

Judicial Communications Office

STATEMENT BY MRS JUSTICE KEEGAN

**Issued to legal representatives involved in legacy inquests
on 30 January 2018**

**Issued to the Press under embargo until 00:01hours
on 31st January 2018**

The Judgment of the Court of Appeal in John Flynn -v- The Chief Constable of the Police Service refers to a proportionate approach to discovery of documents and redaction processes in civil “legacy” litigation. As similar issues arise in the Disclosure Process in Legacy Inquests, the Presiding Coroner intends to develop a Disclosure Protocol and will issue a draft for consultation with all interested parties within the coming weeks.

The Presiding Coroner was recently made aware by the PSNI of a development which impacts on the PSNI fulfilling its obligation to provide full disclosure of intelligence material to the Coroner under section 8 of the Coroners Act (NI) 1959.

In 2007 the PSNI took possession of an existing intelligence database which included MOD intelligence. However the PSNI Disclosure Unit was not aware of this and consequently did not routinely search the MOD database when compiling disclosure of intelligence material for the Coroner. PSNI did search its own database and also one shared with the MOD; this material was provided to Coroners.

The Chief Constable, on becoming aware of this issue, directed in December 2017 that PSNI will now also routinely search the MOD military intelligence database which it holds to ensure full disclosure of any material held to the Coroner in compliance with his duty under section 8.

The MOD has of course provided its own disclosure of military intelligence material to Coroners and it is to be expected that this material should be the same as that which is on the database in the possession of the PSNI. An exercise is already underway in an ongoing inquest to compare the material which PSNI has

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uncovered by searching the MOD database it holds with the material which the MOD had previously provided by way of disclosure to the Coroner and to date no major discrepancies have been found.

In relation to other “live” inquests the PSNI will now conduct searches of the MOD database it holds (and in fact has completed a review in a number of ongoing cases) and provide the material for determination of potential relevance to the Coroner’s legal representatives who will then have to carry out a comparison exercise with any MOD material already disclosed. It will be a matter for each Coroner to deal with on a case by case basis going forward to be assured that all disclosure obligations have been satisfied.

The PSNI has assured the Coroners Service of its continued co-operation and commitment to work with the Coroners in relation to all matters affecting legacy inquests. The MOD has stated that it has always fully complied with all of its legal and statutory obligations in regard to disclosure of legacy material, including historic intelligence material and that the discovery process involves searching a wide variety of systems and archives, which includes – and has always included – military intelligence records held in shared intelligence databases operated jointly with partner organisations. The MOD states that it remains committed to working with the Coroners Service of Northern Ireland, the Police Service of Northern Ireland and others, to ensure that all potentially relevant material is made available to Coroners in Northern Ireland in the discharge of their role.

All Coroners have been advised of this development so that the issue can be properly considered in each ongoing inquest to ensure that all disclosure obligations are properly discharged.

The Presiding Coroner takes this opportunity to assure the families involved in legacy inquests that inquests which are listed for hearing this calendar year are on track and should be capable of being heard in accordance with planned timescales, and assures all those involved in these cases that every step will be taken to ensure that all disclosure obligations are properly discharged in all cases.

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