

KENOVA INVESTIGATIONS

OPERATION KENOVA (“STAKEKNIFE”)

OPERATION MIZZENMAST (JEAN SMYTH-CAMPBELL)

OPERATION TURMA (SEAN QUINN, PAUL HAMILTON & ALLAN McCLOY)

OPERATION DENTON (THE BARNARD / GLENANNE SERIES REVIEW)

[DRAFT] PROTOCOL ON PUBLICATION OF PUBLIC REPORTS

1. Introduction

- 1.1 The terms of reference for and further information about the abovementioned investigations can be found via the website <https://www.kenova.co.uk/>.
- 1.2 These investigations will involve the preparation of public-facing reports of Kenova’s findings for publication by the Police Service of Northern Ireland (“PSNI”) at the conclusion of any relevant criminal justice process.
- 1.3 In the case of Operations Kenova, Mizzenmast and Turma, an interim report will also be prepared for earlier publication provided the Public Prosecution Service for Northern Ireland (“PPSNI”) and PSNI are satisfied that this will not prejudice any ongoing criminal justice process (“the interim report”). This interim report will address generic, high-level themes and issues and concentrate on organisations, rather than individuals, and confirm - at a relatively high level of generality and without going into specifics - our findings about what was, and was not, happening during the Troubles as between (a) organisations, (b) the Provisional IRA and its Internal Security Unit, (c) the police, armed forces and intelligence services and (d) their agents and informants. In particular, we intend to make clear where we have, and have not, found patterns of State intervention or non-intervention in particular types of circumstance and address types of circumstance in which steps were, or were not, taken in relation to the disclosure of intelligence about serious criminal conduct, either prospectively before it happened or retrospectively when it was being investigated.

- 1.4 This protocol outlines the broad process that we intend to follow in finalising these reports and submitting them to PSNI for publication.

2. Legal framework

- 2.1 As publisher and author of these reports respectively, PSNI and Kenova must act in the public interest, including the public interest in the due administration of justice, and compatibly with all relevant legal obligations including those owed under:

- (1) Statute
e.g. the Official Secrets Act 1989, the Human Rights Act 1998, the Investigatory Powers Act 2016 and the retained General Data Protection Regulation (“UK GDPR”) and Data Protection Act 2018;
- (2) Public law
i.e. common law obligations to act lawfully, fairly and reasonably;
- (3) Private law
e.g. under the general law of confidence, defamation and misuse of private information;
- (4) Express and implied undertakings
e.g. under information-sharing agreements, protocols and memoranda of understanding entered into with other public authorities and ordinary implied obligations owed to sources of information;
- (5) Codes of Ethics
i.e. issued by the Northern Ireland Policing Board and the College of Policing.

- 2.2 In addition, PSNI and Kenova must follow the Government Security Classifications Policy in connection with their handling of classified information assets (current version 1.1 dated May 2018).

2.3 In order to navigate the above, we must necessarily take a staged and methodical approach to the preparation and publication of our reports as set out below.

2.4 At each stage, disclosure by Kenova will require and depend upon recipients giving and abiding by undertakings as to confidentiality and onward disclosure or use.

3. Stage 1: preparation of first drafts

3.1 This will be the responsibility of Kenova.

4. Stage 2: representations process

4.1 Every person or body who is criticised in or might be adversely affected by a draft report will be given an opportunity to respond to the relevant passage(s), or a summary of what is said about them, prior to publication, unless they have already been given a fair opportunity to do this in person or writing. This will apply in the case of private individuals and public authorities.

4.2 In this regard, we will follow the guidance helpfully set out in the “Review of *Maxwellisation*” commissioned and published by the House of Commons Treasury Committee and dated November 2016. This makes clear that the representations process should not be seen as, or become, an opportunity for participants to seek to “negotiate” conclusions or the terms in which they are expressed.

5. Stage 3: preparation of final draft reports

5.1 This will be the responsibility of Kenova.

6. Stage 4: security checking process

6.1 Once each report has been finalised, it will be necessary to consult the Cabinet Office (on behalf of HM Government) about whether publication of any of its contents would be contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any public authority.

6.2 Kenova cannot and would not wish to jeopardise any of the above public interest considerations and we will always listen and accord respect to the expertise, experience and assessments of those responsible for their protection. We also recognise that the public interest has different facets and that these sometimes need to be balanced against each other.

6.3 For the avoidance of doubt, the security checking process will be confined to public interest considerations, it will not extend to issues of fairness or accuracy falling within the representations process, it will be a consultation exercise in the same way as that process and it will not involve the exercise of any power of executive censorship or veto “as of right”.

7. Stage 5: preparation of final reports and submission to PSNI

7.1 This will be the responsibility of Kenova.

7.2 If any report contains anything which cannot be published for legal reasons, the full version will be submitted to PSNI together with a redacted version which is suitable for publication and which indicates the nature and extent of any redactions.

7.3 Before submission to PSNI, draft versions of reports for publication will be shared, first, with the Kenova Governance Board, Steering Group and Professional Reference Group.

7.4 In this regard, the Governance Board is responsible for ensuring that legal and investigative due diligence has been applied and that all reports are robust and accurate for families and stakeholders.

8. Stage 6: administration of justice review of interim report by PPSNI and PSNI

8.1 Final reports will be published at the conclusion of any relevant criminal justice process, but we intend to publish the interim report sooner and, as set out above, this will only be possible if PPSNI and PSNI are satisfied that doing so will not prejudice any ongoing criminal proceedings.

8.2 If a risk of prejudice were identified and it could be avoided by the amendment or redaction of the interim report, we would, of course, explore the scope for doing this and reserving any withheld material for the final report.

9. Stage 7: pre-publication disclosure to victims and families

9.1 This will be the responsibility of Kenova and will be dealt with in person and/or writing as individuals wish.

10. Stage 8: publication by PSNI

10.1 This will be the responsibility of PSNI.

11. Conclusion

11.1 The representations process (stage 2) needs to come before the security checking process (stage 4) in case it results in changes. This order should not present any difficulties because the representations process will not involve the disclosure to those consulted of new security-sensitive information.

11.2 It will be seen that the interim report is likely to be able to pass the representations and security checking processes (stages 2 and 4) more quickly and that it is the only report that will need to pass an administration of justice review (stage 6).

Chief Constable (retd) Jon Boutcher

Officer in Overall Charge

23 September 2021