Judicial Communications Office

Friday 20 September 2019

COURT DELIVERS "HOODED MEN" JUDGMENT

Summary of Judgment

The Court of Appeal today[1], by a majority of two to one, said it was satisfied that the treatment to which Hooded Men had been subjected to would if it occurred today properly be characterised as torture, bearing in mind that the European Convention on Human Rights is a living instrument, but that the test had not been met to enable an Article 2 or 3 procedural investigation to take place given the passage of time. The Court upheld the earlier decision to quash the PSNI's decision not to take further steps to investigate the question of identifying and, if appropriate, prosecuting those responsible for criminal acts arising from their interrogation. It recognised however that an investigation may be hampered by the antiquity of the events.

The appeal concerned applications[2] for judicial review of the PSNI's decision in 2014 that there was no evidence to warrant an investigation, compliant with Articles 2 and 3 of the ECHR, into the allegation that the UK Government authorised and used torture in NI in 1971. The applications also challenged decisions of the PSNI, Department of Justice and Northern Ireland Office as constituting a continuing failure to order and ensure a full, independent and effective investigation into torture at the hands of the UK government and/or its agents in compliance with Articles 2 and 3 of the ECHR, common law and customary international law. The trial judge had dismissed the applications but declared that the PSNI's decision not to take further steps to investigate the question of identifying and, if appropriate, prosecuting those responsible for criminal acts should be quashed. The Court of Appeal said it would deal with all the issues that had been before the trial judge.

Background

The background to the decision to introduce detention without trial and the five interrogation techniques[3] in Northern Ireland in 1971 is set out in paragraphs [3] – [10] of the judgment. As evidence of the nature and effects of the treatment of detainees emerged there was considerable public disquiet.

On 31 August 1971 the Home Secretary established the Compton Enquiry to investigate allegations of physical brutality. It considered that brutality was an inhuman and savage form of cruelty, and that cruelty implied a disposition to inflict suffering, coupled with an

[1] The panel was the Lord Chief Justice, Lord Justice Stephens and Lord Justice Deeny. The Lord Chief Justice delivered the judgment of the court and Lord Justice Deeny delivered a dissenting judgment.

[2] The applications were brought by Francis McGuigan (one of the "hooded men") and Mary McKenna, the daughter of Sean McKenna deceased, another of the hooded men.

[3] The techniques were: wall standing; hooding; subjection to noise; deprivation of sleep; and deprivation of food and drink.

indifference to, or pleasure in, the victim's pain. The Committee concluded that none of the 12 complainants suffered physical brutality as so defined.

On 16 November 1971 the Prime Minister established the Parker Committee to consider whether, and if so in what respects, the interrogation procedures required amendment. The Committee reported on 31 January 1972 with the majority concluding that, subject to effective safeguards against excessive use, there was no reason to rule out the techniques on moral grounds. In his minority report Lord Gardiner found the issue of authorisation was one of some difficulty and questioned whether the Committee should recommend the enactment of legislation governing the use of the interrogation techniques in emergency conditions. On 2 March 1972, the Prime Minister announced that the government had decided that the techniques would not be used in future as an aid to interrogation.

On 16 December 1971, the Irish Government submitted an application to the European Commission for Human Rights against the UK alleging that the hooded men were subjected to treatment in breach of Article 3 ECHR. The Commission concluded that the combined use of the five techniques constituted a practice of inhuman treatment and of torture contrary to Article 3 and that violations of Article 3 had occurred. The Irish and UK Governments discussed the possibility of a friendly settlement but agreement could not be reached on the initiation of prosecutions or disciplinary proceedings against the officers who were involved in conducting the interrogations. The Irish Government then requested an order from the European Court on Human Rights (ECtHR) that the UK Government should proceed under the criminal law of the UK against the members of the security forces who committed acts in breach of Article 3 and against those who condoned or tolerated them. The ECtHR decided to review the Commission's decision and while it accepted that the use of the techniques amounted to inhuman or degrading treatment it considered that they did not occasion suffering of the particular intensity and cruelty implied by the word torture. The ECtHR also concluded that the sanctions available to it did not include the power to direct one of the States before it to institute criminal or disciplinary proceedings in accordance with its domestic law.

The issue lay dormant until documentation was discovered by researchers in 2013. On 4 June 2014, RTÉ broadcast a documentary which disclosed correspondence that had not been before the Commission and ECtHR. This indicated that in December 1976 Roy Mason, the then Secretary of State for NI, wrote to his opposite number in the Conservative Party, Airey Neave, indicating that it was preferable that the claims for damages in respect of the interrogation procedures should be settled out of court given that the procedures themselves were unlawful and because of the embarrassment or worse which could arise for those concerned at the time including Lord Carrington. The terms of the letter raised concerns in the Ministry of Defence should the letter be disclosed and it was recommended that the Secretary of State attempt to recover the letter from Mr Neave and advise him not to reveal its contents to anyone else. This appears to have been successful and an amended letter excluding the reference to embarrassment and Lord Carrington was provided.

The programme also referred to a memo written by the then Home Secretary, Merlyn Rees on 31 March 1977 to the Prime Minister ("the Rees memo") after a meeting with representatives of the Irish Government seeking to achieve a friendly settlement of the dispute which stated: "It is my view (confirmed by Brian Faulkner before his death) that the decision to use methods of torture in Northern Ireland in 1971/72 was taken by Ministers – in particular Lord Carrington, then Secretary of State for Defence." In a note in the margin of the Rees memo the Head of the Army Department of the Ministry of Defence (MoD") wrote: "This could grow into something awkward if pursued". The Rees memo was followed up by a letter from him dated 18 April 1977 in which he said: "I would accept that in discussing the situation in 1971/72 I compressed the record too starkly".

The Pat Finucane Centre also uncovered material in the National Archive in 2013 including a document from a MoD official dated 9 November 1971 entitled "Northern Ireland – Authority for Interrogation". In this document it stated:

> "On 10 August [1971] S of S [Lord Carrington] discussed the matter with the Home Secretary [Reginald Maudling]. Neither Secretary of State indicated any dissatisfaction with the situation. S of S consider, I believe, that he and the Home Secretary (in the Prime Minister's absence) thereby acquiesced in the provision by the Army of advisory services for the interrogations that were expected to be authorised by the Northern Ireland Minister of Home Affairs and to produce a valuable intelligence dividend. The selection of individuals to be interrogated was, however, entirely a matter for the RUC and the Northern Ireland Government. On 11 August Mr Faulkner, acting as Minister for Home Affairs, and on the advice of the RUC, signed orders … authorising the removal of each of the 12 persons … Mr Faulkner had received recommendations that these individuals should be interrogated, and he had been extensively briefed by the Director of Intelligence in Northern Ireland on the techniques of interrogation. By authorising the removal of these persons in the circumstances, Mr Faulkner must have deemed to have agreed that they should be interrogated. I believe therefore that not only would it be fair that any public answer should be in terms that interrogation had been authorised by the Northern Ireland Government with the knowledge and acquiescence of HMG; but that the legal fact of the signing of the removal order by Mr Faulkner virtually precludes any other answer. Likewise, if asked who authorised interrogation of these particular individuals, the facts permit no other answer than "the Northern Ireland Government".

The RTÉ broadcast led to a question being asked by Gerry Kelly MLA at the Northern Ireland Policing Board in July 2014 about what action the Chief Constable had taken "following the assertion in official documents that Lord Carrington authorised the use of methods of torture in this jurisdiction". The response was that "the PSNI will assess any allegation or emerging evidence of criminal behaviour … with a view to substantiating such an allegation and identifying sufficient evidence to justify a prosecution and bring people to court". The PSNI deployed a researcher to carry out an investigation at the National

Archives. He was unable to locate the Rees memo and was told "it had most likely been returned to the original department"[4]. He reviewed a range of documents and concluded that there would be no useful purpose served by taking the investigation further. This resulted in a written response from ACC Kerr on 17 October 2014 stating that the evidence to support an allegation that the UK Government had authorised torture had not been found and that it was clear that the use of torture was never authorised at any level. It was this statement that generated this litigation.

On 27 October 2017 the trial judge, Mr Justice Maguire, dismissed the applications for judicial review of the PSNI's decision that there was no evidence to warrant an investigation compliant with Articles 2 and 3 must fail but declared the decision not to take further steps to investigate the question of identifying and prosecuting individuals should be quashed.

On 4 December 2017 an application was made by the Irish Government to the ECtHR requesting it to revise its judgment on the grounds that the UK Government had information demonstrating that the effects of the five techniques could be substantial, severe and long-lasting while it had alleged in the Convention proceedings that the effects were minor and short term; and that the archive material revealed the extent to which, at the relevant time, the UK Government had adopted and implemented a policy of withholding information from the Commission and the ECtHR including that their use had been authorised at ministerial level and their purpose in doing so. The majority of the ECtHR had doubts as to whether the documents on the medical effects suggested that the Commission had been misled as to the serious and long-term effects of the five techniques. The ECtHR accepted that a number of documents demonstrated that the then UK Government was prepared to admit that the use of the techniques had been authorised at "high level" to avoid any detailed enquiry into the issue but that the relevant facts were not "unknown" to the Court at the time of the original proceedings. In her dissenting judgment, Judge O'Leary concluded that the new facts revealed that medical evidence was available pointing to the long-term serious mental effects of the five techniques and the existence, nature, extent and purpose of a policy of nondisclosure and obstruction by the UK Government. She considered that those new facts might or would have had a decisive influence when the Court considered whether it should confirm or overturn the unanimous Commission finding of torture.

Consideration

The passage of time is the most substantial issue in this appeal. It arises in two ways:

- The Convention is a living instrument. The Court of Appeal said that it was clear that the approach both nationally and internationally to the conduct which would constitute torture in 1971 and the steps that should be taken in relation to it have changed. It referred to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was adopted in 1984. It provided a

[4] The RTÉ journalist stated in her affidavit that she had accessed the Rees memo in a MoD file in the UK National Archives.

definition of torture, that torture should be criminalised and that alleged offenders should be subject to criminal, disciplinary or other appropriate proceedings. The UK Government gave effect to the criminalisation provisions of the Convention in s. 134 of the Criminal Justice Act 1998 which provides that "a public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties." The Court said the decision of the ECtHR in 1978 was subject to a degree of criticism because of the nature and extent of the conduct required to constitute torture before such a finding could be made. In 1999 the ECtHR reviewed its position and stated that "having regard to the fact that the Convention is a "living instrument which must be interpreted in the light of present day conditions", it considered that certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. In the domestic courts, it was accepted in 2006 that the international prohibition of the use of torture enjoyed an enhanced status which meant that in terms of criminal liability every state was entitled to investigate, prosecute and punish or extradite individuals accused of torture who were present in its jurisdiction. It was also accepted that torture may not be covered by a statute of limitations and that only in the past 25 years had international law recognised a duty on states to carry out formal investigations into at least some of the deaths for which they were responsible and which may well have been unlawful.

- The temporal relationship between the claim in this case made in 2014 and the events which occurred some 43 years earlier. In paragraphs [78] – [98] the Court reviewed the domestic and international case law on the procedural and substantive obligation on the State under Article 2 ECHR to carry out an effective investigation and the temporal jurisdiction for carrying out an investigation. The Court said that, unlike the trial judge, it had the benefit of the UKSC decision in Geraldine Finucane's Application [2019] UKSC 7 which set out the following propositions:

    - The critical date for the establishment of Convention rights in domestic law is 2 October 2000 when the Human Rights Act 1998 (HRA) was commenced.
    - Where it is sought to establish procedural or ancillary Article 2 or 3 Convention rights after that date in respect of a death prior to 2 October 2000 the genuine connection and Convention values tests apply.
    - The 10 year time-limit is not inflexible. Although it is a factor of importance its significance may diminish particularly where the vast bulk of the enquiry into the death or breach of Article 3 has taken place since the HRA came into force.
    - The Brecknell test can provide a basis for the revival of the procedural obligation but the genuine connection or Convention values test must also be satisfied.

The trial judge had been satisfied that the materials exposed in the RTÉ documentary fell within the broad description referred to in the Brecknell judgment. The Court said it was important to recognise that although Lord Carrington, Sir Reginald Maudling and Brian Faulkner are now all deceased the investigation sought by the appellants was broader than

the part that those individuals played and that many of those involved in the events may no longer be available. It was necessary to review the trial judge's finding in light of the revision judgment in Ireland v UK which had not been available to him but which gives substantial guidance on the issue of how the ECtHR might interpret the circumstances. Although the overall issue for the Court was whether there was material which satisfied the very high test as to whether there were exceptional circumstances justifying a revision of the judgment, the basis upon which it was contended that the judgment should be revised required determination of what the new material was and how it was relevant to a revision of the original findings.

The Court noted that the purpose of the proposed investigation includes obtaining evidence as to the level of knowledge and understanding the persons authorising the application of the five techniques actually had. It noted there must be a trigger before the obligation to conduct a procedural investigation arises as any other approach would offend the principle of legal certainty upon which the Convention places great weight. Case law cites that any new material emerging should be sufficiently weighty and compelling to warrant a new round of proceedings. The Court said it was therefore necessary to examine what material was available by the time of the delivery of the judgment in Ireland v UK in 1978 and what difference to the obligation to investigate has been established by the material newly released into the National Archive. It noted that by 1978, as a result of the Compton Enquiry, the Parker Committee Report, the debates in Parliament, the investigations by the European Commission and the hearings before the ECtHR the following matters had been established:

- the precise nature of the techniques used and the purposes for which they were used;
- the persons in respect of whom they were used;
- the extent of the training and preparation for their use;
- the fact that a secret base was identified for their application;
- the use of the techniques had been authorised at a high/senior level;
- the authorisation included ministerial authorisation (referred to by Lord Gardiner);
- the use of the techniques was unlawful;
- the use of the techniques was in breach of Article 3 of the Convention;
- the use of the techniques was an administrative practice of the United Kingdom;
- the UK government had chosen not to co-operate fully with the investigation carried out by the European Commission;
- that attitude persisted during the hearing before the Court;
- the UK government made clear that it did not intend to carry out any investigation into the criminal or disciplinary liability of those who authorised and applied the techniques.

It said it was clear, therefore, that by 1978 there was a compelling case for the investigation of those who authorised and implemented the unlawful use of the five techniques with a view to prosecution for any criminal offences disclosed: "That investigation did not take place because of a policy decision made within the United Kingdom Government. All of that was known." The Court referred to a minute prepared by an official in the Northern Ireland

Office on 13 February 1978 discussing what if any steps should be taken in light of the judgment of the ECtHR in Ireland v UK which noted: "In relation to the five techniques, there is no point in talking about evidence or investigations. It would not be a week's work to discover who was responsible if we set our minds to it. As I understand it, the decision not to prosecute was, and is, a policy decision (and no doubt an admirable one)."

The Court commented that the new material which was recovered principally from the National Archive provides further detail in relation to the circumstances leading to the authorisation of the use of the five techniques and the lack of cooperation of the United Kingdom Government in the disclosure of material, particularly in relation to the consequences of the use of the techniques. It said it does not, however, alter the substance of what has been known for the last 40 years:

> "The omission of any adequate investigation seeking to establish criminal responsibility in respect of the unlawful treatment of those subjected to the five techniques has been publicly recognised since at least 1978 and although the recent focus on the additional material in the National Archive emphasises the proper sense of injustice felt by those who were subjected to the techniques that material does not constitute new material raising reasons for the conduct of an adequate investigation beyond those that have been known for a long time. The jurisprudence of the Convention does not permit the simple application of new law to past facts. Taking into account the analysis of the revision judgment which was not, of course, available to the learned trial judge and applying it to the circumstances of the appeal we consider that the Brecknell test has not been satisfied."

The Court said that if it was wrong in its approach to the Brecknell test it agreed with the trial judge that the critical date is 2 October 2000 and the genuine connection test has not been met and that in any event extensive, detailed investigations had taken place during the 1970s.

The Court found the application of the Convention values test more difficult. It accepted that the application of the five techniques amounted to the torture of those who endured them and that that conclusion reflects the development of the Convention as a living instrument. It also accepted that this is a feature which should be taken into account in determining whether any proposed investigation is required by Convention values. The Court, however, questioned whether this was the only feature as the Convention values test cannot apply to the period before the Convention was adopted:

> "That would suggest that there is at the very least a role to be played in the application of this test by considering the nature of Convention values at the time when the omission took place. That would mean taking into account the conclusions of the ECtHR in 1978. It would also require one to recognise the investigations which did take place through the Compton Enquiry, the Parker Committee, the debates in Parliament, the investigation by the Commission and

> the consideration by the Court. The resolution of this issue is not necessary to our decision in this case since we have concluded that the Brecknell test is not satisfied but may have to be addressed in other circumstances."

The Court then dealt with the issues of any duty at common law and customary international law. It said that if the obligation at common law is the same as that under the Convention it will similarly fail because the Brecknell test has not been satisfied. It agreed, however, with the trial judge that it could not be argued that there was an obligation to carry out a procedural investigation of a death as an aspect of customary international law before the 1990s and that that was long after the relevant period in this case.

The final issue before the Court concerned the legal consequences of the answer given by the Chief Constable to Mr Kelly at the Policing Board in 2014. The appellant advanced an argument on the basis of legitimate expectation. The Court noted the UKSC judgment in Finucane which states that where a clear and unambiguous undertaking has been made, the authority giving the undertaking will not be allowed to depart from it unless it is shown that it is fair to do so. The trial judge had characterised the narrowness of the enquiry which the PSNI researcher carried out as inconsistent with what the Chief Constable had said and that the investigation should have been aimed at identifying evidence of criminal behaviour. The Court considered that the statement made by the Chief Constable to the Northern Ireland Policing Board was a clear and unambiguous undertaking as to the nature of the investigation that should be carried out and that it created a legitimate expectation of a procedural kind to the public at large:

> "This is not a case in which the Chief Constable has sought to resile from that undertaking … the investigation carried out by the researcher tasked with this issue was unduly narrow and appears to have been focused solely in establishing whether there was express information given to a particular Minister [Lord Carrington] of the application of torture. It is disappointing to note that this inadequate investigation was signed off by two more senior officers. That may raise an issue about whether there is likely to be any public confidence in an investigation without practical independence from the PSNI."

The Court agreed with the trial judge that the approach to the investigation was irrational and in its view the expectation remains unfulfilled. It made the following conclusions:

- "We are satisfied that the treatment to which Mr McGuigan and Mr McKenna were subject would if it occurred today properly be characterised as torture bearing in mind that the Convention is a living instrument.
- We are satisfied that the Brecknell test can apply in domestic law so as to enable an Article 2 or 3 procedural investigation to take place in respect of a death occurring before 2 October 2000 but consider that the test is not satisfied in this case taking into account the conclusion of the revision judgment in Ireland v UK.

- We agree with the trial judge that the genuine connection test in Janowiec is not satisfied and we question whether the Convention values test is satisfied bearing in mind the conclusion of the Court in Ireland v UK and the extent of the investigation that has taken place already.
- We agree with the trial judge that there is no common law obligation identical or similar to the procedural Article 2 or 3 obligations.
- We agree with the trial judge that there is no procedural obligation imposed by customary international law in this case.
- We are satisfied that the Chief Constable's answer to the question posed by Mr Kelly at the meeting of the Northern Ireland Policing Board on 3 July 2014 gave rise to a legitimate expectation of the type described in the judgment. The Chief Constable has not resiled from that undertaking.
- We agree that the investigation carried out by the researcher on behalf of the HET was irrational and did not honour the undertaking given by the Chief Constable.
- We are satisfied that the decision made by the trial judge to quash the outcome of that investigation was well within his area of discretionary judgment. In light of the manner in which the investigation was pursued it seems unlikely that an investigation by the Legacy Investigation Branch of the PSNI or its successor is likely to engender public confidence.
- We recognise, however, that the passage of time may considerably hamper the progress of any such investigation.
- It is, of course, entirely appropriate in a modern democracy that civil servants should protect the political reputation of their Ministers but there is a real danger that the rule of law is undermined if that extends to protecting Ministers from investigation in respect of criminal offences possibly committed by them."

DISSENTING JUDGMENT OF SIR DONNELL DEENY

Sir Donnell Deeny said he was unable to fully agree with the judgment of the Lord Chief Justice and Lord Justice Stephens in respect of two matters.

Torture

Sir Donnell could not agree that it is appropriate for the Court to make a finding that the treatment is to be re-labelled as torture 48 years after the events. He said the ECtHR, by a majority of six to one, had dismissed the request for revision of its 1978 decision to substitute a finding of torture for one of "inhuman and degrading treatment". He cited the principle of legal certainty which means there must be an end to litigation and said for the Court to make an actual finding that the "deplorable conduct" constituted torture was inappropriate in four respects:

- It altered a finding of fact by the judge for no good reason;

- It ran counter to the finding of the court with the ultimate responsibility for the vindication of the ECHR which chose not to make that finding applying the appropriate test;
- It contradicts the principle of legal certainty;
- It appeared to be "an unnecessary and otiose" finding and that the conduct in 1971 had a "larger dimension than an ordinary criminal offences and would amount to the negation of the very foundations of the Convention".

Sir Donnell then proceeded to consider the Convention values test. The principal basis relied upon by the applicants was the Rees memo saying that torture had been authorised by Lord Carrington. Sir Donnell dismissed the evidential value of the document and considered that Merlyn Rees was expressing an opinion about something done by a political opponent in another government department and in the context at that time including the claim by Ireland before the ECtHR. Sir Donnell considered that neither the memo nor the other material relied on by the appellants seemed to justify a reopening of the investigation. He cited case law which stated the required connection for the Convention values test may be found to exist if the triggering event was of a larger dimension than an ordinary criminal offence and amounted to the negation of the very foundations of the Convention as would be the case with serious crimes under international law such as war crimes, genocide or crimes against humanity. Sir Donnell commented that "however deplorable the treatment here it is not to be equated with "war crimes, genocide or crimes against humanity". He said this matter has been twice before the ECtHR thus meeting any need to ensure the real effective protection of the guarantees and the underlying value of the Convention:

> "The mere fact that the events happened 48 years ago would strongly point against such a course or the application of this test. So is the fact that those who authorised the techniques, whether in some lesser form or as actually applied in the brutal way they were, are either dead or, as Lord Carrington was at the time of the hearing at first instance, very elderly. He has since died. What is to be gained by going over this ground again? It seems to me therefore that this would be an erroneous application of the Convention values test which is to be kept for something more exceptional."

The Chief Constable's Investigation

Sir Donnell also disagreed with the conclusion that the Chief Constable's answer at the Policing Board in 2014 gave rise to a legitimate expectation. In determining whether there is a legitimate expectation the court has to consider whether the Chief Constable gave a "clear and unambiguous undertaking" which is enforceable in law. Referring to the Chief Constable's answer, Sir Donnell said that it might be taken to be merely a statement of the duty on the PSNI to assess allegations of, or evidence of criminal behaviour. He said the answer is in the most general terms and not what the courts had in mind where they have found public authorities to have created a legitimate expectation of which they are in breach.

Sir Donnell also noted that the question posed by Gerry Kelly MLA related only to Lord Carrington. It did not go further in seeking action with regard to other police officers, politicians or soldiers and he felt the response therefore could not be categorised as a "clear and precise undertaking". He was also troubled by the view expressed by the majority of the Court that the Chief Constable had not resiled from that undertaking:

> "It might not be an unreasonable implication from [ACC Will Kerr's letter dated 14 August 2014] that the PSNI considered the matter had been disposed of; they had not "resiled" from any "undertaking" but that they had researched the matter and said they would. It is true to say that in subsequent correspondence the PSNI said they were open to consider any further evidence that came to light. It would have been preferable for ACC Kerr to give more detail at that stage."

Sir Donnell then considered what legal duty was on the Chief Constable in this case. He agreed that a case had not been made out imposing a duty on him under the Convention and that the Chief Constable was presumably therefore acting on foot of his duties at common law and relevant legislation. Sir Donnell said that authority makes it plan that only in highly exceptional cases will the courts disturb the decisions of an independent investigator who has been entrusted by Parliament with discretionary powers. Concluding, Sir Donnell commented:

> "It seems to me that the police have much more pressing duties of crime prevention and law enforcement than to conduct historical research into the matters of which the appellants complain. It does not seem to me appropriate to interfere with the decision of the Chief Constable contained in the ACC letter of 17 October 2014 on discretionary grounds. I think it is a common sense decision to take the course adopted by the Chief Constable. Certainly it is within his area of discretion and should not be interfered with by the court. Given the passage of time, the elaborate investigations that have taken place in the past and the paucity of evidence that had come to light from [the researcher's] investigation it seems to me a decision that could not possibly be described as irrational."

Sir Donnell Deeny said he would find in favour of the Chief Constable on his appeal and reverse the decision of the trial judge insofar as he found against him. He commented that the decision not to investigate further was one the Chief Constable was entitled in law to make.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

Judicial Communications Office

ENDS

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