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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 09/10/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

PATRICK FRIZZELL AS PERSONAL REPRESENTATIVE OF THE ESTATE OF
BRIAN FRIZZELL (DECEASED)

Plaintiff

and

(1) THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN
IRELAND

(2) THE MINISTRY OF DEFENCE

(3) THE SECRETARY OF STATE FOR NORTHERN IRELAND

(4) ALAN OLIVER

(5) ANTHONY McNEILL

(6) THOMAS HARPER

Defendants

AND

Between:

MARGARET LUNDY ON BEHALF OF THE ESTATE OF ALAN LUNDY
(DECEASED)

Plaintiff

and

(1) THE CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN
IRELAND

(2) THE MINISTRY OF DEFENCE

Defendants

OPEN JUDGMENT ON CLOSED MATERIAL PROCEDURE APPLICATIONS

Gregory Berry KC and Joseph Kennedy (instructed by SASO) as Special Advocates for
the Plaintiffs

HUMPHREYS J

Introduction

[1] The plaintiff in the first action ('the Frizzell action') is the brother of the deceased, Brian Frizzell, who was murdered by loyalist terrorists on 28 March 1991. The plaintiff in the second action ('the Lundy action') is the widow of Alan Lundy who was murdered, also by loyalist terrorists, on 1 May 1993.

[2] In each case the plaintiff makes a number of allegations against the PSNI and the MOD. Relevant to the instant applications are the contentions relating to the importation of weapons into Northern Ireland by and on behalf of loyalist paramilitary groups which occurred, on the pleadings, in late 1987 and/or early 1988.

[3] The weapons imported included VZ 58 assault rifles, a Czech made weapon, and Browning semi-automatic pistols. A significant number of actions relating to legacy killings contain allegations that these weapons were imported into Northern Ireland, and permitted to be distributed to paramilitary groups, as a result of some acts or omissions on the part of state agencies, and then used in a series of murders.

The pleadings

[4] In the Frizzell action, it is pleaded that the PSNI and MOD, through their servants and agents, were:

- (i) Aware of plans to import significant weaponry into Northern Ireland in mid to late 1987;
- (ii) Aware of the arrival of the weapons shortly after this occurred;
- (iii) Involved in the procurement and distribution of the weapons amongst loyalist paramilitaries;
- (iv) In possession of intelligence in relation to the importation which was not disseminated to those investigating the matter.

[5] It is specifically pleaded that:

- (i) A surveillance operation by the PSNI and/or MoD was commenced on 7 January 1988 in relation to individuals known to have been involved in the importation;
- (ii) At 12:00 hours on 8 January 1988 three individuals were arrested at Mahon Road in Portadown in possession of some of the weapons from the shipment;
- (iii) At around 14:00 hours on 8 January 1988 a servant or agent of the PSNI or MoD warned James Mitchell, who was storing imported weapons at his farm in Co Armagh, that police intended to search his farm; and
- (iv) On 12 to 13 January 1988 intelligence was received that weapons were being stored in a barn at a farm owned by James Mitchell, but this intelligence was not disseminated to CID and Mitchell was not made subject of investigation into the importation.

[6] In the Lundy action, the case is made, albeit with less particularity, that neither the PSNI nor the MOD sought to intercept the consignment of weapons despite having knowledge of its arrival. Thereafter, the weapons were disseminated to loyalist paramilitary groups with the knowledge of the PSNI and MOD. One of the VZ 58 weapons was used in the murder of Mr Lundy.

The Closed Material Procedure Applications

[7] In each case, the court made a declaration pursuant to section 6 of the Justice and Security Act 2013 ('JSA'), being satisfied that:

- (i) The defendants would be required to disclose sensitive material in the course of these proceedings to the plaintiffs; and
- (ii) It was in the interests of the fair and effective administration of justice to make the declaration.

[8] Special advocates ('SAs') were appointed to represent the interests of the plaintiffs under section 9 of JSA.

[9] The defendants then applied, under section 8 of JSA, to the court for permission not to disclose material otherwise than to the court, the special advocates and the Secretary of State. Section 8(1)(c) prescribes the relevant test:

"The court is required to give permission for material not to be disclosed if it considers the disclosure of the material would be damaging to the interests of national security."

[10] When this test is met, the court must then consider whether it should require the relevant person (in this case, the PSNI and MOD) “to provide a summary of the material to every other party to the proceedings (and every other party’s legal representative).” It is incumbent on the court to ensure that any such summary does not itself contain material which would be damaging to the interests of national security.

[11] Subject to sections 8, 9 and 11 of JSA the rules of discovery applicable to civil proceedings continue to apply in cases where a section 6 declaration has been made.

[12] Pursuant to the requirement in section 8 JSA, rules of court were made in the form of Order 126 of the Rules of the Court of Judicature (Northern Ireland) 1980. Order 126 rule 2(2) provides for an overriding obligation on the court to ensure that information is not disclosed in a way which is damaging to the interests of national security.

[13] Order 126 rule 13 governs the consideration of closed material applications and provides that, before any such hearing, the relevant person and the special advocate must agree a schedule identifying the issues in dispute, giving reasons for these, and setting out proposals for the resolution of the issues.

[14] Order 126 rule 13(7) states that, where the court grants permission to the relevant person, it must:

“... consider whether to direct the relevant person to serve a summary of that material on the specially represented party and the specially represented party’s legal representative; but shall ensure that any such summary does not contain material disclosure of which would be damaging to the interests of national security.”

[15] By virtue of Order 126 rule 15, where the court gives judgment in relation to any proceedings to which the Order applies, it may withhold its reasons or any part thereof if it is not possible to give those reasons without disclosing information which would be damaging to the interests of national security. Where a judgment does not contain the full reasons on that basis, then a separate written judgment must be served on the SAs, the relevant person(s) and the Secretary of State.

[16] This is the OPEN judgment relating to the closed material applications in these cases; part of the reasons for the decision had been withheld as the information contained therein would be damaging to the interests of national security. Two separate CLOSED judgments have been prepared and served on the SAs, the PSNI, the MOD and the Secretary of State.

The Preliminary Issues

[17] A significant volume of closed material was provided to the SAs. This was the subject of close scrutiny by the legal teams involved and I am grateful to all concerned for the considerable time and care which has been involved in the detailed consideration of the important and sensitive issues which have arisen. Hearings in relation to the closed material were convened and held in private pursuant Order 126 rule 5(1).

[18] A preliminary issue was raised by the SAs in relation to documents and information which did not appear in the closed material but which they would have expected to see. An affidavit was sworn by a senior PSNI officer to the effect that the totality of the information held in relation to the weapons importation issue had been disclosed, nothing having been withheld on the grounds of relevance.

[19] The SAs then argued:

- (i) A suitable witness should be required to give oral evidence on oath, and be cross examined on the closed material applications; and
- (ii) The product of the closed material application should include a summary, or gist, to be provided the plaintiffs' open representatives of absent or unavailable material in addition to the gist of material actually disclosed.

[20] There is no doubt that the court could, in a suitable case, require a witness to attend and give evidence as part of a closed material application. Indeed, such course of action is expressly contemplated by Order 126 rule 11.

[21] In the instant case, the SAs sought not to cross-examine the deponent of the affidavit in relation to disclosure but rather some other unnamed but better informed witness.

[22] I have concluded that is neither necessary nor proportionate to require such a witness on behalf of the defendants to give evidence under oath as part of the closed material process. The court is aware of the considerable volume of material which has been disclosed and has uncontroverted evidence that these documents were not subject to any restriction on the grounds of relevance. The SAs will be in a position at trial to cross-examine the defence witnesses as to any missing or unavailable documentation. This is a mirror image of what would happen on a regular trial albeit with the plaintiff's OPEN representatives carrying out the questioning.

[23] The second preliminary question relates to how the absence of material ought to be dealt with.

[24] The defendants say, in reliance on the express terms of the JSA and Order 126, that the closed material procedure is limited to documents which are actually in

existence rather than those which it is speculatively believed may have been or ought to have been in existence.

[25] Whilst it is correct to say that both Order 126 rule 2(2) and rule 5 refer to 'information', this is in the context of information not being disclosed as it would cause damage to the interests of national security. Insofar as the process of gisting itself is concerned, rule 13(7) speaks of permission being granted to withhold material and consideration being given to the service of a summary of that material. The JSA itself, at section 6(11), defines 'sensitive material' as "material the disclosure of which would be damaging to the interests of national security."

[26] Neither the JSA nor the rules contain a similar statutory provision in respect of documents which are not contained within sensitive disclosure. There is no requirement to consider a summary of absent material or otherwise provide a gist of matters which may have been contained in now unavailable documents. The absence of such a requirement is not surprising given the nature of the exercise, which is to seek the court's permission to withhold sensitive material from disclosure.

[27] In the absence of such a procedure in the statutory code, it is not open to the court to impose this type of provision on the defendants. The parties may, of course, agree a form of words in a gist or summary which serves to reveal that certain documents were absent from disclosure which has been withheld with the court's permission but there is no obligation imposed on the defendants so to do.

[28] Furthermore, I am satisfied that this ruling causes no unfairness to the plaintiffs, nor does it infringe the right to a fair trial under article 6 ECHR. The absence of documents relevant to a particular issue is always a matter which can be explored in cross-examination and may lead to the court drawing a particular inference in an appropriate case.

[29] I therefore decline the SAs' applications in respect of the oral examination of a witness and also in respect of the gisting of missing or unavailable documents.

The Preparation of a Gist

[30] Following a series of exchanges, a schedule was produced under Order 126 rule 13(4) setting out the competing versions of the summary or gist of the sensitive material prepared by each party and the reasons for the areas of dispute.

[31] Ultimately, a gist was agreed subject to one area of dispute upon which the court was asked to rule. For the reasons set out in the CLOSED judgment, I made the following directions under Order 126 rule 13(7) and (10):

- (i) Giving permission to the defence to withhold sensitive material; and

- (ii) Directing them to serve a summary of that material on the plaintiffs and their legal representatives.

[32] In the absence of any decision by the defendants to decline to serve the summary as directed, I set out the gist in full at Annex A to this judgment.

[33] This judgment was served on the Secretary of State and the defendants pursuant Order 126 rule 16 in order that they could notify the court of any application to review the terms of the proposed judgment. It is noted that no such application has been made.

ANNEX A

GIST DEALING WITH PSNI AND NIO DOCUMENTATION

RE VZ58 WEAPON IMPORTATION

Background

1. Police carried out searches for materials relating to the importation of arms, specifically VZ58 weapons. The police material generated by the police searches has been made available to the Special Advocates in its entirety.
2. Over many years, both prior and subsequent to 1987, the police received intelligence about Loyalist paramilitaries' (including UDA, UVF, Ulster Clubs and Ulster Resistance) various efforts to obtain large consignment of firearms.
3. A review of the information received by police during this period indicates that they had information referring to a number of countries from which weapons might be sought by Loyalists or where their arms supply contacts might reside. These ranged across Great Britain and Europe, as well as the Middle East and North America.
4. During this time, there were also a number of reports of alleged successful weapons deliveries having been received in various ports in NI, other than Belfast.
5. Amongst a volume of information received by police throughout 1986 and 1987, on the subject of Loyalist arms procurement efforts, there was information about a proposed tripartite arms deal involving the Ulster Clubs, the UDA and the UVF. A common theme of some of the reports on the alleged deal was that the money to fund the deal was not available. Throughout 1987 there were reports indicating that some Loyalist paramilitaries were concerned about recent RUC successes in respect of arms finds, and they took steps to reduce the number of people who had knowledge of the arms procurement attempts. The materials indicate that any arms coalition or arms deal was in a state of flux throughout 1987, with some Loyalists querying whether the arms deal was genuine and withdrawing money.

Gist

6. During autumn 1986, police had conflicting information about alleged Ulster Club attempts to raise funds to purchase arms. There was also information that the Ulster Clubs were in a hurry to obtain money. Separate reporting

suggested that Ulster Clubs were in contact with a potential weapons supplier and had already raised some of the necessary money. Around the same time, however, separate information indicated that the UDA had investigated rumours about the Ulster Clubs being offered a large consignment of arms and concluded that no such consignment existed.

7. In late 1986 the police received information about an alleged Loyalist arms shipment from the Middle East, and that the Ulster Clubs were attempting to raise money for arms. There was also information that Loyalists had recently brought arms into Northern Ireland using a fishing vessel.
8. By the end of 1986, the police had information that Loyalists were seeking to obtain arms from Europe using a contact from North America. The funding was to come from the UVF, the UDA and the Ulster Clubs. The police had some collateral reporting for this procurement effort.
- 9.. On 25 December 1986 security forces in the UK and Canada foiled a Loyalist attempt to acquire arms in Toronto, Canada, and recovered a quantity of weapons. Arrests were made.
10. In early 1987, police had information about the Ulster Clubs' attempted procurement of weapons, including from North America. The police also had information that the Ulster Clubs had no real weaponry, and its arms fund raised only a relatively modest sum, and although there had been talk about arranging arms deals, none had yet produced any results. The police continued to receive reports that the Ulster Clubs lacked sufficient funds to purchase arms.
11. In the first part of 1987, police were receiving conflicting information about Loyalist arms procurement efforts, including that they hoped to collect a large quantity of arms from Europe. Ulster Clubs had a large sum of money available for the purchase of munitions. They were also considering purchasing UVF weapons. Police also had information that some Ulster Clubs members were worried that no weapons had yet materialised. There was also information about the possibility of an arms supply solely for the UDA. There was contradictory information about which other Loyalist organisations would contribute funds towards an Ulster Clubs arms deal. Other reports indicated that there were insufficient funds.
12. Reporting indicated that some members of the Ulster Clubs had decided not to purchase weapons from an arms delivery in Europe. There was other reporting that the Ulster Clubs had possessed some weapons that they were prepared to offer for sale. Although Loyalist arms procurement attempts were ongoing, there were reports about funding issues. Also, there were concerns amongst both the UVF and Ulster Clubs due to successful police arms finds. The Ulster Clubs were attempting to reduce the circle of

knowledge about arms procurement. These concerns about the spread of knowledge were to continue. There were reports that the UVF were interested in the possibility of a joint arms deal with the UDA and Ulster Clubs.

13. In early summer 1987, there was information about UDA attempting to import arms, and that they might come from the Middle East. Some Ulster Clubs' members were informed that the arms operation was to be called off due to concern about leaks. Also, the UDA and UVF were reported to have pulled out of the deal and had their money returned. There was more information about the Ulster Clubs suffering financial problems which affected their procurement plans. The Ulster Clubs, however, hoped that the funding difficulties could be rectified. The police had information about a weapons importation from mainland Britain to Northern Ireland, but there is conflicting information about the extent of any progress with the Ulster Clubs fundraising. In June 1987 police found a small amount of weaponry concealed in a hide at Ballysillan Avenue, Belfast.
14. There was information that there was some dissent within the Ulster Clubs due to the failure of any weapons to arrive, despite payments having been made. There was intelligence that the UVF had received a large consignment of arms from a supplier in Great Britain. The UVF were concerned about police arms finds. There was also reporting about the Ulster Clubs expecting to receive weapons during summer 1987.
15. In summer 1987 the police had information that the Ulster Clubs were anticipating that they would soon be receiving arms and that some of the proceeds of crime were to be put towards purchasing arms. Intelligence was received that the robbery of the Northern Bank in Portadown on 8 July 1987 was carried out by Loyalist paramilitaries, and that the proceeds were intended to be used to finance an arms deal. Other intelligence reported that the UDA were considering stealing arms from a security force base.
16. Intelligence in late summer 1987 indicated that the Ulster Clubs arms deal still appeared to be in progress. Police also learned that the Ulster Clubs, UVF and UDA had negotiated a joint arms deal during the previous 18 months or so. The weapons, which were believed to be coming from the Middle East and South Africa, would only be delivered after they had been fully paid for. In autumn 1987 the police had information that the money had been banked in Europe. This consignment was believed to be the UDA's biggest ever arms deal. The weapons were to be delivered by an international arms dealer probably to somewhere in Great Britain. Later intelligence reported that some Loyalists wanted their money back, but the deal was too far advanced.
17. In the Autumn of 1987, in response to information received about the

progress of a possible Loyalist arms deal, MI5 researched shipping routes between South Africa and the UK and mainland Europe.

18. By the end of 1987, the police had information that the UVF had taken delivery of a contingent of weapons that had been brought by boat to somewhere on the coast of County Down.
19. Subsequent to the seizure of the weapons at Mahon Road, police received conflicting information in January 1988 on where the weapons had come from, as well as where and how they entered Northern Ireland. The materials indicate that on 19 January 1988 police had information that investigations revealed a specific container had arrived in Belfast docks on or about 2 January 1988 and remained there until 5 January 1988 allegedly containing ceramic floor tiles from Beirut having left Beirut on 2 or 3 December 1987 and coming via Liverpool to Belfast. On 19 January 1988, police ascertained that shipping container ELLU 296 499/1, left Beirut on 2 December 1987 on the Manchester Trader. When it arrived in Ellesmere Port, it was transferred to the Atria, and was off loaded in Belfast docks on 2 January 1988. In mid-late January 1988, police were trying to determine if this was the arms or a legitimate transaction.
20. In the period between the early evening of 4 January 1988 and 5 January 1988, MI5 became aware that the arms had arrived in Northern Ireland in a container at an unspecified port and was in bond awaiting customs clearance. This information was passed on to the RUC promptly. A surveillance operation against senior UDA figures was mounted, while the RUC undertook to begin seeking to identify likely containers in conjunction with HMRC.
21. It was later discovered by the RUC on 19 January that container no. ELLU 296 499/1 departed Belfast docks, also on 5 January 1988, bound for a business in Northern Ireland. The container was said to contain 24,000 ceramic floor tiles originating from Beirut.
22. Documents on file indicate that on 7 January 1988, senior UDA leadership figures learned that the arms consignment in the container had cleared customs and was in the hands of an unknown intermediary, and that the arms were being stored in an unknown farm in Co Armagh. Observed by surveillance officers, an individual, later identified as the intermediary, met with senior UDA members and arrangements were made for the collection of their share of the arms the following day.
23. The police surveillance operation which commenced at 0900hrs on 6 January 1988, in light of information received that the UDA, UVF and Ulster Clubs had plans to receive weapons that week, was targeted at the address of an individual believed to be involved in the arms deal.

24. On 7 January 1988 police then received information that a different individual had instructed two men to hire cars for use over the weekend of 8-9 January 1988. It was believed that the cars would be used to transport weapons to Belfast. Police undertook surveillance of these vehicles and the vehicles (a Maestro and 2 hired Granadas) were observed travelling from Portadown towards Tandragee on 8 January 1988. The vehicles were observed stationary within a car park opposite the Gilford Road in Tandragee at approx. 0940hrs. The vehicles remained there until approx. 10.30hrs when the Granadas left. It was believed that the vehicles had possibly gone out the Markethill Road from Tandragee. Visual Surveillance was lost on the vehicles for approx 90 mins but the vehicles were then re-located on the road from Tandragee towards Portadown and were stopped near Mahon Road at approximately 12 noon on 8 January 1988. Both Granadas were heavily laden with weapons and ammunition, and all three drivers were arrested. Police had access to a technical surveillance device which was found to be functioning at 1045 and 1055hrs. At 1045 hrs it was recorded that the Granadas appeared to have stopped. The VCP which was set up on the Mahon Road, and the fact that Police assets remained in the Tandragee/Mahon Road area, reflected the police plan to intercept vehicles on their return journey. A document indicates that MI5 were informed from the outset of the police intention to run the cars into a VCP on the return journey.
25. The weapons seized at Mahon Road by the RUC on 8 January 1988 comprised 61 Czech AK47 type rifles (later determined to be the VZ58P variant), 30 Browning 9mm pistols, 150 anti-personnel grenades, ammunition, magazines, and pouches. Research indicated that the grenades were of the Soviet RGD-5 type, that the pistols were of Belgian manufacture and the ammunition was made in China. MI5's assessment was that the weapons recovered were an impressive list of equipment which was out of character with past procurement exercises by Loyalist paramilitaries, and was purchased by a single entity, possibly, due to its military nature, by a government.
26. Based on the known weights of the container, the tiles and recovered weapons, it was estimated that the likely composition of the entire load of weapons was 200 rifles, 100 pistols, 24 boxes of grenades and 48 boxes of ammunition.
27. After the seizure of the weapons at Mahon Road, police received conflicting information about where the weapons might have been stored prior to their seizure. Police had information that the weapons were hidden in a church or churchyard in Co Monaghan before being moved to the North. Police had information that the weapons were brought from the Republic of Ireland via South Armagh to Portadown. Police had information that not all of the

weapons had been confiscated and that they were part of a larger consignment. In mid-late January 1988 police had information that Loyalists transported a couple of vanloads of weapons on the same route before being caught in Portadown.

28. On 4 February 1988, police had information that a large haul of firearms and rockets were in the process of being sorted out at an address on Flush Road in Belfast, with a view to transporting the arms from Flush Road in various vehicles to different locations around Northern Ireland for use by the UVF.
29. On 4 February 1988, the RUC raided an address in Flush Road, Belfast and recovered 38 VZ58 rifles, 15 Browning pistols, 1 RPG launcher with grenades and 100 RGD-5 hand grenades. Information indicated that these weapons were in the possession of the UVF and were destined for different units around Northern Ireland, as when they were seized, they were in bags with the names of the units marked on the outside. MI5 assessed that these weapons formed part of the same consignment as those seized on 8 January 1988.
30. After the Flush Road seizures, police had multiple pieces of information indicating concern and dissent within Loyalist circles about recent police success in arms seizures, and the disruption this caused. Police also had information that part of the shipment remained at large. In late February 1988 police had information that the arms had been delivered to Flush Road from Portadown in a lorry, and that Flush Road was not the intended delivery address but that a difficulty had arisen en route. In late February 1988 police had information that the UDA and UVF shares of weapons had been captured in their entirety by police, but the Ulster Resistance share had been hidden possibly in Co Armagh and further share was being held around the Lurgan area, possibly for the Ulster Clubs.
31. In mid-January 1988, the intermediary, who was believed to have had the consignment somewhere under his control, was arrested by Police, and receipts from hotels in Geneva dating from late 1987 were seized from his residence. MI5 were asked by RUC to make enquiries to see if other persons of interest had stayed in the same hotels at the same times. Inquiries were duly made and revealed that an individual had travelled to Geneva on a number of occasions in 1987. Intelligence suggested that during some of these visits he had met an American arms dealer, on whom MI5 conducted further inquiries.
32. MI5 investigators considered that it was possible that the government of Republic of South Africa (RSA) had facilitated the shipment in some way, partly because of the possible involvement of the American arms dealer in the deal, who seemed well connected in both the RSA and Middle East. However, it was thought very unlikely that the RSA had actually supplied

the weapons. The MI5 investigators also concluded that there was no doubt that UDA was dealing with the RSA over supply of a British missile system.

33. A body of intelligence indicated that an unknown proportion of the original arms consignment, which had evaded seizure by the security forces, had found its way to various Loyalist paramilitary groups. Intelligence also indicated that in the Spring and Summer of 1988, Loyalist paramilitaries continued to seek purchase weapons from the original consignment.
34. Throughout 1988 police received information that Loyalists were trying to gain access to arms from the January 1988 shipment, but were having difficulties getting access. Police also had information of some Loyalists successfully obtaining weapons believed to be from the shipment. In Autumn 1988, police had information that, by that time, the UDA had lost 70% of its share of the January 1988 arms shipment, while the UVF had lost about a third of its allocation. As these organisations were the biggest contributors to the deal and had to receive additional weapons to make up for their losses, there was a shortage of weaponry for smaller groups. Police also had information that following the arms shipment arrests, the main arms dump was cleared out and moved to a new location.
35. On 14 and 15 November 1988, the RUC conducted searches in the Markethill area, and seized a quantity of weapons from hides assessed to be controlled by Ulster Resistance. The types of weapons recovered indicated that a proportion of those seized formed part of the consignment intercepted in January 1988. Also recovered was a Javelin missile aiming device, which police believed was stolen from Shorts. After the November weapons seizures, police had information that these weapons represented the majority of the Ulster Clubs/Ulster Resistance share of the January 1988 arms shipment. Police also had information that the November seizures represented the entire weapons cache held by a unit of the Ulster Resistance.
36. In the mid-late 1970s police received information that James Mitchell's farm in Co Armagh was being used as a Loyalist base and that weapons might be stored there. James Mitchell was arrested on 14/12/78 after a search of his lands revealed arms and ammunition. He was charged with firearms offences on 30/10/79 and later convicted. In late 1983, police received information that Mitchell had UVF weapons under his control. In 1986, police noted that no intelligence had ever come to light to suggest that Mitchell had involved himself with any Loyalist organisation since his conviction and that at that time he was suffering from ill health. In Spring 1986 police had information that Mitchell was active with Loyalists in Portadown. In mid-January 1988 police had information that Mitchell and two others attended a meeting believed to relate to the recent arms find at Mahon Road.

37. In late 1990, police received information that in 1986 (it is clear the date of 1986 is erroneous and actually refers to 1988) Mitchell had hidden Loyalist weapons on his land in plastic bins, and that in 1986 (it is clear the date of 1986 is erroneous and actually refers to 1988) Loyalist weapons consignments were unloaded at Mitchell's farm and divided between the various organisations. The UVF were to collect their share of weapons using a van to transport the weapons to Flush Road, Belfast. The UDA were to move their share on the evening of the same day, using hired Granada cars. The Ulster Clubs had already taken their share of the weapons. Arrangements were changed at the last moment and the UDA weapons were recovered by police at Mahon Road, Portadown. Police then went to search Mitchell's farm, but Mitchell was warned that police were enroute and the remainder of the weapons were removed to a safe location. In 2016 police received information that a police officer made a phone call to Mitchell's farm before a police search. In 2014 and again in 2017 police received information about a PIRA campaign to discredit the police officer named in 2016 as having made the telephone call.