

PUBLIC STATEMENT RELATING TO DECISIONS TO DISCONTINUE PROCEEDINGS AGAINST SOLDIER F AND SOLDIER B FOLLOWING REVIEWS CONDUCTED IN LIGHT OF THE RULING IN R v SOLDIERS A AND C

Introduction

1. The Public Prosecution Service (PPS) has today confirmed that reviews have been completed in two cases involving the prosecution of former soldiers for shooting incidents that took place in 1972. In both cases a decision has been taken that the Test for Prosecution is no longer met and that therefore the proceedings should be discontinued.

2. The first case related to the prosecution of Soldier F for the murders of William McKinney and James Wray, and the attempted murders of Joe Friel, Michael Quinn, Joe Mahon and Patrick O'Donnell during events in Londonderry on 30 January 1972 known as Bloody Sunday.

3. Soldier F was the only individual reported by the Police Service of Northern Ireland (PSNI) in connection with the events of Bloody Sunday in respect of whom a prosecution was commenced. A summary of reasons for the decisions not to prosecute all of the other reported individuals was published at the time of those decisions in March 2019. The key difficulty faced by the prosecution related to the inadmissibility, for the purpose of criminal proceedings, of the previous statements made by soldiers in 1972 and also their later accounts provided to the Bloody Sunday Inquiry which reported in June 2010.

4. The second case related to the prosecution of Soldier B for the murder of Daniel Hegarty, and the wounding of Christopher Hegarty, in the Creggan area of Derry in the early hours of 31 July 1972.

5. There have been a number of previous decisions as to prosecution in the Soldier B case. Decisions not to prosecute issued in 1973, 2008 and 2016. The 2016 decision was challenged by way of judicial review and was quashed (*Brady, Re Judicial Review* [2018] NICA 20). A fresh decision resulted in a prosecution and this was challenged, unsuccessfully, by the defendant (*B, Re Application for Judicial Review* [2020] NIQB 76). Final preparatory steps were being taken to formally serve papers on the defendant when a review was commenced in the circumstances outlined below. The Circumstances of the Reviews

6. All decisions as to prosecution are taken by applying the Test for Prosecution. This involves two stages: (i) Consideration of whether the available evidence provides a reasonable prospect of conviction (the Evidential Test for Prosecution); and (ii) Consideration of whether prosecution is in the public interest (the Public Interest Test for Prosecution). It is only if the Evidential Test is met that the prosecutor proceeds to consider and apply the Public Interest Test.

7. In any case, when a decision to prosecute is taken, there is a duty on the prosecutor to keep under review whether the Test for Prosecution remains met. Paragraph 4.5 of the Code for Prosecutors

states: "Prosecutors also have a general duty to keep prosecution decisions under consideration and take into account any change in circumstances that occurs as the case proceeds. Where new information or evidence becomes available it should be considered along with all the existing information and evidence in the case and the Test for Prosecution applied. Where this occurs and that Test for Prosecution is no longer met the particular charge or charges or indeed the whole case should not proceed."

8. The new information that triggered these reviews was the ruling of Mr Justice O'Hara on 30 April 2021 in the case of R v. Soldier A and Soldier C [2021] NICC 3 (the "A and C" case). That ruling related to the admissibility of interviews conducted by the PSNI Historical Enquiries Team (HET) in 2010, statements prepared by the soldiers in advance of those interviews, and also statements made by the soldiers to the Royal Military Police (RMP) in 1972. Whilst it was accepted by the prosecution that the denial of legal rights and safeguards when taking the original 1972 statements would normally render them inadmissible, it was argued that the HET interviews, which were voluntary and conducted under caution and with the benefit of legal advice, were admissible, and that the adoption of the 1972 statements in those interviews rendered the 1972 statements themselves admissible.

9. The prosecution submissions were rejected by O'Hara J who acceded to the defence application to exclude all of the evidence referred to above. The key aspects of the ruling in A and C in relation to the 1972 statements were:

(i) The procedure under which RMP statements were taken following a shooting was part of an "appalling practice", which was designed in part to protect soldiers from being questioned by the Royal Ulster Constabulary and, ultimately, from being prosecuted. This was a practice worthy of continued judicial condemnation.

(ii) The compulsion, absence of a caution and lack of access to legal advice meant that it was inevitable the statements would be excluded as a matter of fairness pursuant to Article 76 of PACE, under common law principles, and having regard to Article 6 of the European Convention on Human Rights.

4(iii) The procedure under which the statements were taken amounted to "oppression" of the defendants, and the circumstances in which the statements were made were such that any confession made was likely to be unreliable. The evidence would therefore be excluded under both 'limbs' of Article 74(2) of PACE.

(iv) The procedure under which the statements were taken was not designed to establish criminal liability. Conspicuously missing from the statements was detailed analysis or explanation of what was in the minds of the soldiers when they fired, and why they felt entitled to fire. The remit of the procedure meant that the makers of the statements were not questioned in detail, and that the accounts were limited. This was a further matter relevant to the question of fairness under Article 76.

10. The key aspects of the ruling in relation to the HET interviews were:

(i)The purpose of a HET investigation was to seek to provide resolution. In an appropriate case a file would be submitted to the PPS. Later, in 2010, procedures were changed to ensure that cases that might lead to a prosecution were transferred to the PSNI. In 2013, a report criticised HET's use of interviews under caution, because its officers were not in fact investigators.

(ii)Accordingly, there was at least a degree of ambiguity about the purpose and potential consequences of HET's investigating officers interviewing former soldiers: "Was it simply to help understand what had happened before? Were they investigators in the criminal sense at all?"

(iii)The interviewing officers did not themselves reasonably suspect that the defendants had committed a crime. They expected that any criminal investigation, if required, would be conducted by the PSNI after HET had completed its work. They did not consider that they were themselves conducting a criminal investigation.