**The trouble with Kenova**

Freddie Scappaticci has been around a long time. Now in his seventies, he has probably been a British agent since around 1976. He was one of the most valuable agents in the British arsenal. Rumoured to have been flown to meet Thatcher, he certainly met the army GOC in 1993. In that same year the Cook report journalists interviewed him.

Ian Hurst, aka Martin Ingram, outed Scappaticci in 2003. He immediately issued a judicial review, attempting to force the government to state that he was not an agent. He failed. The affidavit he swore for those proceedings may come back to haunt him.

Stevens also got involved and there were discussions about terms of reference to expand his investigation. But in March 2006 the matter was passed to the PSNI Historical Enquiries Team.  Subsequent to this the Criminal Cases Review Commission referred a group of people to the Court of Appeal in respect of other convictions.

Following the quashing of the convictions relating to the Alexander Lynch abduction by the Court of Appeal in January 2009, the then Director of Public Prosecution, Sir Alasdair Fraser QC, issued a direction pursuant to Section 35(5) of the Justice (Northern Ireland) Act 2002 requesting information from the Chief Constable in relation to potential criminal conduct of police and military personnel.

A second referral pursuant to Section 35(5) was made by the former Director of Public Prosecutions, Mr Barra McGrory, on 29 January 2013.

In June 2015 the Office of the Police Ombudsman contacted the Public Prosecution Service and indicated that they had completed a review of Stakeknife papers referred to them by the Historical Enquiries Team in 2012.  The former Director of the Public Prosecution Service then issued a third Section 35(5) referral on 11 August 2015 seeking information on the affairs of an alleged agent known as Stakeknife.

PPS announcement: Information provided by Police Ombudsman’s Office

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“The Police Ombudsman’s Office recently provided an interim file to the Director of Public Prosecutions containing information gathered in one of its ongoing and complex investigations.

That investigation is examining allegations of police conduct linked to the circumstances of 24 murders attributed to the IRA's 'Internal Security Team' during the 'Troubles'.

The objectives of that investigation, which began in August 2013, include establishing the following:

1. If a member of the RUC or agent of the RUC was culpable in the murders or in other related criminality.
2. If police were in possession of intelligence which, if acted on, may have prevented the murders.
3. If the police murder investigations were adversely impacted by the non dissemination of intelligence or were otherwise obstructed and.
4. If all reasonable lines of enquiry were pursued in respect of disseminated intelligence.

The interim report to the Director served to highlight evidence and/or intelligence identified by the Police Ombudsman of potential culpability not only of police officers but also of members of other Intelligence Agencies and members of the public, in the circumstances of the murders.

As the Police Ombudsman does not have the statutory authority to investigate the conduct of persons other than members of the RUC/PSNI, the Director of has now formally referred the potential culpability of these other persons in the crimes to the Chief Constable.

The Police Ombudsman, Dr Michael Maguire, has said his investigations will remain independent of any other inquiry into these matters.”

“The Director of Public Prosecutions Barra McGrory QC has announced today (Wednesday October 22, 2015) that he has requested that the Chief Constable investigate a range of offences which relate to the activities of an individual who is commonly known under the codename ‘Stakeknife’.

The Director has requested two new investigations in this regard. The first will seek to examine the full range of offences alleged to have been committed by this individual and will also include an investigation into any criminal activity that may have been carried out by Security Service Personnel. “

Here is what Section 35 [5] says:

(5)The Chief Constable of the Police Service of Northern Ireland must, at the request of the Director, ascertain and give to the Director—

(a)information about any matter appearing to the Director to need investigation on the ground that it may involve an offence committed against the law of Northern Ireland, and

(b)information appearing to the Director to be necessary for the exercise of his functions.

It was clear that the Ombudsman’s investigation could go no further, because of the presence and activities of other agencies, such as the Security Service, the Army, notably the Force Research Unit and perhaps even the Secret Intelligence Service. The Ombudsman is unable to investigate these agencies, but the police, in theory, can.

The Chief Constable then brought in Bedfordshire Constabulary and its Chief Constable Jon Boutcher and Operation Kenova was born.

“The Chief Constable of the Police Service of Northern Ireland has asked for the assistance of Chief Constable Jon Boutcher of Bedfordshire Police, to lead an external investigation team to carry out a full investigation in response to the Section 35(5) referrals, and the Mulhern investigation.

Chief Constable Boutcher will lead the investigation and appoint a Senior Investigating Officer and the investigation team.  Chief Constable Boutcher will have the full delegated authority of the Chief Constable of the Police Service of Northern Ireland to direct the investigation.

The investigation team will carry out their investigation by virtue of Section 98(1) of the Police Act 1996 and thus, will have all the necessary powers and privileges of police officers of the Police Service of Northern Ireland, to ensure an effective investigation and ensure that the request from the Director of Public Prosecutions is fulfilled.  The team will be based in Great Britain and will carry out enquiries in Northern Ireland as necessary.  This external investigation team will be gathered from across UK law enforcement services.  It will not include personnel who are serving in or have previously served in the Royal Ulster Constabulary, Police Service of Northern Ireland, Ministry of Defence or Security Services.

Mechanisms will be put in place to report any allegations of criminal or misconduct offences by the police officers or police staff within the Op Kenova investigation team, to the relevant investigative body.”

Here is what section 98 [1] says:

#### Cross-border aid of one police force by another.

(1)The chief officer of police of a police force in England or Wales may, on the application of the chief officer of a police force in Scotland or the chief constable of the **[**Police Service of Northern Ireland**]**, provide constables or other assistance for the purpose of enabling the Scottish force or the **[**Police Service of Northern Ireland**]** to meet any special demand on its resources.

The terms of reference were :

“Whether there is evidence of the commission of criminal offences by the alleged agent known as Stakeknife, including but not limited to, murders, attempted murders or unlawful imprisonments.

Whether there is evidence of criminal offences having been committed by members of the British Army, the Security Services or other Government agencies, in respect of the cases connected to the alleged agent known as Stakeknife. Regard in this context will be given to the Article 2 (ECHR) rights of victims and the associated responsibilities of the British Army, the Security Services, or other Government agencies.

Whether there is evidence of criminal offences having been committed by any other individual, in respect of the cases connected to the alleged agent.

Whether there is evidence of the commission of criminal offences by any persons in respect of allegations of perjury connected to the alleged agent.

If the Op Kenova investigation team identifies matters which indicate that former or current police officers may have committed criminal or misconduct offences, they will be formally and expeditiously referred to the Deputy Chief Constable of the Police Service of Northern Ireland who will refer the matter to the Office of the Police Ombudsman via the statutory requirements of the Police (Northern Ireland) Act 1998.

Any matters falling outside these parameters will be brought to the attention of the Chief Constable of the Police Service of Northern Ireland by Chief Constable Boutcher for consideration.The Chief Constable of the Police Service of Northern Ireland will, if necessary, consult with the Director of Public Prosecutions or the Police Ombudsman as to the appropriate basis on which to address these additional matters.”

It is important to trace the development of the state’s treatment of this scandal against what was really known about Scappaticci.

The initial investigation was in respect of two incidents. The first, in time was the murder of Fenton, on 24th February 1989, who had been a state agent of considerable value. He had , as an estate agent, been able to make properties available to PIRA, having first ensured that the state had planted electronic devices in them.

The murder of the “ice cream man”, off duty police officer John Larmour, is a case in point. After the PIRA team killed him, they retreated to a house, where they met Gerry Kelly. The house had ears and Brian Gillen was arrested shortly afterwards. He became a state agent. Fenton also provided PIRA with cars, which the state had bugged. When he was eventually ‘caught’ and ‘executed’ eyebrows were raised regarding the speed of his execution and there was speculation that he had been killed by Scappaticci to protect other, more important informers, including himself.

The second case was the kidnapping of Lynch, in January 1990. Scappaticci and Sean Maguire, now SF/IRA’s PR man, were present in the house where Lynch was held. Lynch was bait for Morrison. He arrived and was arrested. He was sentenced to eight years imprisonment.

Both these cases went back to the Court of Appeal as a result of intelligence seen by the Criminal Cases Review Commission. It is likely that what they saw was that Scappaticci and Maguire were, at the material times , agents of the state.

The initial idea , therefore , was to investigate these cases along with the Police Ombudsman’s investigation of twenty four cases where PIRA volunteers had been killed as state informers.

The theory was that Scappaticci was, while acting as commander or second in command of PIRA’s “nutting squad” , at all times a state agent. So it was important to know what his handlers knew of these activities.

But the second Section 35 request widened the scope. It was a request to examine

1. The full range of offences alleged to have been committed by this individual; and
2. An investigation into criminal activity that may have been carried out by Security Service personnel

Note that there was no mention of the British Army or the Secret Intelligence Service.

Kenova further widened the scope. Now it was criminal offences “not limited to murders, attempted murders or unlawful imprisonments”. Further, the British Army was now included, as was, by implication, the Secret Intelligence Service.

Wider still the investigation was to ascertain “whether there is evidence of criminal offences having been committed by any other individual , in respect of cases connected to the alleged agent”. This would no doubt cover, inter alia , the role played by British agent Sean Maguire , in the Sandy Lynch kidnapping.

So the list now looks like this:

Stakeknife

Scappaticci

Police officers

MI5 officers

MI6 officers

Army personnel

Criminal associates of Scappaticci, whether state agents or not

Then , before you get too overwhelmed, Dear Reader, we must mention the game of pass the parcel.

The Police Ombudsman passed the uncompleted investigation into 24 murders to the DPP because he, Dr Maguire, could not investigate the actions of those who were not police officers. The DPP gave the files to the Chief Constable , to finish the job. Hamilton did not have the resources and there were other complications, so he gave the job to Jon Boutcher. If he finds evidence of criminal conduct by police officers, he has to hand that evidence back to Drew Harris, who will pass it back to, yes, you’ve guessed it, Dr Maguire. In fact it is moot as to whether or not Boutcher has any authority even to investigate the actions of any police officer involved in this investigation.

Other points must be mentioned at this juncture.

Drew Harris, Deputy Chief Constable, is the PSNI intelligence gate keeper and the primary point of contact with the Security Service, who are his masters in respect of the investigation of terrorism in Northern Ireland. What conversations might he have with them, regarding the Boutcher investigation of MI5 agents?

Regarding the performance of the PSNI, it still has not complied with the Section 35 requests, issued in 2002 and 2013.

But there is a much bigger picture. Which I have set out recently for Jon Boutcher and Operation Kenova.

Scappaticci , as PIRA became more paranoid, was drawn in to the chain of command in relation to the planning and approval of operations. Post the disaster for PIRA at Loughgall, PIRA wanted to ensure that operations were sealed. Therefore Scappaticci was forewarned about operations and should have passed this information to his handlers.

Moreover, he and his team were responsible for investigating botched or unapproved operations. For an example of this , see the interrogation of Peter and Margaret Keeley , after the foiled attempt to kill Derek Martindale, in 1994.

I allege that Scappaticci would have been in the loop when the plan to kill my father, was hatched. He would have had to pass it up to Northern Command, led by McGuinness and which insisted on approving such operations. If it was , in fact , an unapproved operation or , as is the case, it drew criticism from Adams, the circumstances would have been inquired into by Scappaticci. In addition, a man called Braniff was arrested and questioned about my parents’ murders. It is likely that he, too was an agent.

Out of all these permutations of events, it is more likely than not that Scappaticci told his handlers something about the murders.

Instead, the state has , for sixteen years said that no intelligence exists.

Enter Kenova. Jon Boutcher was appointed head of Operation Kenova in June 2016. It has been active for almost two years. At an undisclosed location in GB it has a staff of around fifty detectives. It has gathered more than half a million documents and more are to come. It has interviewed one person, widely reported as being Scappaticci, on 30th January 2018. It also has elaborate systems for review, a Victims’ Focus Group and an Independent Steering Group.

In March 2018 I sent the following analysis to Operation Kenova. I have redacted some names.

 B [and possibly one other] was arrested in connection with the murders.

As in all cases he was taken to Castlereagh. The available documents [held at Seapark and/or Sprucefield] will be :

**The warrant.** This will provide intelligence material and/or evidence grounding the application

**The occurrence book** which will state the date/time/location of his arrest, the arresting officer, the legislation under which he was arrested and the time of arrival at Castlereagh.

**The Criminal Intelligence Unit brief [this unit was stationed in Castlereagh]**- all suspects who were to be interviewed had a file – this contained details of arrest , previous convictions, intelligence on previous activities and , crucially , intelligence from SB or others which formed the basis for arrest and the subject matter for the interviews which were to be carried out.

**Interviewing officers’ notes**- X and Y would have been two of possibly six or more officers who would have interviewed B and possibly one other, in relays.

**Fingerprint records**

**Authority for continuing detention-** if B held for an extended period of time, a record of the authorisation and the reasons would exist.

A number of possibilities occur:

1. B was not interviewed but someone else was interviewed on 3rd July.
2. Two persons were interviewed- Y has a note to that effect.
3. B was not interviewed [as has been stated to me previously] on the basis of a sighting by a member of the public. This , in itself, calls into question the veracity of information given to me by the PSNI.
4. B was interviewed on the basis of intelligence supplied by SB/Box/Army.
5. The intelligence was supplied by a state informant who had prior and or subsequent knowledge of the operation and those involved.
6. That informant was a member of PIRA.
7. He was a participating informant.
8. B was given to police by the state as a patsy, he was himself an informer, he was told to say nothing and he complied.
9. Whatever B’s status it is almost certain , on his release, that he was de-briefed by Scappaticci. This was the regular arrangement.

If B was de-briefed by Scappaticci then Scappaticci has failed to report an indictable offence. If he reported this debrief to his handlers, then they would commit a similar offence, plus misconduct in public office. All those involved would commit conspiracy to pervert the course of justice.

All of the material relating to this must be in the hands of the state. If Scappaticci makes no admissions, then there must exist, in the hands of the state, evidence to prosecute him.

I spoke to knowledgeable people about the likelihood of Scappaticci debriefing.

The reasons for a Scappaticci debrief are :

1. The killings drew the usual condemnation but also criticism from Adams
2. The rules were broken- retired officers were not a target
3. Was it pre-approved by Scappaticci. ?
4. Was it properly scouted?
5. It involved the murder of a civilian OAP

It seems to me to be beyond peradventure that you have already had sight, from other organs of the state, of all product from Scappaticci, when he was an informant.

I therefore find it hard , in the extreme , to believe that nothing connects him to a crime in respect of the murders.

The spectacle of one arm of the state, investigating an individual or individuals protected by another arm of the state is not edifying nor does it fill me with confidence.

It will shortly be twenty eight years since the events.

Time is short. I have to tell you that unless I am given more cogent answers in relation to the points I have made above, I will consider taking other steps.

I hope that will not be necessary.

I met with Jon Boutcher , who has always been courteous and frank with me in all our dealings. Kenova’s position was that Scappaticci had left Northern Ireland and crossed the border after the Lynch affair. He had remained there for some time, and he had been under suspicion from PIRA leadership. Therefore he was not around in June 1990 , at the time of my parents’ murders and therefore he could provide no information about that incident.

This was my response.

My understanding is that the Kenova investigation considers the following to be the position re Scappaticci. As a result of the “Sandy Lynch incident”, Scappaticci went across the border and at the same time , he came under suspicion from PIRA high command. Accordingly, Kenova states, he was not active at the time of my parents’ murders in June 1990, he was not involved and he can give no information about them.

I have spoken to a wide range of people, some of whom have first class information on Scappaticci. It is their unanimous view that the Kenova team is wrong. Here is why.

When the Lynch incident occurred in January 1990, several significant PIRA figures crossed the border; Scappaticci, Maguire , Mulgrew and Magee. Only the first two returned, so far as is known. How long Scappaticci was out of the jurisdiction would be known by his handlers.

It is unlikely that they would have wanted him out of NI, for any significant period of time, given the value he had.

In any event, I am told that , frequently, interviews of volunteers about operations were held across the border and that these continued during any absence from NI. It is perfectly possible that those who carried out the June 1990 murders were de-briefed by Scappaticci and Magee in Dundalk or some similar location.

The suggestion that Scappaticci was under active suspicion by PIRA immediately after Lynch is not credible. Neither is the suggestion that he was removed from his role. Aside from anecdotal information about other killings of ‘informers’ that he was involved in, the following facts are not in dispute.

Following the thwarted attack on Derek Martindale in February 1994 ,a significant number of arrests were made. Peter Keeley and his wife were among those arrested. In subsequent legal proceedings it has been stated that Scappaticci was among those who interrogated them in Belfast, post their release from police custody.

General Wilsey, GOC from 1990 to 1993 admitted to Ian Hurst, aka Martin Ingram, in a telephone conversation, that he had met Scappaticci, along with a senior Security Service official , in 1993. At that time Scappaticci was still embedded in PIRA. Hurst asked Wilsey if , when he met Scappaticci, he, Scappaticci, had been compromised. His reply was “No, he hadn’t. Absolutely not”

My conclusions are:

1. Scappaticci was not out of the jurisdiction for any significant period of time in the first half of 1990.
2. Even if he was, he continued to exercise the same supervisory role and he may have de-briefed those involved in the murders.
3. He was not removed from his role, in or about early 1990. He continued to exercise the function until at least 1994.

It is always distressing for me to find that there is high grade information which directly contradicts what the Kenova team have told me.

I remain of the opinion that there is , somewhere, significant information regarding the murders of my parents. I am also of the opinion that “Steak Knife” or its other variants holds this information, whether or not that is Scappaticci. I am disappointed at Kenova’s inability to find this.

Aside from my personal involvement in this, there are wider issues.

Kenova says that it has had approaches from over forty families. I do not know if that is in addition to the twenty five murders previously investigated by PONI. Given that Scappaticci was involved in hundreds of de-briefs, disciplinary hearings, torture and murders, two score complainants would appear to be the tip of the iceberg.

The trouble with Kenova is:

1. The investigation has become too wide ranging for the staff available.
2. Its primary target is a state informer, and he is presumably still supported by the state financially and otherwise.
3. Its secondary targets are employees of the state. How will that be met by their masters? Are they likely to cooperate or have all the incriminating documents been shredded already?
4. A prosecution of a state agent or employee would have significant implications for state security. How likely is it that the Shawcross Doctrine will be imposed by Westminster on Stephen Herron, the young and inexperienced Director of Public Prosecutions?
5. A prosecution of Scappaticci for perjury would necessitate a witness from the state giving evidence that he was in fact an agent. How likely is that and what disclosure would be given?

The likelihood is that Kenova will attempt to prosecute Scappaticci for perjury and a few low level offences and then fold up its tent and be gone, the way of Stalker, Stevens et al.

Of course Alfredo could die in the interim….

In the meantime, Kenova has not responded to my last submission.