



Complaint made by Denise Lane to the Office of the Ombudsman

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. On 24 August 2011 the then Ombudsman David McGee CNZM QC referred to the Authority a complaint of possible misconduct by Police officers relating to the convictions of Joyce Conwell for the attempted murder of Doreen Middlemiss aged 63 in Dunedin in June 1998 and the murder of Alec Rodgers aged 36 in Christchurch in September 1999. There were serious allegations covering a wide range of Police conduct both before and at the time of the homicide investigations, but the essence of the complaint was that Ms Conwell had confessed to the offences as a result of Police coercion. The complaint had been made by Denise Lane, who is Ms Conwell's sister.
2. Ms Lane's allegations of Police misconduct relating to the convictions of her sister had already been reported to the Authority in February 2008 by then Christchurch MP Tim Barnett. The Authority undertook some initial investigation and conducted some interviews at that time, but discontinued the investigation because Ms Conwell would not co-operate.
3. However, as a consequence of the Ombudsman's referral, and the additional material provided by him as part of that referral, the Authority decided to review the position and to reactivate the independent investigation.

BACKGROUND

The Death of Doreen Middlemiss

4. In 1998 Doreen Middlemiss was a resident in a continuing care hostel for psychiatric patients in Lees Street, Dunedin and had lived there for about three years. She was found dead in her bed at 1.50pm on 7 June 1998.
5. Ms Middlemiss had suffered from epilepsy from childhood and had been institutionalised for most of her life. She administered her own medication and worked at an IHC

workshop. To those who regularly interacted with her, she appeared to be in good health prior to her death.

6. Amongst those who had cared for Ms Middlemiss at the hostel were Joyce Conwell, Susan Sutton and Murray Childs.
7. Ms Conwell had been a casual worker at the hostel and, although she was no longer employed in that role at the time of Ms Middlemiss' death, she had formed and continued to have a close association with her. She was seen by another resident of Lees Street going for a long walk with Ms Middlemiss at 9.15pm on Saturday 6 June, the night before she was found dead.
8. Ms Sutton was the main caregiver of Ms Middlemiss. She had worked at the hostel for about 5 years and was working the shift until 11pm on that Saturday night. Ms Sutton's partner, Alec Rodgers, was also with her on the premises during that evening.
9. Mr Childs, who had been working the 11pm to 7am shift every second Friday and Saturday night for about 3 months, took over from Ms Sutton at 11pm on that night.
10. Shortly after the death was reported to Police, Ms Sutton and Mr Childs were interviewed. Ms Sutton told the Police that, after she had finished her shift at 11pm on Saturday night, she was in the office for a while on the internet and had a conversation with Ms Middlemiss at about midnight in the hallway outside the latter's bedroom. Mr Childs said that Ms Middlemiss briefly came to see him shortly after midnight while he was watching television. He reported that he visited the part of Lees Street where Ms Middlemiss' room was located several times during the night. On one of those visits he heard noises coming from her room, as if she was having a bad dream. Her door was partially open, as was usually the case. He listened but heard nothing more and did not check on her.
11. Following those interviews, the Police conducted a number of preliminary inquiries and interviews (including area inquiries). Information was also obtained from Ms Middlemiss' general practitioner and psychiatrist.
12. The Police treated the death of Ms Middlemiss as suspicious because there were abrasions to her face and backs of her hands and unusual aspects of the scene. In particular, the deceased's dentures were on the floor beside the bed; there was a screwdriver, torch and rubber band in the bed; there was a crumpled note on the dresser that read: "*Robert keep out or I'll chop off your fingers*"; and there was a blood spot on the floor near the door to the room.
13. A pathologist who had visited the scene and viewed the body in situ subsequently carried out a post mortem examination. He concluded that "*the cause of death was cardiac*

arrhythmia, complicating severe coronary artery atheroma. The deceased had suffered injuries consistent with the effects of a fall, but which had caused no serious injury”.

14. An ESR Blood Analysis Report dated 1 July 1998 indicated the presence of Diazepam within or below the therapeutic range; Sulthiame within the therapeutic range; and Imipramine above the therapeutic range but below the levels usually found in fatal cases. The report commented that the level of Imipramine found in the sample was close to the level which might cause toxic effects, and that the half-life of Imipramine increases in elderly subjects. This was reiterated by the pathologist in his written report.
15. The Coroner released the body on 8 June 1998, giving as the cause of death that stated by the pathologist. On the same day, the Police obtained a warrant to check telephone calls to and from Lees Street between 9pm on 6 June and 7.30am on 7 June 1998. The application for the warrant was to the effect that the bruises on Miss Middlemiss’ face, the presence of her dentures on the floor, and the presence of a screwdriver in her bed, indicated a possible assault. There is no record on the file of the outcome of any execution of this warrant.
16. This was essentially the limit of further Police inquiries at this point. The investigation into the death of Ms Middlemiss virtually stopped when the pathologist advised the Police that, although she had sustained some minor injuries, death had resulted from natural causes.

The Death of Alec Rodgers

17. Alec Rodgers lived at a lodge near Christchurch. He had moved there from Dunedin for employment purposes in November 1998. His partner, Susan Sutton, had stayed in Dunedin and he regularly returned there, usually on alternate weekends.
18. He was shot dead on 17 September 1999 with a shortened shotgun fired at close range. Police responded rapidly. The perpetrator was not immediately known but he had been seen in the area and the Police were able to obtain good descriptions. A full scale homicide investigation was mounted, encompassing all standard avenues of inquiry, including an intensive examination into Mr Rodgers’ background and associates.
19. Three days later Mr Childs confessed to his murder, claiming he used a gun given to him by Mr Rodgers for the purpose of shooting a third person. His confession was supported by other evidence obtained during the course of the inquiry. Mr Childs claimed that he shot Mr Rodgers because of a drug deal that had gone wrong. Investigators found no evidence of either man having been involved in drug dealing and continued inquiries to establish the reason for Mr Rodgers’ murder.
20. Mr Childs pleaded guilty to the murder and was sentenced to life imprisonment on 12 October 1999.

The Reinvestigation into the Death of Doreen Middlemiss

21. In the statement of confession by Mr Childs, he mentioned the fact that his friendship with Mr Rodgers had arisen through his partner Ms Sutton. He explained that he had met Ms Sutton when visiting an unnamed friend at the Lees Street home where Ms Sutton worked; and that he also visited Lees Street to see Ms Sutton.
22. The Police team investigating the Rodgers homicide suspected that Ms Sutton had played a role in it and therefore focussed on her activities and associates. During the course of these inquiries, they learned about the suspicious death of Ms Middlemiss 15 months earlier from Ms Sutton's stepfather, former Police officer Merv Brown. This in turn led them to identify Ms Sutton's friendship with Ms Conwell, a friendship so close that they sometimes described themselves as, and were regarded as, sisters. The Middlemiss sudden death file was examined and gaps in the original investigation identified.
23. This was the first time that Ms Conwell had been brought into the frame in the context of the death of Ms Middlemiss. Although she had been reported as going for a long walk with Ms Middlemiss on Saturday night (see above, para 7), this was never followed up by the original investigation team. As a result, her relationship with Ms Middlemiss and her activities during the 24 hours leading up to the discovery of the body of Ms Middlemiss had never been examined.
24. The Police team investigating the Rodgers homicide therefore gathered information not only about the relationships and activities of Mr Childs, Ms Sutton and Mr Rodgers but also those of Ms Conwell both before and after the death of Ms Middlemiss. This led them to interview Ms Conwell at Dunedin on 28 September 1999. She refused to make a statement. She said that she was the "*best friend*" of Ms Sutton, whom she had known for about 16 years. She knew Mr Childs as a friend of Mr Rodgers, whom she had known for about 20 years, but she claimed to know little about Mr Childs or how he knew Mr Rodgers.
25. Following a recommendation by the Police team investigating the Rodgers homicide, further Dunedin-based Police inquiries into the death of Ms Middlemiss were set up in October 1999. It is unnecessary for the Authority to outline the full extent of these further inquiries. They were detailed and extensive and examined all aspects of the circumstances of the death and the activities of those who might have been implicated in it. However, a few key features of these inquiries need to be highlighted.
26. Further discussions were held with the pathologist, who was reminded of the circumstances of the death and the nature of his original finding. On re-examining the photographs, the pathologist stated that the injuries to the knuckle area of the hands were more likely to be defensive than the consequence of a fall. He also expressed concern about the injury below the left eyebrow and graze on the left forehead. He

described the injuries to the hands as “*classic defence injuries*”, but did not give an unequivocal view as to whether the injuries had been sustained by a fall or an assault.

27. The pathologist was also asked about the unusually high level of Imipramine in the deceased’s blood. He said that the effect of the level detected on the deceased was difficult to judge without knowing her regular dosage. However, after some further research he advised that the dosage detected could cause delirium and confusion, and it was conceivable that Ms Middlemiss was stumbling around and may have fallen.
28. Ms Sutton was interviewed at length on 28 October 1999 about the death of Ms Middlemiss. In the course of giving a statement, she indicated that Ms Conwell feared that she was suspected of having murdered Ms Middlemiss because her car had been stolen and recovered with the word “*murderer*” painted on it.
29. Ms Conwell was interviewed on both 1 November and 3 November 1999. In the first interview, she was questioned about her activities on the Saturday night preceding the discovery of Ms Middlemiss’ body. She confirmed that she had taken Ms Middlemiss out that night. She reported that they returned to Lees Street somewhere between 10.15pm and 10.45pm. She said that she did not see any injuries to the face of Ms Middlemiss at that time. Her interview on 3 November focused on her activities at the time of the murder of Mr Rodgers and not on the Middlemiss matter.
30. On 26 October 1999 the Police obtained an Interception Warrant to intercept calls made to and from the home and mobile telephones of Ms Sutton. The purpose was to obtain evidence relating to the murder of Mr Rodgers through communications between Ms Sutton, Mr Childs and Ms Conwell. Calls were intercepted until 24 November 1999. The nature of the conversations was such that Police concluded that all three strongly suspected that their calls were being monitored, and they were accordingly guarded in what they said. None of the intercepted conversations therefore produced material usable as evidence. However, there were two comments to the effect that the Police suspected that Ms Conwell was involved in the death of Ms Middlemiss or were going to charge her in connection with the deaths of Ms Middlemiss and Mr Rodgers; and there was a conversation between Ms Sutton and her daughter in which the daughter said that she knew two murderers (Childs and Conwell), and that Ms Conwell had a violent streak.
31. All of these and other inquiries culminated in an interview with Ms Sutton on 18 November 1999. This was a lengthy interview, during which Ms Sutton was questioned about the murder of Mr Rodgers. However, it began with questions about the death of Ms Middlemiss. She was asked about her own movements on the night before the death, as well as those of Ms Conwell, Mr Childs and Mr Rodgers. She was also questioned about whether she had observed any signs of injury to the deceased or any indication of illness, and about any possible explanations she might have for the unusual features of the scene in the bedroom.

32. It is not entirely clear from the Police file what the outcome of that interview was, or what Ms Sutton's next actions were. However, it is known that she met Ms Conwell on Sunday 21 November 1999. According to Ms Sutton, because they were concerned that they might be overheard, they wrote notes to each other.
33. In the course of exchanging notes, Ms Conwell wrote that *"I killed Doreen and was a party to Alec's death"* and told Ms Sutton that she had provided the gun which Mr Childs used to kill Mr Rodgers.
34. These notes were provided to the Police on 23 November, and Ms Sutton was interviewed about them on 25 November. According to the brief later provided by Ms Sutton, Ms Conwell then called at her address on 28 November 1999, at the end of which she left a further lengthy note for Ms Sutton to read. This made a variety of incriminating statements, including more detailed information about how she had killed Ms Middlemiss: *"I hid in Doreen's wardrobe and waited for her to go to sleep, then I went over and put my hand over Doreen's mouth. I kept it there for some time until I thought she wasn't breathing no more...Doreen must have got the bruising on her mouth from my hand and the bruising on her arms when I was trying to stop them from thrashing around."*
35. In order to verify the authenticity of the handwriting in the notes provided by Ms Sutton, the Police referred the notes and samples of original writing by Ms Sutton and Ms Conwell to a Police document examiner on 14 December 1999. The examiner's opinion was that Ms Conwell and Ms Sutton were the authors of the notes.
36. On 20 December 1999 Joyce Conwell went to see her lawyer. She told him that she wanted to confess to the murder of Ms Middlemiss. She subsequently went with him later that day to participate in a video interview with Police at Dunedin Police station. In accordance with her earlier statement to her lawyer, she confessed to the murder of Ms Middlemiss. Unexpectedly, she also admitted giving the shotgun to Mr Childs, knowing it was to be used to maim Mr Rodgers. Although some uncorroborated evidence had earlier been collected by Ms Conwell's mother to the effect that Ms Conwell had said, on the evening that Mr Rodgers was shot, that she was worried about him and that he might have been shot, there was no other evidence directly implicating her at that time, and her confession came as a surprise to both her lawyer and the interviewing police officer. Until that time, Police attention had largely been focused on Ms Sutton as a co-conspirator in the murder.
37. Ms Conwell was charged with assault on Ms Middlemiss and being a party to the murder of Mr Rodgers, and appeared in Court on 21 December.
38. Following her Court appearance, a Detective Senior Sergeant personally drove Ms Conwell from Dunedin to Christchurch Women's Prison. They were the only two in the

car. En route, according to the Detective, they discussed both the Middlemiss and Rodgers matters and Ms Conwell made written notes of these discussions, which both she and the Detective Senior Sergeant later initialled. These notes have been provided to the Authority by the Police. Among other things, the notes provide further information as to the relationship between Mr Childs and Mr Rodgers. They also set out when and where she provided the shotgun to Mr Childs.

39. Subsequent to these events, the Police consulted further with the pathologist about the death of Ms Middlemiss, but he was still unable to give an unqualified opinion that the assault may have contributed to her death, given the presence of coronary artery disease.
40. Because of the pathologist's report and the difficulty of proving the necessary causal link between Ms Conwell's actions and the death, the assault charge was amended to attempted murder rather than murder at Ms Conwell's next court appearance on 17 January 2000.
41. At that appearance, she pleaded guilty to the attempted murder but not guilty to the murder.

The 'Retraction Statement'

42. On 26 February 2000, whilst Ms Conwell was in prison after having been sentenced on the attempted murder charge but before she pleaded guilty to the murder, she is alleged to have made a 'retraction statement'. According to Ms Lane, this statement was compiled by a private investigator at a meeting with Ms Conwell, Ms Lane and others, during which Ms Conwell's comments were recorded and later produced by the private investigator as a first person statement.
43. In essence, the statement as produced by the private investigator contains a denial by Ms Conwell of her involvement in both the Middlemiss and Rodgers deaths; and it gives, as the reason for her confession, long term intimidation by Police officers. It says that Ms Conwell had a long term abusive sexual relationship with one particular officer, who had come up behind her in the street, threatened her family and told her what to say.
44. Although this statement exists in written form, Ms Conwell did not sign or even see it after it had been produced by the private investigator. Its reliability as a record of any meeting at the prison is therefore impossible to determine. It was not provided to the Police. In any case, Ms Conwell's lawyer told the Authority that she quickly distanced herself from it. Against his strong advice, she insisted on pleading guilty to the murder charge on 27 March 2000 and was sentenced to life imprisonment on 3 April 2000.

Susan Sutton's Possession of a Shotgun

45. In the course of their inquiries into the Rodgers homicide, the Christchurch Police Team found that he had been involved in a series of burglaries in Dunedin in the first half of 1986. In one of those burglaries a sawn-off shotgun, similar to that used to kill him, had been stolen and not recovered. On 6 October 1999, Police interviewed a co-offender for these crimes. She said that Ms Sutton was directly involved, and had strongly influenced Mr Rodgers and herself in these burglaries. She also said that Ms Sutton knew about the shotgun.
46. In April 2000, very soon after Ms Conwell had been sentenced for the Rodgers murder, a woman who had been a neighbour of Ms Sutton for some 14 years told the Police that Ms Sutton had had possession of a shotgun less than two weeks before the murder. She had been shown the shotgun at Ms Sutton's address. Ms Sutton had told her that the gun belonged to Mr Rodgers, and Mr Childs might take it to his father to get rid of it.
47. When interviewed about possession of the gun by the Police on 26 May 2000, Ms Sutton refused to answer questions. The Police lacked evidence to connect the particular weapon with the Rodgers homicide. Ms Sutton was charged with unlawful possession of the firearm and pleaded guilty. What happened to the gun was not determined, nor was Ms Conwell's account of her possession of a shotgun revisited.

The Second Pathologist's Report

48. Ms Lane subsequently obtained an independent pathology opinion from Dr Robert Chapman, a British pathologist. He expressed the view that the injuries were consistent with an episode of suffocation involving pressure over the front of the face; that the distribution of injuries on the face was unlikely to be explained by a fall; that the natural coronary artery disease present in the deceased would be a sufficient explanation for her death in the absence of other findings; and that this natural disease might have led an elderly person to die rather more rapidly during suffocation than a younger and fitter person. However, unlike the New Zealand pathologist, Dr Chapman formed his opinion without either visiting the scene or conducting a post mortem; he was reliant solely on the New Zealand pathologist's report and the Middlemiss Police investigation photographs. His report is therefore of limited value and does not in itself undermine the validity of the original pathologist's conclusion as to the cause of death.

THE AUTHORITY'S INVESTIGATION

49. The Authority's investigation has taken five forms.
50. First, we have reviewed all of the Police files into the initial investigation of the death of Ms Middlemiss, its re-investigation, and the investigation into the Rodgers homicide. The files are extensive and contain voluminous materials. However, they have been taken apart, photocopied and reassembled numerous times for a variety of reasons. The material is therefore disorganised and not all of the documentation that might be expected to be in the files is there. This is understandable given the considerable passage of time since the investigations took place.
51. Secondly, we have considered all of the material provided by the complainant Ms Lane, including the second pathologist's report.
52. Thirdly, we have interviewed Ms Conwell on three occasions. All of these interviews took place after Ms Conwell had been released from prison on parole.
53. It had been made clear to the Authority by Ms Lane that Ms Conwell would be reluctant to do anything that would attract the attention of Dunedin Police officers who, according to Ms Lane, she still feared. The Authority was told that she would only co-operate with the Authority if Ms Lane could persuade her to do so. As a result, Ms Lane was present for each interview, it being clear that Joyce Conwell would not otherwise speak with the Authority.
54. Fourthly, we have viewed the so-called 'retraction statement' and considered carefully the way in which it was developed and Ms Conwell's subsequent statements about it to her lawyer and to the Authority.
55. Fifthly, we have interviewed the following:
 - a) the four officers most closely involved in the three investigations, as well as the officer against whom the allegation of intimidation had been made;
 - b) with Ms Conwell's consent, the lawyer who acted for her at the time of her arrest and prosecution;
 - c) Stanley Middlemiss, the brother of Ms Middlemiss.
56. Finally, we have received written submissions from a number of other officers who were involved in various stages of the investigation.
57. The Authority's investigation has been hampered by the fact that two people who might have been able to provide evidence to support or refute some of Ms Lane's allegations

have since died and were therefore unable to be interviewed. Mr Childs died in prison in October 2005. Ms Sutton died in April 2012.

58. The information provided by all of the witnesses was understandably affected by the passage of time. Sometimes witnesses had no recall of particular events; at other times they gave accounts which differed markedly from the information that had been gathered at the time of the original investigation.
59. In the case of Ms Conwell, we have made a detailed comparison and assessment of her various accounts, beginning with her first interview by Police in September 1999 and her final interview by the Authority. Some of her evidence to the Authority differed from those given in earlier interviews and in the 'retraction statement'. More generally, she was markedly vague and equivocal about her relationships and actions. Her contradictory statements and shifting position have contributed to the unreliability of the information available to the Authority.
60. It is evident that the underlying concern of Ms Lane, the complainant in this case, is whether Ms Conwell was properly convicted of the attempted murder of Doreen Middlemiss and the murder of Alec Rodgers. However, the safety of those convictions, and whether they should be revisited, is not within the statutory remit of this organisation. We have a narrower function: to determine whether there was any Police misconduct or any failure of Police practice, policy or procedure.
61. On this basis, there are four issues that fall to be determined:
 - Was Ms Conwell's opening 'confession' in respect of both homicides the result of intimidation or pressure by any Police officer or officers?
 - Was the initial investigation into the death Ms Middlemiss adequate and appropriate?
 - Were the subsequent investigations into the deaths of Mr Rodgers and Ms Middlemiss adequate and appropriate?
 - Should a Detective Senior Sergeant have escorted Ms Conwell in his car to Christchurch Women's prison after her first court appearance?

THE AUTHORITY'S FINDINGS

Issue One

Was Ms Conwell's 'confession' in respect of both homicides the result of intimidation by a Police officers or officers?

62. As noted above (para 43), the 'retraction statement' that is alleged to record what Ms Conwell said at a meeting at the prison states that her confession was made as a result of threats made by a particular officer with whom she had had a long term submissive relationship.
63. The Authority is unable to judge the authenticity of this 'retraction statement'. As noted above (para 44), Ms Conwell did not see it or sign it. In any case, when we interviewed her, she dissociated herself from much of this allegation against a particular officer. While she repeated general allegations of criminal acts and serious misconduct by Dunedin Police officers, she said that she did not know the Police officer with whom she had earlier supposedly said she had a long-term submissive relationship, and in fact had met him only once. The only part of the 'retraction statement' in this respect that she still maintained was true was that the officer had come up behind her in the street and had told her to confess to both the Middlemiss and Rodgers deaths under threat of harm to her family.
64. When we interviewed this officer, he emphatically denied any involvement. He said that he had no explanation for the allegation, or knowledge of the basis for it. He specifically rejected as completely false the allegation that he had threatened Ms Conwell on the street. He said that he had no involvement in the investigations into the Middlemiss and Rodgers deaths, and indeed was no longer a serving Police officer at the time the alleged threat was made. This was confirmed by the Police files and the other officers with whom we spoke. He also said that he had no real knowledge of the homicides until he read an *Investigate* magazine article in 2007. To the best of his knowledge, he had had no contact of any sort with, and did not know, either Ms Conwell or Ms Sutton.
65. Ms Conwell's lawyer stated at interview that he believed her to be fearful of a Dunedin Police officer but did not suggest that she had confessed because she had been threatened by an officer.
66. The only information suggesting the possibility that there had been contact between this Police officer and Ms Conwell came from a Detective Senior Sergeant who reported to the Authority that in another file there was a record indicating that, on 14 May 1997, Ms Conwell had left a package at the Dunedin Police Station for the officer who she subsequently alleged had threatened her. The package was said to be from "Petra". The package had been delivered to the officer, who had requested that it be lodged in the

exhibit store. The package had contained a pair of socks and a note. There is no indication on the file why this package was left for the officer concerned or what its significance was. However, it seems clear that the officer himself did not take possession of the package and did not regard it as containing his own belongings.

67. This is not sufficient to demonstrate the existence of any relationship between Ms Conwell and the officer. The Authority has no reason to disbelieve the officer's strong denial of any such relationship. The so-called 'retraction statement' is of questionable validity and has no evidential value. There is in any event no evidence that this officer was in any way involved in or connected with the Middlemiss or Rodgers investigations. There is no evidence upon which it can be concluded that the confessions made by Ms Conwell were extracted under duress or as a result of Police misconduct.

FINDING ONE

There is no evidence that the confession made by Joyce Conwell was extracted under duress or as a result of other Police misconduct.

Issue Two

Was the initial investigation by Police into the circumstances of the death of Doreen Middlemiss adequate and appropriate?

68. The Detective Senior Sergeant in charge of the original investigation into the death of Ms Middlemiss told the Authority that he had concerns about the injuries to the face and the backs of the hands of the deceased but noted that, while there had been a suggestion of a fall, no evidence of a fall was found, either in the room or elsewhere. He had several discussions with the pathologist and ultimately accepted his opinion that there was no causal link between the injuries and the death. He said that the pathologist at no time during the initial investigation suggested that some of the injuries could be defence injuries, and that if the pathologist had raised that as a possibility he would have changed his approach to the investigation.
69. The Detective Senior Sergeant also noted that, when he accepted the pathologist's opinion as to the cause of death, he did not simply withdraw from the matter at that stage. There were consultations with the District Crime Manager and discussions about what needed to be done in order to complete the inquiry. He met with key members of the Investigation Team and consulted the pathologist again. Only after the pathologist reiterated that there was no causal link between the injuries and the death was the decision made to treat the matter as a sudden death. At that point inquiries were handed back to staff at South Dunedin to be completed.

70. Although there were a few further discussions after the pathologist's advice as to the cause of death was received, it is clear that the investigation virtually stopped at that point. Little or no further work on a possible assault, or who had been responsible for it, was undertaken. Given the pathologist's opinion, this was not an unreasonable decision. The observed injuries to the deceased were not in themselves serious; there was no obvious evidence pointing to a particular suspect; and the resources required to pursue the investigation to a satisfactory conclusion might have been considerable. It would perhaps have been desirable for the investigation to have followed up lines of inquiry about other possible offences. However, in the absence of information about available resources and other investigative priorities at the time, the Authority cannot criticise the Police for failing to do so.

FINDING TWO

The lack of further inquiries into the injuries sustained by Ms Middlemiss after the pathologist's opinion as to the cause of death was reasonable.

Issue Three

Were the subsequent investigations by Police into the circumstances of the deaths of Doreen Middlemiss and Alec Rodgers adequate and appropriate?

71. The subsequent investigation into the Rodgers homicide and the re-investigation of the death of Ms Middlemiss in both Christchurch and Dunedin, were detailed and extensive, and pursued a number of different avenues of inquiry. Before Ms Conwell's confession to her part in both deaths on 20 December 1999, no criticism of the scope or appropriateness of the Police investigation can be made.
72. However, there are a number of issues about the confession and subsequent events that need to be discussed in more detail.

The Middlemiss Reinvestigation

73. Turning to the death of Ms Middlemiss, three issues require consideration.
74. First, the interview during which the confession was made was not entirely satisfactory. In particular, there was a notable lack of probing for indicators that would have assisted in corroborating aspects of her confession. Principally, she was not asked about the scene – the dentures on the floor, the screwdriver, torch and rubber band in the bed, the note, or the blood spot on the floor. Nor was she pressed on the deceased's clothing, or whether she had left her covered or uncovered. It would clearly have been prudent to cover these matters. However, the interviewing officer's failure to do so may have been due to the fact that he had only been contacted earlier in the day and had not had time to

prepare a proper interview plan. In the light of that, the Authority does not believe that the officer can be criticised for these deficiencies.

75. Secondly, before Ms Conwell's confession there was clearly insufficient evidence for her to be charged in connection with the death of Ms Middlemiss. However, after her confession, no attempt was made to undertake inquiries that might have corroborated it or called its veracity into question.
76. We do not think that the Police can be criticised for failing to pursue such inquiries. Ms Conwell pleaded guilty to and was convicted on the attempted murder charge on 17 January 2000, only 28 days after her confession. Given the Christmas period and the existence of her confession, it is unsurprising that no real further inquiries were undertaken over that period. While it might have been prudent for the Police to undertake these follow-up inquiries after her conviction, it is not unreasonable that they did not do so; by the time the matter was before the Court and a conviction entered, the investigation in relation to Ms Conwell was effectively at an end. It should also be noted that the Police were not provided with the 'retraction statement' and the officers we interviewed had never seen it.
77. Thirdly, there is evidence that the Crown Solicitor was critical of the fact that he had not been consulted on the attempted murder charge before it was laid. It is certainly the understanding of the Authority that it is usual for Police to engage with the local Crown Solicitor on decisions relating to serious charges. The Police officers who we interviewed confirmed this. However, the Crown Solicitor's concern in this case appears to have been that he regarded the appropriate charge in relation to the death of Ms Middlemiss to be murder rather than attempted murder. Given the pathologist's report as to the cause of death, there would inevitably have been difficulties in proving the murder charge at trial. While it may be prudent for the Police to consult with the local Crown Solicitor in matters such as this (so that charges do not have to be amended at a later date), we do not think that any real criticism can be levelled at the Police for failing to do so in this instance. We note, too, that the officer in charge of the case did seek the views of the local Crime Services manager and Police legal advisers in Dunedin and Christchurch, before laying the attempted murder charge.

The Rodgers Investigation

78. Turning to the murder of Mr Rodgers, two issues require consideration.
79. The first issue is whether the Police were remiss in failing to conduct further inquiries between the date on which she was charged in connection with that murder and before her entry of a guilty plea.
80. Before Ms Conwell's confession there was insufficient evidence for her to be charged in connection with the death of Mr Rodgers. In the notes that she had exchanged with Ms

Sutton on 21 November 1999, she had made a number of incriminating statements to the effect that she was a party to Mr Rodgers death and that it had been the intention that he be maimed rather than killed. However, the Police had no other evidence implicating her in the murder.

81. In the interview on 20 December 1999 there were a substantial number of discrepancies between her account of the events leading up to the shooting of Mr Rodgers and the account that had been provided by Mr Childs. It might therefore have been expected that further inquiries would be made to corroborate her version of events. Moreover, unlike the entry of her guilty plea to the attempted murder of Ms Middlemiss, she did not plead guilty to being a party to the murder of Mr Rodgers until 27 March 2000. The Police therefore had more than three months in which to undertake such inquiries.
82. These inquiries might, for example, have considered the following matters:
 - a) Ms Conwell in her confession said that the shotgun that she had given to Mr Childs for the purposes of shooting Mr Rodgers had been given to her by Mr Rodgers to look after. She described the gun as a sawn-off shotgun, but she was not asked for a further description or about ammunition for the gun. She said that she had not kept the gun at her various addresses because they were regularly searched by Police. However, she was not pressed on where she had concealed it. Nor were there any other follow-up inquiries, such as at her various addresses or with her various associates.
 - b) Police were aware, from the interview with a co-offender on 6 October 1999, that Ms Sutton and Mr Rodgers had been involved in the burglary and theft of a sawn-off shotgun in 1986 (see above, para 45). No inquiries were made in an effort to determine whether this gun was the same as that used in the homicide. If it was the same gun, there was no inquiry as to how or why it was passed to Ms Conwell.
 - c) There was no inquiry about Ms Conwell's alleged communications about the gun with Mr Rodgers, who was living in Christchurch and visiting Dunedin only fortnightly.
83. Since her confession, Ms Conwell has been consistent in maintaining that she did not have possession of the shotgun or give it to Mr Childs. As has been noted, the Police did not know about the 'retraction statement'. However, given the obvious discrepancies between the accounts provided by her and Mr Childs, they should have made further inquiries such as those outlined above. Their failure to do so before the entry of Ms Conwell's guilty plea on 27 March 2000 was undesirable.
84. The second issue is whether the Police should have conducted further investigations in response to the evidence they obtained in April 2000 that Ms Sutton had had possession of a shotgun less than two weeks before the Rodgers murder (see above, para 46). This evidence suggested the possibility that this was the firearm used by the killer, since

arguably it was unlikely that separate shotguns were in the possession of both Ms Conwell and Ms Sutton in the days before Mr Rodgers was shot. This raised questions about whether Ms Conwell was indeed the person who had kept a gun hidden for a significant period of time before handing it over to Mr Childs; and, if she had, whether this was part of a wider conspiracy in which Ms Sutton was involved.

85. However, by that time Ms Conwell had already pleaded guilty to being a party to the murder and had been sentenced to life imprisonment. Ms Sutton, when interviewed, had refused to answer questions about the firearm or how it came to be in her possession. Given that Court proceedings in relation to Ms Conwell's involvement in the murder had been concluded, the lack of any further investigation into the matter was reasonable.

FINDING THREE

The Police failure to undertake further inquiries between 20 December 1999 and 27 March 2000 in order to corroborate Ms Conwell's account of her involvement in the murder of Mr Rodgers was undesirable.

The lack of further inquiries into evidence that Ms Sutton had possession of a shotgun two weeks before the Rodgers homicide was reasonable.

Issue Four

Should a Detective Senior Sergeant have escorted Ms Conwell in his car to Christchurch Women's Prison after her first Court appearance?

86. In her complaint Ms Lane maintains that a routine transport of females to Christchurch Women's Prison took place on 22 December 1999, and that there was no need for the Detective Senior Sergeant to undertake that journey. Ms Conwell said in interview with us that she was uncomfortable during the drive to Christchurch because the officer was a friend of the officer who she alleges had threatened her.
87. When interviewed, the Detective Senior Sergeant said that he took Ms Conwell to Christchurch in his car at the request of the Duty Senior Sergeant, who had no staff to undertake the trip. He did not comment on whether there was a routine prisoner transport the following day, but did say that it was common practice at the time for officers to be asked whether they could assist with the transport of female prisoners to Christchurch. He also said that the decision that he was to transport Ms Conwell was made solely because of resources, although he added that it suited him to do so because he was able to visit his parents in Christchurch. He said that on the drive to Christchurch he and Ms Conwell discussed "*all sorts of things*". He said that Ms Conwell wrote notes in his notebook relating to their discussions about her case, and the notes were initialled by both of them.

88. The officer conceded that it was unwise for him to take Ms Conwell to Christchurch by himself. The Authority agrees. The way in which the notes of the conversation in the car were recorded and initialled was unsatisfactory. The journey should not have been undertaken without another person present. The Authority understands that the practice has since been discontinued.

FINDING FOUR

It was undesirable for a Detective Senior Sergeant to escort Ms Conwell from Dunedin to Christchurch by himself.

CONCLUSIONS

89. As outlined at para 59 above, the underlying concern of Ms Lane, the complainant in this case, is whether Ms Conwell was properly convicted of the attempted murder of Doreen Middlemiss and the murder of Alec Rodgers. The Authority again reiterates that the safety of those convictions, and whether they should be revisited, is not within the statutory remit of this organisation. We have a narrower function: to determine whether there was any Police misconduct or any failure of Police practice, policy or procedure.
90. The Ombudsman referred the complaint from Denise Lane, of possible misconduct by Police, in August 2011. The Authority has undertaken a detailed investigation into these issues. We have been hampered by the passage of time since the original events, and the fact that certain key people have since died.
91. The Authority does not report publicly on its independent investigations until it is satisfied that the most thorough investigation has been conducted and all reasonable natural justice processes have been completed. We understand that this can cause frustration for complainants at times.

Section 27 opinion

92. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
93. The Authority has formed the opinion, pursuant to section 27(1) of the Act, that the following actions and omissions were undesirable:
- a) Police's failure to undertake further inquiries to corroborate Ms Conwell's account of her involvement in the murder of Mr Rodgers;
 - b) A Detective Senior Sergeant escorting Ms Conwell from Dunedin to Christchurch by himself.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

20 May 2014

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has highly experienced staff who have worked in a range of law enforcement roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



IPCA

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