions on *vires*. It was contended that the judgment of the Court of Appeal in *Re Barnard* which identified a legitimate expectation to the completion of a thematic review of the "Glenanne Series" could not provide a jurisdictional basis for the review itself. Similarly, it was argued that obligations under article 2 ECHR could not provide a legal basis for the Review since the relevant incidents fell outside the temporal scope of article 2 obligations under the Human Rights Act 1998 ("the HRA") (*Re McGuigan* [2021] UKSC 5).

[36] Finally, it was contended by the applicants that even if PSNI had power to undertake the Barnard Review, it had no power under statute or at common law, to publish a report of its findings. The applicants highlighted a number of statutory provisions containing express powers to produce a report. They submitted that where the legislature intended to confer a power to report findings, it did so expressly. Examples of such express powers were:

(i) Sections 58 and 59 2000 Act (Annual Report and Commissioned Reports by Chief Constable to Policing Board);

(ii) Section 60 of the 2000 Act (Inquiry Reports by Policing Board, following report by the Chief Constable);

(iii) Section 61 of the 2000 Act (Reports by Chief Constable to Secretary of State or Minister of Justice);

(iv) Section 2(5) of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Power of ICRIR to produce final reports on the findings of each review of deaths or harmful conduct); and

(v) Sections 15-17 of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (Regulating preparation and publication of reports by ICRIR).

[37] In further support of this submission, the applicants also drew a contrast between police powers and the powers of Police Ombudsman investigators. Pursuant to section 56(3) of the Police (Northern Ireland) Act 1998, Police Ombudsman investigators had all the powers and privileges of a constable throughout Northern Ireland. Notwithstanding the conferral of common law

powers upon investigators, the applicants highlighted the fact that express powers were imposed upon investigators to prepare a report at the conclusion of a formal investigation (section 56(6) of the 1998 Act) and upon the Ombudsman to publish statements in relation to his actions and decisions (section 62 of the 1998 Act). The applicants contended that no such express reporting powers ought to have been necessary, if they were available to a constable at common law.

[38] Finally, the applicants submitted that if the Chief Constable did have the power to establish and conduct the Barnard Review, any attempt to reach "adjudicative findings" which attributed criminal conduct to individuals would be unlawful on the basis it would breach the fair trial rights of any suspect later prosecuted. The applicants accepted that this submission was ultimately dependent upon the future content of any review report and the extent to which it may purport to include "adjudicative findings" of criminal conduct by specific individuals. They also accepted that, since their family members were now deceased, they could never be put on trial. Accordingly, the point did not apply to their particular circumstances and was not pursued with any vigour in oral submissions.

Respondents' submissions

[39] The respondents' core submission was that the establishment and conduct of the Barnard Review fell within the common law powers of a police constable. It was submitted that the Chief Constable of the PSNI is an attested constable. At common law, he therefore enjoys all of the powers and privileges of a police constable, subject to and in addition to, any express statutory powers and functions. It was submitted that the duties of a PSNI constable set out in section 32 of the 2000 Act, are a recognition or affirmation of the common law duties of a constable. It identifies the broad purposes and objectives for which policing powers should be exercised. It was submitted that section 32 therefore complemented and affirmed the position which has always existed at common law but did not have the effect of converting the office of a constable into a statutory one. Accordingly, the respondent contended that the office of Chief Constable, while recognised by statute, was not a statutory office, nor was it a statutory body whose powers and functions were both defined and confined by statute. It was submitted that the establishment and conduct of the Barnard Review was a lawful exercise of the powers of a constable which pursued proper and lawful policing purposes. It was not a re-investigation of criminal offences, rather it was a review of the investigation of those offences, which built upon the previous review work undertaken by the HET. It was a bespoke review exercise insofar as it focused upon thematic connections between all of the incidents in the Glenanne Series and pursued the specific objectives set out in the Terms of Reference which, in turn, had been devised in response to the judgment in *Re Barnard*.

[40] The respondent contended that the conduct of investigative reviews was a well-established and nationally recognised part of policing functions. Within Northern Ireland, reviews in Troubles related cases had been conducted for many

years by the HET and subsequently by the PSNI's Legacy Investigation Branch. However, the purpose and conduct of investigative reviews was recognised nationally by the National Police Chiefs' Council in both the 2006 Murder Investigation Manual and the 2021 Major Crime Investigation Manual. These publications developed and defined national standards for different types of review process including murder cases and cold-case reviews. Accordingly, it was submitted that this review was simply an example of a well-established and recognised form of police work, which pursed legitimate policing purposes.

[41] It was submitted that the mere fact the Barnard Review was described as a "thematic" review in the sense that it consisted of the parallel consideration of multiple potentially linked cases which had themselves been the subject of previous individual investigations and individual reviews, may be unusual, but it was not impermissible. It was submitted that this feature of the review was simply a reflection of the unusual circumstances in which it was established and the fact that reviewing connections between these incidents may provide greater insight into, or investigative leads, for individual cases. Notwithstanding those bespoke features, it was submitted that the process pursued legitimate policing purposes and fell within the common law powers of a constable. It was submitted that the preparation and publication of a report explaining the work and conclusions of the review was also a normal and appropriate part of a review exercise which pursued legitimate policing purposes and was not *ultra vires*. In this particular case, it also furthered the policing purpose of securing public confidence in police by demonstrating in a transparent fashion the work which had been undertaken and the basis for its conclusions. Accordingly, it was submitted that no express statutory power was necessary to publish a report of this nature and that the relevant legal constraints upon publication of a report were other laws such as defamation, privacy, fair trial, contempt and the HRA. It was submitted that until such time as the content of the report was known, there was no reason to impugn the work of the Barnard Review, based upon apprehensions over possible future content. It was submitted that, even if some officers might have exceeded the Terms of Reference during the 8 October 2025 briefing, those acts did not impugn the power of the Chief Constable to establish or conduct a review of this nature, including the publication of a report.

[42] The respondent also contended that this ground of challenge was out of time. Since the Terms of Reference for the Barnard Review were published in March 2020, it was contended that a challenge to the *vires* of the review process should have been commenced many years ago.

Barnard Review: Establishment and Terms of Reference

[43] There are two aspects about the legal basis for the establishment of the Barnard Review which should be clarified at the outset.

[44] First, the judgment of the Court of Appeal in *Re Barnard* [2019] NICA 38 provides the context but does <u>not</u> provide the legal basis for the Barnard Review.

The Court of Appeal held, on account of commitments and promises made to family members, the PSNI had a legal obligation to undertake a "thematic review" of cases considered to fall within the "Glenanne Series" and which may properly be considered for connections or linkages. While the Court of Appeal recognised some uncertainty about the scope or parameters of the exercise to be undertaken, it found that the core promise was sufficiently clear and unambiguous to be enforceable, in the absence of lawful justification. While the Court of Appeal identified the core features of the promise, it expressly held that it was for the relevant officers to develop parameters and methodology which may give effect to it. The Court of Appeal simply declared this obligation to exist but did not make a mandatory order. In consequence, the effect of the Court of Appeal judgment was to recognise and to declare the existence of unfulfilled legal obligations upon the police but did not confer new powers upon the police. The discharge of the obligation therefore depended upon the existence and scope of pre-existing policing powers. Of course, the order of the Court of Appeal appears to be premised upon an understanding that police *would* have sufficient powers to undertake some form of review exercise which matched the promises made to families. If police did not have such powers, the expectation engendered is unlikely to have been found to be a legitimate one. However, that point appears to have been assumed by all parties and all Courts throughout the *Re Barnard* litigation and was never fully argued. It now falls to be decided. The issue for this court is not whether police may undertake "some form of review exercise", but whether it can undertake the exercise described in the Terms of Reference.

[45] Second, the legal basis for Operation Denton is different from Operation Kenova. Between January 2009 and October 2015, two successive Directors of Public Prosecutions in Northern Ireland ("DPP") made four separate requests to the Chief Constable PSNI pursuant to section 35(5) of the Justice (Northern Ireland) Act 2002 to investigate matters of potential misconduct by state officials and agents, including the activities of a military agent known as "Stakeknife." Section 35(5) requires the Chief Constable of the PSNI to ascertain and to give the Director *"information about any matter appearing to the Director <u>to need investigation</u> on the ground that it may involve an offence committed against the law of Northern Ireland."* The four section 35(5) requests therefore resulted in a formal criminal investigation, which was conducted under the umbrella name Operation Kenova. In 2016, the Chief Constable of the PSNI asked for assistance from external police officers to lead the Operation Kenova investigation and appointed Jon Boutcher, then Chief Constable of Bedfordshire Police. Operation Kenova was therefore a formal criminal investigation involving use of coercive police powers, conducted following a statutory request by the DPP and was performed by external police officers appointed under the mutual aid provisions of section 98(1) of the Police Act 1996. Pursuant to section 98(5) of the 1996 Act, all mutual assistance officers act under the direction and control of the Chief Constable of the PSNI and have *"… the like powers and privileges as a member of that other force has in that place as a constable*."

[46] At the time of establishment of the Barnard Review, Operation Kenova officers were therefore already conducting a major criminal investigation in Northern Ireland with all of the powers of a constable of the PSNI and under the direction and control of the Chief Constable of the PSNI. It was in this context that the Chief Constable of the PSNI requested Operation Kenova officers to conduct the Barnard Review, in accordance with Terms of Reference published on 15 March 2020. Unlike Operation Kenova, the Barnard Review was not requested by the DPP under formal statutory powers. Its establishment by the Chief Constable and its conduct by mutual assistance officers were founded upon pre-existing policing powers of the Chief Constable of the PSNI, whether under common law and/or statute. The issue for this court is whether those powers were sufficient to conduct the review in accordance with the Terms of Reference, including publication of a report.

Delay

[47] Order 53, rule 4 of the Rules of the Court of Judicature (Northern Ireland 1980 requires that an application for judicial review should be made within three months of the date when the grounds for the application first arose, unless there is good reason to extend time. Where an applicant seeks an extension of time, it is necessary to explain, in evidence, the reasons for each period of delay. The principles governing extension of time applications were considered by the Court of Appeal in *Re Allister* [2022] NICA [48]–[56]. Ultimately, the test for the court involves consideration of whether there are good reasons for the delay and whether the applicant has demonstrated a reasonable objective excuse. The court will look for the possibility of substantial hardship to either party, any prejudice to their rights, any potential detriment to good administration and any public interests. All relevant factors will be considered holistically, rather than mechanistically or sequentially, with the court forming an overall judgment in the interests of justice which reflects the circumstances of the case. It is of note that the test under Order 53, rule 4 requires focus upon the date when grounds for the application "*first arose*." Where, as here, the alleged wrongdoing is continuing in nature, the test differs from some other statutory limitation periods in which the focus is upon the end of the continuing period. The limitation period prescribed by section 7(5)(a) of the HRA is such an example (see *O'Connor v Bar Standards Board* [2017] UKSC 78). Nevertheless, the fact that an alleged public law wrong is ongoing and continuing will generally be a material factor which the court is entitled to consider when deciding whether there is good reason to extend time.

[48] In this case, I do not consider that it can seriously be disputed that the grounds for challenging the power of the Chief Constable to establish the Barnard Review and for publishing a report of its findings first arose when the Terms of Reference were published on 15 March 2020. The publication ought to have informed any person concerned about the Chief Constable's powers about the fact of the decision and also sufficient information about the legal basis for the decision to bring a challenge of the type now before the Court. The question is therefore

whether there is a good reason for the delay in challenge. I consider that there are several relevant factors. First, the extent of the delay is in excess of five years and is very considerable. Second, the alleged wrongdoing has been continuous insofar as the Review has been in operation since it was first established. This factor cuts both ways for the applicants. On the one hand, the damage to public administration is potentially very significant by permitting a challenge to proceed after such significant time has passed and huge resources have been expended in conducting the review. On the other hand, if the Chief Constable lacked the relevant powers, the legal error has become embedded and compounded by time, rather than absolved. Allowing it to continue in the absence of an adequate legal foundation may be damaging to the public interest and undermine any conclusions. Third, the applicants' explanation for the delay appears to be that they only became aware of the possibility that the Review may engage their personal interests in late 2025 and that they acted very promptly once this became clear. Fourth, this challenge raises additional grounds about the content of the report, which, at best, only arose once the applicants had notice of the potential content. Indeed, the respondents continue to maintain that those grounds are premature, pending publication. Fifth, there are considerations of public interest. Even if the *vires* challenge is late, the mere fact that it has been brought casts a shadow over the entire process and could serve to undermine confidence in the ultimate content of the report if the challenge was rejected on grounds of delay. There are an enormous number of families who campaigned long and hard for this exercise to be undertaken. The Court of Appeal declared that the PSNI had an obligation to undertake an exercise of this nature. There is therefore a very significant public interest in the question of whether the Barnard Review is within or beyond the scope of the Chief Constable's powers. In the *Re Allister* case, the Court of Appeal considered that the public interest in clarifying the legal status of the Windsor Framework was decisive in determining whether there was a good reason for extending time.

[49] Taking account of all of these factors and viewing them holistically, I consider that there are sufficiently strong reasons for extending time for the Ground 1 challenge and I do so, until the date of commencement of proceedings. In doing so, I give particular weight to the public interest in providing clarity about the Chief Constable's powers.

Question 1: Power of Chief Constable PSNI to establish and conduct Operation Denton

[50] The central plank of the applicants' submission is that the office of Chief Constable of the PSNI is a statutory office, whose powers and functions are both defined and constrained by statutory provision. Accordingly, the applicants submit that he has no power to commission a "non-criminal investigation" since the general function of all constables under section 32(1)(d) of the 2000 Act has a criminal focus, namely bringing offenders to justice. This issue is therefore central to the scope of the Chief Constable's powers. Resolution of that issue requires consideration of the

historical development of the office of Chief Constable of the PSNI and of the statutory regulation of police forces generally.

The Office of a Constable and Chief Constable

[51] The primary statutory provisions governing the structure and operation of the Police Service of Northern Ireland are found in the Police (Northern Ireland) Act 2000. Section 1 of the 2000 Act provides that the body of constables previously known as the Royal Ulster Constabulary should be renamed and styled for operational purposes as the "Police Service of Northern Ireland." The term "police" is defined in section 77(1) to mean the PSNI and PSNI Reserve. In support of their primary submission that the office of Chief Constable is statutory, the applicants relied upon the recognition of the office in section 33(1) of the 2000 Act. It provides:

> "(1) The police shall be under the direction and control of the Chief Constable."

[52] The applicants also traced the statutory recognition of a Chief Officer of the police force in Northern Ireland through a consecutive series of historic policing statutes which provided for the force to be under the direction and control of a Chief Constable or Inspector General. These included section 6(2) of the Police (Northern Ireland) Act 1970; regulation 3 of the Royal Ulster Constabulary (Ranks) Regulations 1970; section 7(1)(e) of the Constabulary Act (Northern Ireland) 1922; section 3 of the Constabulary (Ireland) Act 1836 and section 1 of the Constabulary Act 1822.

[53] All of these statutes provide important context for the 2000 Act. All provide for the attestation and appointment of constables as part of police constabularies or forces in Ireland. All are consistent with the historic development of the office of a police constable, namely an individual officer of the Crown, with powers, functions and responsibilities which were developed under the common law. The statutes mark developments in the organisation of modern constabularies through their organisation into forces consisting of groups or bodies of constables, acting under the direction and control of a senior officer and organised through principles of rank and discipline. An early example is section 5 of the 1822 Act which prescribes the statutory oath to be taken by every Chief Constable or other constable appointed and thereafter provides:

> "V. … and every such Chief Constable and other constable, having taken and subscribed the said oath, shall be to all intents and purposes a constable in and for the county in which such Chief Constable or other constable shall be appointed until dismissed from his office by a competent authority and every such Chief Constable and other constable shall have all such powers, authorities, privileges and advantages as any constable

> duly appointed now has or can or may have by any law or laws enforced in Ireland."

[54] The office of police constable was recognised and continued under the Constabulary (Ireland) Act 1836, which provided for the establishment of the Royal Irish Constabulary as a police force for Ireland under the direction and superintendence of an Inspector General of Police (in addition to the Dublin Metropolitan Police, between 1836 – 1922). A similar statutory format was followed by the Constabulary Act (Northern Ireland) 1922 which established a new force known as the Royal Ulster Constabulary. Pursuant to section 1(4) of the 1922 Act, the powers and duties of any officer or constable of the Royal Irish Constabulary were continued and had effect in Northern Ireland as being exercisable by or imposed upon any officer or constable of the Royal Ulster Constabulary.

[55] The existence and legal status of the office of a constable of the Royal Ulster Constabulary has continued since that time. Upon enactment of the 2000 Act, the force was renamed the Police Service of Northern Ireland. While the 2000 Act and the 1998 Act imposed additional statutory obligations and powers upon constables, as part of wider reforms of the police force, the force remained unchanged as a collective body of individuals holding the office of a constable under the direction and control of the Chief Constable. Officers are also ranked in terms of seniority in accordance with the Royal Ulster Constabulary (Ranks) Regulations 1970. They are also obliged to obey the lawful orders or directions of superior officers (regulation 20, Police Service of Northern Ireland Regulations 2005 and PSNI Code of Ethics, Para 1.5). The legal status of the force and the continuation of the office of constables is made expressly clear from the opening provision of the 2000 Act. Section 1(1) provides:

> "1(1) The body of constables known as the Royal Ulster Constabulary shall continue in being as the Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)."

[56] Section 32(2) of the 2000 Act also continues to recognise expressly the existing nature, powers and functions of the office of a constable. It provides:

> "32(2) A police officer shall have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom waters."

[57] As a member of the PSNI, with power of direction and control over other constables, the Chief Constable is himself a constable and therefore has the same powers and privileges which are attendant upon that office and recognised by law. His status as a constable is again expressly clear from section 38 of the 2000 Act which provides that:

> "38(1) Every police officer shall, on appointment, be attested as a constable by making before a justice of the peace a declaration in the following form …" [emphasis added].

[58] The attestation includes a requirement to:

> "… truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality ..."

[59] The result of all of the above analysis is that for over two centuries, the establishment and recognition of police forces in Ireland have been provided for in statute. In all of those cases, the relevant legislation has done so by defining the force as a body of independent constables, as recognised under common law, who are subject to the direction and control of one or more chief officers. Accordingly, rather than alter that historic structure of police forces in Ireland or the force established in 1922 as the Royal Ulster Constabulary, the 2000 Act maintains it, under its new name.

[60] The long line of statutes in Ireland which recognise police forces comprised of individual constables under the superintendence of a chief officer, follow a similar statutory formula to that in England & Wales. An important recent example is the Police Act 1996 which provides for the establishment of police areas and police forces for those areas (sections 1 and 2, 1996 Act). Forces in England and Wales are also comprised of individual attested police constables who have "*all the powers and privileges of a constable*" (sections 29 and 30, 1996 Act).

[61] The legal effect of statutes creating police forces comprised of individual constables is explained in *Halsbury's Laws of England* (Vol 84, 2026) in the following terms:

> "2. Various enactments were passed in the 19th and 20th centuries providing for the establishment of police forces comprising constables appointed in the manner laid down in the relevant enactment and the organised police force was thus superimposed on the office of constable. Powers were not conferred on members of police forces as such, but a member of a police force maintained for a police area and every special constable appointed for a police area is, on appointment, attested as a constable by making a declaration and a member of a police force now has all the powers and privileges of a constable throughout England & Wales and the adjacent United Kingdom waters and not merely within their own

area. The authority of a member of a police force arises directly from their attestation and their status is derived from that of a common law constable.

4. A member of a police force, of whatever rank, when carrying out their duties as a constable, acts as an officer of the Crown and a public servant. Their powers, whether conferred by common law or statute, are exercised by them by virtue of their office and unless they are acting in execution of a warrant lawfully issued, can only be exercised on their own responsibility."

[62] In light of these well-established principles, together with the clear and consistent line of statutes in Ireland and Great Britain which provide for the establishment and regulation of police forces by reference to the historic common law office of a police constable, I consider that an attested constable of the Police Service of Northern Ireland is the holder of the common law office of a constable, rather than the holder of a statutory office. Attested constables are servants of the Crown with the rights, privileges and powers recognised at common law as attendant to the office and they exercise their functions in an individual capacity rather than as an employee or on behalf of a statutory body. Like any product of the common law, the exercise of the powers of a constable is subject to statutory provision. Many supplementary statutory powers, duties and constraints have been enacted. Obvious examples are the intrusive statutory investigative powers of a constable such as conducting searches or taking of samples which would be unlawful in the absence of statutory authority. The legal effect of such statutory provisions is to supplement the functions, duties and powers of a constable, but not to transform the office of constable into a statutory office.

[63] I consider that the same principles apply to the office of Chief Constable of the PSNI. He is an individual attested constable of the PSNI, with all the powers, duties and privileges attendant upon that office which are recognised by law, but whose rank within the police force is separately recognised in statute. His position as the head of the force is established by means of his statutory power of direction and control over all other members of the force pursuant to section 33(1) of the 2000 Act. That provision, along with the Royal Ulster Constabulary (Ranks) Regulations 1970, Regulation 20 of the Police Service of Northern Ireland Regulation 2005 and the PSNI Code of Ethics (paragraph 1.5) provide the legal basis for the organisation of the police force as a hierarchy of officers for the purposes of command and control. The office of Chief Constable is therefore clearly recognised by statute and is more highly regulated than many other constables and carried separate express duties, powers and functions. However, properly construed, and contrary to the applicants' submissions, section 33(1) of the 2000 Act operates to confer the power of direction and control over the force, rather than to transform the office of Chief Constable into a statutory office.

[64] In order to determine whether the Chief Constable of the PSNI had a statutory or common law power to establish the Barnard Review and to conduct it in accordance with its Terms of Reference, it is necessary to examine the statutory and common law powers of the Chief Constable, as an attested constable.

Common Law and Statutory Powers of a Constable

[65] As explained above, the office of constable of the PSNI traces back to the formation of the Royal Ulster Constabulary in 1922. However, the common law office of a constable within an organised police force has been continuously recognised by statute in Ireland for over two centuries. While the office is recognised by statute, its origins and the powers and functions attendant upon it have been developed at common law. The multiple statutory reforms and initiatives during that time have refined the specific duties of constables and their available powers, but I do not consider that they have changed the nature of the office. The core common law duties, functions and powers of a constable remain, subject to statutory modification. The source, nature and breadth of the common law powers of a constable are clear from an analysis of the authorities and have been recognised at the highest judicial level.

[66] In *Glasbrook Bros v Glamorgan County Council* [1925] AC 270, the House of Lords was considering the legality of a request by police for payment to supply officers to protect a colliery during the course of an industrial dispute. The duties of constables at common law were described in the following terms:

> "… no doubt there is an absolute and unconditional obligation binding on the police authorities to take all steps which appear to them to be necessary for keeping the peace, for preventing crime or for protecting property from criminal injury; and the public, who pay for this protection through their rates and taxes, cannot lawfully be called upon to make a further payment for that which is their right …" (per Viscount Cave LC, at p277)

[67] In *Rice v Connolly* [1966] 2 QB 414, the Divisional Court considered an appeal against conviction for the wilful obstruction of a constable in the execution of his duty. The appellant was convicted for refusing to answer police questions or to accompany officers to the station, unless arrested. The issue concerned the scope of a constable's duties. The court allowed the appeal. It held:

> "… it is also, in my judgment, clear that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace, for preventing crime or for protecting property from criminal injury. There is no exhaustive definition of

> the powers and obligations of the police, but they are at least those, and they would further include the duty to detect a crime and to bring an offender to justice." (per Lord Parker CJ, at p417)

[68] In *R v Oxford, ex p Levy* (The Times, 1 November 1986), the Court of Appeal was concerned with, *inter alia*, the legality of a police policy which treated an area of London as a "no go" area for police. In furtherance of the policy, a senior officer instructed a constable to cease the pursuit of a suspected getaway car which entered the area following a suspected robbery. Lord Donaldson MR stated:

> "There is no doubt that any duty of the Chief or other constables is to keep the peace and enforce the law. Nor, is there any doubt about the jurisdiction and readiness of courts to intervene by mandatory, prohibitory or declaratory orders, if it is established that they are failing in their duty. Indeed, such a failure can constitute a criminal offence (*R v Dytham* [1979] QB 722). However, Chief Constables have the widest possible discretion in their choice of the methods whereby they will discharge this duty (*R v Commissioner of Police for the Metropolis, ex p Blackburn* [1968] 2 QB 118). Any police officer who finds that his chosen policing methods are ineffective will be under duty to re-examine them and consider whether any and, if so, what alteration is required, but one incident or even several would not necessarily be a sound basis for such a re-examination or, a fortiori, a change. The fact has to be faced that some areas are far more difficult to police than others … Accordingly, I, like the Divisional Court, can find no evidence of any failure by the Chief Constable to discharge his duty and, in my judgment, it is not for the courts to review his choice of methods, providing that he does not exceed the limits of his discretion which, in my judgment, is the position in this case …"

[69] These authorities were reviewed and considered by the Supreme Court in *Michael v Chief Constable South Wales Police* [2015] UKSC 2; [2015] 2 WLR 343. The court distinguished the broad common law powers and duties of police which are owed to the public at large, from the private law duties which are owed to individuals. The court described the public duty as follows:

> "33. The duty is one which any member of the public affected by a threat of breach of the peace, whether by violence to the person or violence to property, is entitled to call on the police to perform. In short, it is a duty owed

> to the public at large for the prevention of violence and disorder." (per Lord Toulson).

[70] The common law source of policing powers to maintain order and to prevent and detect crime was also expressly recognised by the Supreme Court in *R(Catt) v Association of Chief Police Officers of England & Wales* [2015] UKSC 9; [2015] 2 WLR 664, (per Lord Sumption). The court held that the common law powers of police included a power to obtain and store information for policing purposes, notwithstanding the absence of express statutory provision. However, the exercise of those powers was subject to statutory regulation in the form of the Data Protection Act 1998 together with other relevant guidelines. The decision therefore provides an important recognition of the nature of the parallel relationship between police common law powers and statutory provisions. This interaction was also considered by the Supreme Court in *DB v Chief Constable PSNI* [2017] UKSC 7; [2017] NI 301, in the context of section 32, 2000 Act. Lord Kerr recognised the common law origins of policing powers and duties and held that they were "*confirmed*" (as opposed to "conferred", "superseded" or "replaced") by section 32 of the 2000 Act. He stated:

> "10. Under the general law, the police have a duty to prevent the commission of offences. That fundamental duty of the police, inherent at common law, is expressly confirmed by section 32 of the 2000 Act ..."

[71] There are a number of recent examples of judicial recognition of the common law source of policing powers and their continued existence, in parallel with but subject to statutory provision. In *R(Centre for Advice on Individual Rights in Europe) v Home Secretary* [2018] EWCA Civ 2837, the court was concerned with the legality and capacity of police officers to question certain immigrants and to pass the information to the Home Secretary for immigration purposes. The court found that the activity pursued a legitimate policing purpose and did not constitute intrusive conduct which required express statutory authorisation. The Court of Appeal explained the source and nature of police powers as follows:

> "[39] On the first point, a police force is no more nor less than a number of police officers each of whom has the same powers and rights as an ordinary citizen, so they may, as a matter of vires, do anything that a natural person could do without the use of coercive powers, including asking questions that a member of the public could lawfully ask. It is true that police officers have particular duties and obligations and have powers additional to those of members of the public and specific to their office that authorise the police to do things that would otherwise be unlawful. However, in our judgment, these duties and powers do not constrain or restrict the powers and rights police officers have as ordinary citizens."

[72] In *R(Sex Matters) v National Police Chiefs' Council* [2026] EWHC 1954 (Admin), the High Court found that common law police powers included conducting a consensual strip search of a transgender person by an officer of the opposite biological gender, notwithstanding that the Police and Criminal Evidence Act 1984 provided expressly for strip searches conducted under coercion to be carried out by officers of the same gender.

[73] In this jurisdiction, in *Re Matthew Dowd* [2024] NIKB 30, Scoffield J recognised that police had a common law power to capture audio recordings of events in custody suites, notwithstanding narrower express audio capture powers pursuant to the Police and Criminal Evidence (NI) Order 1989. Referring to the broad powers of police to take steps which appear to them necessary for keeping the peace, preventing crime and protecting property, he stated:

> "[36] … That only goes so far, since the police can only take such steps as are lawful. However, the common law has long since recognised a variety of steps which may lawfully be taken by police officers in pursuit of those broad purposes."

For present purposes, the important point emerging from these authorities is that the existence of limited statutory police powers did not "occupy the field" or have the result of excluding the continued parallel existence of common law police powers which were not inconsistent with statute.

[74] A similar recognition of police common law powers and the effect of subsequent statutory regulation, is found in the decision of McAlinden J in *Holbeach v Chief Constable PSNI* [2023] NIKB 128 (subsequently approved by the Court of Appeal) at [2024] NICA 45, per McCloskey LJ at [12]). The case concerned the interaction between common law powers and the duties of PSNI officers under section 32 of the 2000 Act. McAlinden J stated:

> "Section 32 of the 2000 Act, replaced a similarly worded provision set out in section 18 of the Police (Northern Ireland) Act 1998 ... Prior to the 1998 Act, it appears that this function/duty was one founded in common law and recognised in statute: see section 1(4) of the Constabulary Act (Northern Ireland) 1922, section 11 of the Constabulary (Ireland) Act 1836 and section 5 of the Constabulary Act 1822 …"

[75] In recent years, the courts have recognised that the common law powers of police to prevent and detect crime, to preserve the peace and to bring offenders to justice were sufficiently broad to include a series of specific operational measures including, notwithstanding the absence of express statutory powers:

(i) The collection and study of intelligence materials about protest groups: *R(Catt) v Association of Chief Police Officers* [2015] UKSC 9;

(ii) Sending of "prevention of harassment letters": *R(Catt)*;

(iii) The collection and retention of details of "hate incidents": *R(Miller) v College of Policing* [2022] 1 WLR 4987;

(iv) Publication of photographs of persons suspected of engaging in crime and disorder: *Re JR38* [2015] UKSC 42;

(v) Publication of confidential information about individuals for crime prevention or public protection reasons: *R(AB) v Chief Constable North Wales* [1999] QB 396;

(vi) Public deployment of cameras with automated facial recognition technology capabilities: *R(Bridges) v Chief Constable South Wales* [2020] 1 WLR 5037; and

(vii) Capture and retention of audio within a police custody suite: *Re Dowd* [2024] NIKB 30.

[76] In light of all of the above authorities, I consider it to be clear beyond doubt that the common law office of constable, carries broad common law powers and duties to preserve the peace, to prevent and detect crime, to protect property and to bring offenders to justice. The choice of method and means by which to achieve these ends is a matter of discretion for police. Over at least the last two centuries, the office of constable has become increasingly more regulated by statute with the enactment of further restrictions, powers and duties. However, the essential status of the office as an independent officer of the Crown has not changed. In Northern Ireland, the current status of the PSNI is as a body of individual attested constables who act under the direction and control of a Chief Constable. The force was established as the Royal Ulster Constabulary pursuant to the Constabulary Act (Northern Ireland) 1922. It was renamed the Police Service of Northern Ireland and remains regulated by the 2000 Act. While the office of Chief Constable of the PSNI is more regulated than other constables and is subject to additional powers and duties, the office remains fundamentally that of an attested constable, with all of the powers, privileges, legal capacity and operational independence which are attendant upon the common law office of a constable. The office is therefore recognised, rather than established by statute.

[77] In light of this long-standing recognition in both case law and statute that the police force in Northern Ireland exercises its functions by means of common law powers and subject to supplementary statutory regulation, I do not accept the applicants' central submission that the enactment of section 32 of the 2000 Act had the legal effect of either converting the office of a PSNI constable into a statutory one or superseding the common law duties of a police officer with statutory ones which

now "occupy the field." Consistently with the decisions of the Supreme Court, the Northern Ireland Court of Appeal the Northern Ireland High Court and the Courts of England and Wales, as summarised above, I consider that the legal effect of section 32 of the 2000 Act is to confirm by statutory provision the duties of a constable which are already recognised in common law and also to identify the broad objectives and purposes for which policing powers should be exercised, subject to contrary statutory provision.

Common law and statutory powers to establish and conduct the Barnard Review

[78] In this case, the first issue under this ground of challenge is whether the Chief Constable had power, either at common law or under statute, to establish and conduct Operation Denton in accordance with its Terms of Reference. In their submissions, the respondents contended that, as the holder of a common law office, a police officer could do any act which was not unlawful. They relied heavily upon the decision in *Malone v Commissioner of Police of the Metropolis (No.2)* [1979] Ch 344, in which it was held that Chief Officers of police had common law powers to request the Minister to issue a warrant directing the Post Office to tap the telephones of citizens. At that time, such conduct was not expressly prohibited or regulated by statute. The respondent contended that *Malone* establishes the broad principle that "*England is not a country where everything is forbidden except what is expressly permitted; it is a country where everything is permitted except what is expressly forbidden*." Accordingly, it was submitted that a constable had a common law power to do anything which was not unlawful, unconstrained by the achievement of policing purposes. The respondent also drew analogy with the common law office of Secretary of State in which the powers of departments of central government were found to derive from the status of the Crown as a corporation sole which had the capacity and power to do any act which could be done by a natural person (see eg *R(New London College Ltd) v Home Secretary* [2013] UKSC 51; [2013] 1 WLR 2358, at [28]).

[79] For the reasons set out below, I do not consider it to be necessary to decide whether the common law powers of a constable are as broad as contended for by the respondents, as I consider that the establishment of the Barnard Review furthered clearly established, policing purposes. However, I consider it is appropriate to make two obiter observations about the respondents' submissions on this issue.

[80] First, if it had been necessary to decide the point, it is unlikely that I would have been persuaded that the decision in *Malone v Commissioner for the Metropolis* supports the broad legal principle that police can take any action which is not unlawful, unconstrained by policing purposes. On the facts of *Malone*, police requested a warrant to tap a telephone, *for policing purposes*, namely the detection of crime. At that time, telephone tapping was not unlawful, hence it was considered to be a legitimate operational measure which was available to police. On the facts of *Malone*, police did not therefore act for some unrelated or arbitrary purpose. If it had been necessary to decide the point, it is likely that I would have found that the

respondents' submissions elide the legal capacity of a constable with the scope of his/her powers. As a natural person, a constable has the legal capacity to undertake any action which is lawfully available to a person. This point was made expressly clear by the Court of Appeal in *R(Centre for Advice on Individual Rights in Europe) v Home Secretary* [2018] EWCA Civ 2837 ("*… First, as a matter of capacity, a police officer has the power to do anything an ordinary citizen can do, including non-coercive questioning of a person in custody; secondly, and in any event, the questioning is for a police purpose.*", at [38], per Arden LJ) However, there is nothing in the history of the office of a constable to suggest the performance of its duties are unconstrained by policing purposes. I consider the proposition advanced by the respondent is likely to involve a substantial expansion of the common law, which is not supported by either the *Malone* case, or the other authorities relied upon by the respondent.

[81] Second, I do not consider that the respondents' analogy between the office of constable and the office of Secretary of State is exact. While both are common law offices and while the holders of both will have the legal capacity to undertake any actions which may lawfully be carried out by a natural person or a corporation sole, the duties attendant upon the offices are different. The office of Secretary of State has a broad duty to act in furtherance of the common good, with similarly broad policy responsibilities and it has the legal capacity of the Crown as a corporation sole. By contrast, a constable may have the broad legal capacity of a natural person, but the scope of policing powers is narrower and is limited by the need to further recognised policing purposes rather than an officer's assessment of the common good.

[82] In light of the principles set out above, I consider that the establishment and conduct of the Barnard Review plainly furthers clear policing purposes and that it falls squarely within the well-recognised common law powers of a constable. The investigation, prevention and detection of crime are core and essential policing purposes which comprise one of the undisputed and long recognised functions of a constable. The manner in which police choose to achieve these objectives in any particular case is for police to decide and for which they have the broadest possible margin of discretion. The appalling murders and atrocities which have been accepted within the remit of the Barnard Review were all serious criminal offences. They have all previously been investigated by police with differing degrees of success and in many cases, with severe criticism of the adequacy and effectiveness of those criminal investigations. It is an inherent and essential feature of the power to investigate that police might renew investigation into unsolved crimes by undertaking a review. The timing, scope and purposes of any such review may legitimately differ from case to case depending upon the nature and circumstances of the underlying offences. These are issues within the scope of police discretion. For example, police may review cases for the purposes of learning lessons and improving how investigations might better be conducted in the future or to assess the need for preventative operational measures if there is considered to be an ongoing risk from a particular source. Police may choose to review cases for the purposes of identifying investigative opportunities which have previously been

missed, perhaps with a view to identifying or pursuing suspects, whether known or unknown. These are all entirely uncontroversial and obvious policing purposes which may be furthered by reviewing the facts and investigations associated with past criminal offences.

[83] The process followed by police when conducting a review will again be a matter for the operational decision making of the police, which will depend upon the circumstances of the cases and the specific policing objectives. For example, a review may simply be a paper-based analysis of existing records. However, there is nothing in the policing powers of a constable which requires that it must be so confined. It is of the essence of a review (and at the very least a legitimate policing objective), that the process might *add* to police knowledge of the case(s) by gathering or uncovering new information. A review is a process by which the benefits of greater experience, additional capabilities, new technology, fresh perspectives or knowledge from other cases may all be brought to bear in order to increase police knowledge of the case and to further the relevant policing objectives. Expanding the police knowledge of a case through a review invariably requires searching for and acquiring new information about the case from available sources and by using lawful methods. Acquiring new information or a new understanding of the relevant cases may permissibly (if not inevitably) involve undertaking fact-finding exercises such as speaking with witnesses, undertaking scientific analysis of exhibits or otherwise using police powers and capabilities to achieve the objectives of a review.

[84] In support of its submission that police have no power to conduct a "non-investigative review of historic offences", the applicants attempted to draw a distinction between a police "review" and an "investigation." However, they have not attempted to define the distinction by reference to police powers. It may be that a review process is unlikely to involve the exercise of coercive police powers such as an arrest, taking of samples, questioning under caution or the search of premises under warrant. However, the relevant issue is not the label, which is attached to the actions of police, but whether those actions fall within the lawful powers of police. In choosing the means of discharging their duties, police may draw the boundaries of any operational exercise as widely as they consider appropriate and may deploy such powers and tactics as are necessary, within the scope of lawful policing purposes and powers. Accordingly, there is no legal prohibition upon the lawful use of coercive police powers simply because they form part of a policing operation which has been labelled a "review." Similarly, a comprehensive and committed approach to information gathering, involving the lawful deployment of police resources and capabilities, does not cease to be lawful by describing the approach as an "investigative posture" rather than a "review" or an "investigation." In each case, the legality of the police actions does not turn upon the description given to the operation, but to whether the actions taken were lawfully available to a police constable and, if necessary, whether they pursued a policing purpose.

[85] In choosing the method of discharging their duties, police may also legitimately conduct their work on a phased basis. They may commence with a

process of information gathering and analysis which is labelled a "review", but which pursues the objective of identifying whether future operations are feasible and, if so, to determine whether and to what extent they should be pursued. A phased approach of this nature does not cease to amount to the lawful discharge of police duties or the pursuit of an impermissible policing purpose simply because it may be undertaken at a time when police do not have a target suspect in mind or even because one potential suspect may now be deceased – particularly if other possible suspects may remain alive.

[86] Stepping back and considering the work of the Barnard Review in light of these principles, I consider that the work described within the Terms of Reference and commissioned by the Chief Constable falls clearly and obviously within the scope of his powers. The review process has undertaken an information gathering process by securing access to and obtaining existing documentary records from many sources, including existing police and government records. It has done so as comprehensively as possible. The terms of reference require and the transcript of the family meeting appears to confirm that it has sought out new information about the crimes which may not have been obtained by the original RUC investigators. The terms of reference also require that it analyse all of the information about all of the crimes for the purposes of identifying connections. This is a clear example of the type of well-established, uncontroversial and obvious task which police officers could be expected to undertake in response to the commission of serious criminal offences. In light of the process described in the terms of reference, I do not consider that the use of the term "investigative posture" by a member of the review team during the family meeting reveals any impropriety or illegality on the part of police in conducting the review. It appears to me to reveal nothing other than a reflection of that individual's view about how comprehensive the information gathering exercise has been, falling short of the use of coercive police powers. Insofar as the applicants contend that it demonstrates the pursuit of improper policing purposes or the use of unlawful policing methods, I consider that the submission is entirely incorrect and is rejected.

[87] I consider that the Terms of Reference for the Barnard Review simply reveal that the Chief Constable has chosen a phased approach to the review of these cases. In many cases, individual reviews have already been conducted. The Barnard Review is a form of secondary review which focuses upon connections. However, behind that objective is the unmistakable policing purpose of the detection and investigation of crime. The Terms of Reference could not be clearer in this respect. Evidence of criminal offences which is identified during the review and which may be capable of further investigation must be referred to either the Police Ombudsman or the Chief Constable. The connection between the work of the Barnard Review and the core policing function of investigating and detecting crime is therefore both unmistakable and indisputable. I, therefore, reject the applicants' primary submission that the entire review process is unlawful because it amounts to a "non-criminal investigation." It is a phased review of investigations into criminal offences

which may or may not lead to further police operational measures and which is inextricably connected to proper policing purposes.

[88] I do not accept the applicants' submission that there is no legitimate policing purpose in investigating a deceased person. At the outset of any review or investigation process, it is simply not known whether any investigative leads may be identified and whether they may relate to persons who are deceased or alive. It is in the nature of a review or investigation that the evidence must first be gathered before a suspect might be identified or conclusions reached. In this case, the Barnard Review also involves 98 incidents. While it is clear that Mr Marchant Senior and the identified family member of JR347 are both deceased, the Dublin/Monaghan bombings are only one of multiple incidents which the Barnard Review is considering and may ultimately implicate other individuals who are alive. However, even if the review was focused only upon that one incident, I do not accept that the possibility a suspect is or may be deceased, deprives a review into the relevant offence of a lawful policing purpose. Police may legitimately review or investigate the full background and circumstances of the offences in order to determine whether any other perpetrators were involved or any other offences committed. Even if the lack of alternative possibilities becomes clear, a review or investigation into the circumstances may still serve the legitimate purposes of learning lessons or identifying possible policing failures which may have prevented the offences. Accordingly, the possibility that a review may identify a deceased suspect, does not deprive the process of a lawful policing purpose.

[89] I also reject the applicants' submission that the PSNI has no jurisdiction to investigate criminal offences which took place in Ireland and hence that it had no power to review those cases with a view to possible future investigation. First and foremost, like any other review or investigation, it is simply not possible to know at the outset of a review or investigation process where the evidence will lead and whether it may reveal the commission of criminal offences within the jurisdiction. Even if the outcome of the review indicated no offence within the jurisdiction, the information gathering process may still ultimately uncover facts and information which could prove to be of assistance to investigators outside the jurisdiction and which may lawfully be shared with them under international mutual assistance arrangements, which would plainly be a proper policing purpose. However, in any event, it is clear that a conspiracy within Northern Ireland to commit an offence outside the jurisdiction is an offence in Northern Ireland and has been for over a century. The current law is contained in article 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (inserted by the Criminal Justice (Terrorism and Conspiracy) Act 1998). However, since 1861 UK Courts, including courts in Northern Ireland, have had jurisdiction over domestic conspiracies to solicit or commit murders abroad (section 4 of the Offences Against the Person Act 1861) or for a murder committed abroad by a UK citizen (section 9 of the 1861 Act). Both of these provisions were in force at the time of the incidents considered by the Barnard Review including the Dublin and Monaghan Bombings. Accordingly, notwithstanding the fact that bombs were planted and exploded in Ireland, offences

of conspiracy to murder outside the jurisdiction may still have been committed and thus could be prosecuted in Northern Ireland. A review which may lead to evidence of such an offence is therefore plainly within the powers of a constable in Northern Ireland.

[90] In this case, the objectives and purposes of the Barnard Review were explained clearly in the affidavit of Assistant Chief Constable McNally. He described Operation Denton in the following terms:

> "26. It is important to stress that Operation Denton has not re-investigated any of these incidents. Rather, it has reviewed them all together for the purpose of identifying any connections and patterns in terms of the individuals responsible, investigative failings, opportunities which were missed by – or not available to, the original investigators and the issue of collusion. The parameters and basis of the work of Operation Denton are summarised at [29]-[39] of the final Kenova Report …"

[91] He also described the policing purposes of a review exercise in the following terms:

> "44. It is important to stress that in-house and external 'reviews' which fall short of criminal investigations as such but look into connected matters are part and parcel of contemporary policing. Police forces review and form a view on materials, first, in deciding whether to open or re-open formal investigations … and, secondly, in order to identify and learn lessons, enable improvements and build public confidence. Where appropriate, publishing information about the results of such reviews – whether in summary form or in detail is an important part of this process."

[92] Even if I was wrong in my conclusion that the Barnard Review pursued the policing purpose of preventing and detecting crime, I consider that it also fulfils an important additional lawful policing purpose, which is expressly recognised in statute. Pursuant to section 31A of the 2000 Act, constables of the PSNI are subject to an additional statutory duty concerning community relations. Section 31A of the 2000 Act provides as follows:

> "**31A Core policing principles**
>
> (1) Police officers … shall carry out their functions with the aim—

(a) of securing the support of the local community, and

(b) of acting in co-operation with the local community.

(2) In carrying out their functions, police officers … shall be guided by the code of ethics under section 52."

[93] The respondent contended that the objectives of the Barnard Review included the maintenance and promotion of public confidence in policing and hence that it furthered the express policing purpose recognised in section 31A of the 2000 Act. Prior to the enactment of this provision in 2003, the promotion of public confidence in policing may have been regarded as consequence of fulfilling the traditional policing duties, rather than a separate policing purpose. However, whatever the previous position may have been, since 2003, the existence of this duty is now clear. In this case, the catalyst for the Chief Constable establishing the Barnard Review was the outcome of the *Re Barnard* litigation, which attracted extensive public interest. The atrocious crimes which are now referred to as the "Glenanne Series" were not only horrific in their own terms, but they raised the additional spectre of security force or state collusion in some or all cases. Such circumstances clearly raise issues of acute public concern and I consider that it was plainly open to the Chief Constable to determine that further analysis of the existence, nature and extent of connections between all of these cases could contribute towards building public confidence and/or preventing damage to public confidence in policing. Even if the Barnard Review has a focus upon information gathering, analysis and identifying connections rather than an active police investigation, it is for the Chief Constable to assess whether and to what extent it may contribute to his section 31A duty. The Chief Constable's assessment of this issue is explained expressly in the affidavit of Assistant Chief Constable McNally in clear terms. He stated:

"48 Operation Denton is an important exercise in terms of transparency and public confidence in policing and is capable of leading to new investigations (whether by PSNI and/or PONI) and public reassurance around the work of police. Not carrying out this work would have the real potential to fuel further suspicions and theories about the so-called Glenanne Gang and state collusion.

49 PSNI also considers there is a strong public interest in demonstrating that the judgment of the Court of Appeal in Mr Barnard's judicial review proceedings has been satisfied; both in terms of the creation of a report of the work of Operation Denton and in its publication.

> 50 PSNI is acutely aware of the wider importance of achieving cross-community trust in policing and of the transparency and accountability of its work …
>
> 51 … PSNI is working hard to make progress on gaining trust and support from within communities in Northern Ireland for ordinary policing and community relations. Any perception that the truth around matters which occurred during the Troubles has been withheld by delay, obstruction or secrecy on the part of the police is hugely corrosive and an obstacle to trust and effective community policing."

[94] I accept that this represents a legitimate approach to the contribution the Barnard Review may make to the discharge of the section 31A duty and, for this additional reason, I consider that the establishment and conduct of the Barnard Review was within the scope of the Chief Constable's powers.

[95] For all of these reasons, I find that the clear and unequivocal answer to Question 1 is that the Chief Constable does have power under common law to establish and to conduct the Barnard Review in accordance with its Terms of Reference.

Question 2: Can PSNI publish a report of its Barnard Review findings?

[96] In light of the legal principles set out above, it is clear that the Chief Constable enjoys common law powers to take any action which he considers is necessary and appropriate within the confines of the law, for achieving policing purposes. I consider it follows inevitably from these principles, that the Chief Constable's powers are sufficiently broad to prepare and publish a report of the findings and conclusions of a lawful review exercise. However, the exercise of that power is not unlimited. The relevant legal constraints upon publication of a report of this nature are ordinary principles of public law and/or private law, such as the law of defamation, privacy rights, data protection obligations or Convention rights etc. It will therefore be incumbent upon the Chief Constable to scrutinise the report prepared by Operation Denton officers and to ensure that any published report observes any relevant legal constraints. However, as a matter of general principle, the preparation and publication of a report which records the findings and conclusions of a lawful review exercise will itself be lawful and within the scope of common law policing powers provided that it furthers a lawful policing purpose. In this case, the publication of the report of the Barnard Review will clearly further the policing purpose of preventing and detecting crime and also promoting public confidence in policing.

[97] I do not accept the applicants' submission that an express statutory power is necessary for police to publish a report of the Barnard Review. I acknowledge that

several statutory provisions confer express powers and/or duties to prepare reports on various aspects of police operations. However, as appears clear from the authorities, these are simply specific instances of supplementary express statutory powers and/or duties upon PSNI officers and do not "occupy the field" of report publication by police. The history of police regulation by statute, both before and after enactment of the 2000 Act, does not reveal any intention on the part of the legislature to change fundamentally the nature of the office of constable. Accordingly, the mere fact that some statutes contain express powers or duties to publish reports for specific purposes is insufficient to demonstrate a statutory intention to override or repeal parallel common law reporting powers.

[98] I also do not accept the applicants' submission that a lack of common law powers to publish a report is evidenced by the combination of the express power of PONI in section 62 of the Police (Northern Ireland) Act 1998 to publish a statement and the conferral of the powers of a constable upon PONI investigators. Unlike police constables, the position of the Police Ombudsman for Northern Ireland is a statutory office which was created by the 1998 Act. The 1998 Act also distinguishes clearly between the powers of PONI and the powers of nominated investigators. The powers of a constable are conferred upon nominated PONI investigators, not upon PONI (section 56(3)). Investigators are obliged to report to PONI (section 56(6)) and PONI has a power to publish a statement (section 62). I consider that these provisions comprise a bespoke statutory regime which applies to the conduct of PONI investigations and the exercise of those statutory functions. I do not consider that it reflects a statutory alteration to the office of a constable or the common law powers attendant upon that office.

[99] Accordingly, the answer to the second question is that the Chief Constable PSNI does have the power to publish a report of the findings and conclusions of the Barnard Review, subject to the constraints which public law or private law may impose upon the content of any portion of the report. Any applicable legal constraints are therefore content specific and will apply to the portion or portions of the report which are affected. I do not accept that the potential existence of private or public law constraints upon some of the contents of the report, is sufficient, as a matter of principle, to deprive police of a common law power to publish a report of this nature.

[100] In accordance with previous case management directions, the court will schedule a review of the remaining grounds of challenge for further directions. I will hear the parties on the terms of a final order. Subject to contrary submission, I am currently minded to adjourn both sets of proceedings until such time as the content of the Operation Denton report is finalised and published, or the proposed content is clarified. All parties would have liberty to apply. It may be that a Maxwellisation process will be conducted with potentially affected persons prior to publication, which may give greater insight into the proposed content. This may or may not include the applicants in this case. That will be a matter for police to decide. However, at this time, it is premature for this court to adjudicate upon the

need for such a process, its scope or upon the content of any final report. These are matters which might all be considered if or when the remaining grounds of challenge are progressed.

[101] The answer to the agreed questions is therefore:

1. Whether the Chief Constable of the PSNI had a common law or statutory power to establish Operation Denton and to carry out the matters provided for in its Terms of Reference in accordance with those terms?

   YES.

2. If so, whether the Chief Constable of the PSNI has a common law or statutory power to publish a report which sets out the findings and conclusions of Operation Denton?

   YES.