

1. 3rd Resp
2. J.Boutcher
3. 1st
4. JB1
5. 17/03/25

**IN THE SUPREME COURT OF THE UNITED KINGDOM  
ON APPEAL FROM HIS MAJESTY'S COURT OF APPEAL IN NORTHERN  
IRELAND**

**NEUTRAL CITATION OF JUDGMENT UNDER APPEAL [2024] NICA 39**

**Case No. UKSC 2024/0083**

**BETWEEN:**

**SECRETARY OF STATE FOR NORTHERN IRELAND**

**Appellant**

**-and-**

- (1) CORONER FEE
- (2) NEXT OF KIN (EUGENE THOMPSON)
- (3) CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN  
IRELAND (PSNI)

**Respondents**

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**AFFIDAVIT OF JON BOUTCHER  
CHIEF CONSTABLE OF PSNI**

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I, **JON BOUTCHER**, of PSNI Headquarters, Brooklyn, 65 Knock Road, Belfast BT5 6LD **WILL STATE ON OATH** as follows:

**1. Introduction**

- 1.1 I am the Chief Constable of PSNI and am duly authorised to make this affidavit. The contents are true to the best of my knowledge, information and belief and, where appropriate, I indicate below which statements are made from my own knowledge, which are matters of information or belief and their source. There is now produced and shown to me marked "**JB1**" an indexed and paginated copy bundle of the documents referred to herein and exhibited hereto. I also refer to the Appendix lodged with the Court on 26 February 2025 using the abbreviation "**App**" and the pagination.
- 1.2 I make this affidavit in the discharge of my ongoing duty of candour and in order to update the Court on events post-dating the judgments below and to

provide key background information which I believe may have an important influence on the appeal. I have tried to keep this affidavit as brief and neutral as possible and to avoid comment on the disputed gists themselves. My assessment of these is reflected in the closed affidavit sworn with my approval by Detective Chief Superintendent (DCS) Claire McGuigan, PSNI Head of Legacy and Disclosure, dated 18 April 2024. This affidavit is an open document, it deliberately avoids any express or implied reference to the specific content of the gists and should be read accordingly.

1.3 I recognise that the introduction of new evidence on appeal is not common and ask the Court to permit it for the following reasons:

- (1) This is an important public interest case with implications for Liam Thompson's family, three linked judicial reviews brought by the Secretary of State which are stayed behind this appeal (relating to inquests into six Troubles-related deaths), constitutional law and policing in Northern Ireland more generally.
- (2) The proceedings below were conducted at pace given the impending deadline under the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (1 May 2024) and preparation time was limited. As a result, the papers, submissions and judgments below refer to matters which were not formally in evidence and which were inevitably addressed without the benefit of full context and explanation.
- (3) As well as deciding this appeal, I understand that it may be necessary for the Court to address freestanding PII issues as to the content of its judgment and whether it should set out the terms of "gist 2".
- (4) The underlying PII claims were made pursuant to a practice that I discontinued in March 2024 for reasons unconnected with this case. This change of approach is obliquely mentioned in documents before the Court and it is relevant to appreciate that the facts of this case cannot recur in precisely the same way. As set out below, discussions with the

Northern Ireland Office (NIO) about this continued into January 2025 and have only recently reached what is hopefully a more settled position.

(5) The family’s written submissions below asked whether the gist released in the inquest into the death of Sean Brown [App/441] (now also challenged by way of a linked judicial review) had any adverse effects [App/309, 323]. I think it would help to address this.

1.4 I understand that a number of other government ministers are seeking permission to intervene in this appeal on the basis that they are better-placed than the appellant Secretary of State to comment and provide relevant material on gist 2 and wider issues around national security. If permission is granted and further material provided, it may be that evidence from PSNI in response would assist.

1.5 Before turning to the substance of this affidavit, I think it important to acknowledge that this case arises out of a tragic and senseless murder which, regrettably, has still not been the subject of a full and effective investigation in accordance with article 2 of the ECHR. I am sorry that the RUC / PSNI failed to deliver this and I offer my heartfelt sympathies and condolences to Liam Thompson’s family for their loss. In my view, gist 2 is not particularly revealing, but I believe its publication would nevertheless be of some value to the family. Were it not for these proceedings, it is the kind of information I would have felt comfortable disclosing to a bereaved family in any event, given that it is PSNI information and I do not consider it confidential or damaging.

1.6 The remainder of this affidavit deals with the following topics:

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## **2. My background**

2.1 I have had the following career:

- (1) 1980s: Police Cadet 1983; then Police Constable (PC) with the Metropolitan Police (MPS) 1984-1987; PC with Derbyshire Constabulary 1987-1988; PC with the MPS 1988-1991;
- (2) 1990s: Detective Constable with MPS CID 1991-1993 (first involvement with covert policing and undercover work); Detective Sergeant with MPS CID 1993-1996 (covert work on gun and drug crime involving undercover officers, informants and close liaison with then Covert Operations Group (SO10)); secondment to Regional (later National) Crime Squad (precursors to the National Crime Agency (NCA)) 1996-2001 (working against high threat organised crime groups utilising full range of covert tactics including undercover officers, informants, interception, interference with property and surveillance and deploying as a Level 1 undercover officer from 1998 onwards);
- (3) 2000s: Detective Inspector with MPS Flying Squad 2001-2003 (investigating armed crime and robberies, again using full range of covert tactics as above); Detective Chief Inspector with Anti-Terrorist Branch (SO13) 2003-2005 (working on war crimes, national and international terrorism, close liaison with MI5 from this point on, including Operation Crevice and Senior Investigating Officer (SIO) on Operation Rhyme); Detective Superintendent with SO13 and then new Counter Terrorism Command (SO15) 2005-2007 (including Operation Overt and SIO in charge of the covert operations room for 7/7 bombing and 21/7 man hunt); DCS with SO15 acting as Head of Operational

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Support incorporating all SO15 covert functions 2007-2009; A/Commander as National Coordinator for “PURSUE” limb of “CONTEST” counter terrorism strategy 2009-2010; DCS as Senior Policing Advisor on national security and counter terrorism within Office for Security and Counter Terrorism in the Home Office 2010-2011. (See §7.1 below in relation to Ops Crevice, Rhyme and Overt.)

- (4) 2010s: Assistant Chief Constable (ACC) with Hertfordshire Constabulary 2011-2014 (including Eastern Region roles relating to joint protective services, special operations, counter terrorism intelligence and organised crime and acting as ACPO national lead for the Regulation of Investigatory Powers Act 2000 (RIPA) and technical surveillance units); Deputy Chief Constable and (from 2015) Chief Constable of Bedfordshire Police 2014-2019 (including roles as (a) ACPO and then NPCC national lead for undercover policing and chair of National Undercover Working Group 2014-2016, (b) NPCC national lead for Race, Religion and Belief 2016-2019 and (c) Officer in Overall Command (OIOC) of Operation Kenova - see below - from 2016).
- (5) 2020s: stepping down from Bedfordshire Police and continuing as OIOC Operation Kenova on full-time basis 2019-2023; interim and then (after one month) permanent Chief Constable of PSNI 2023 to date.

2.2 From 2016-2023, I led a large-scale independent police investigation into the army agent known as “Stakeknife”, the individual alleged to have been the agent (the late Frederick Scappaticci) and a wide range of other Troubles-related matters.<sup>1</sup> This work expanded to include other cases under the wider Kenova umbrella: Operation Mizzenmast (murder of Jean Smyth-Campbell in 1972); Operation Turma (murders of RUC officers Paul Hamilton, Allan McCloy and Sean Quinn in 1982); and Operation Denton (review of 127 murders in the “Glenanne Gang Series” from 1972-1978) (Kenova, §§1.6-1.17). This work was

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<sup>1</sup> The terms “agent”, “informant”, “informer” and “covert human intelligence source” or “CHIS” are synonymous. I generally use “agent” or, if others are using the term, “CHIS”.

and is conducted on behalf of and funded by PSNI pursuant to an arrangement with Bedfordshire Police under the Police Act 1996, s.98 (Kenova, §16.7).

2.3 I submitted the Operation Kenova interim report to PSNI for publication on 6 October 2023, shortly before my appointment as Chief Constable of PSNI, and it was published on 8 March 2024. Part F of the report confirms that it went through pre-publication security checking via the Cabinet Office without any changes or redactions being made on security grounds. I understand the report was referred to in and by the courts below and a copy will be available for this appeal. I refer to it herein as “Kenova”.

### 3. **PSNI approach to public interest immunity (PII)**

3.1 “Folder 7” contains PSNI information which derives from and relates to operational counter terrorist policing and in respect of which PSNI was and is the “information owner”. The PII claim made by PSNI in connection with Folder 7 was not supported by a ministerial certificate because of any particular government equity or interest in its contents. Rather, this was done pursuant to a longstanding but (in my view) anomalous Northern Ireland practice whereby successive Chief Constables requested a certificate in connection with every PII claim they intended to make in civil proceedings or inquests.

3.2 The origins of and rationale for this practice are unclear and, as already mentioned, I discontinued it in March 2024. I first wrote to the Secretary of State to say I was minded to do this on 7 February 2024, the week before I requested a ministerial certificate in connection with Folder 7 [App/354]. This and the Secretary of State’s “holding response” are referred to at §9 of the ministerial submission dated 19 March 2024 [App/359].

3.3 The reasons for my decision are set out in a self-explanatory exchange of correspondence I had with the Secretary of State between February and November 2024 [JB1/1-32]. In parallel with this, I had cordial and constructive discussions about the matter with the former and current Secretaries of State and the Director General of MI5. Subsequent to the correspondence, I met with officials from a number of government departments and agencies on 17 January

2025 and commissioned draft in-house guidance on the new approach. There was also a related ruling in another inquest (*Re Kevin McGuigan* [2025] NICoroner 2). I shared a draft of the guidance with NIO for comment on 7 March 2025 [JB1/33-51] and have also shared it with the Independent Reviewer of Terrorism Legislation (IRTL), Jonathan Hall KC, and the Independent Reviewer of National Security Arrangements in Northern Ireland (IRNSA), Dr Jonny Byrne.

3.4 The discontinuance of the abovementioned practice is relevant because some of the procedural issues in this case reflect difficulties inherent in a process whereby two independent public authorities with different responsibilities and expertise sought to adopt a united position on matters about which they might disagree. In future, we will each be able to make our own PII-related assessments and claims - jointly or separately as appropriate - and the relevant court will be better able to identify and resolve any differences.

#### 4. **PSNI, covert policing and national security**

4.1 PSNI has the same independence and law and order functions as every other police service in the UK (the Police (Northern Ireland) Act 2000, s.32). In addition, Northern Ireland police and NCA officers must carry out their functions with the aim of securing the support of and acting in co-operation with the local community (s.31A). Insofar as the ECHR, arts 2-3 impose positive duties on the state to protect life and counter risks of life-threatening, physical or psychological harm, the primary burden of discharging these falls on the police.

4.2 While the devolution settlement and the legislative, policy and accountability architecture above PSNI has changed over time, our essential roles and responsibilities have remained largely unaltered. Like every other police service dealing with extremism, terrorism and serious and organised crime, PSNI:

- (1) has national security functions, including in relation to: law enforcement elements of the government's CONTEST counter terrorism strategy; proscribed organisations; sabotage and subversion; espionage and state

threats; and threats to critical national infrastructure;

- (2) has other important functions in relation to: serious and organised crime; loyalist paramilitary groups and the multi-agency Paramilitary Crime Taskforce (PCTF) (fully operational since 2017); and the policing of parades, processions and other public order events and, on occasions, unrest and rioting;
- (3) uses covert policing and intelligence gathering tactics and powers in connection with both (1) and (2) above, including under Part III of the Police Act 1997, RIPA and the Investigatory Powers Act 2016.

4.3 Parliament and central government have always had responsibility for national security legislation and policy throughout the UK, including in Northern Ireland. This was reflected in the designation of national security and connected matters as “excepted” in the Northern Ireland Act 1998, Sch.2. That said, this responsibility is not exclusive and it is important to recognise that PSNI works in partnership with government on national security and that it has (and the RUC had) its own functions and responsibilities in this area.

4.4 From 1973-1974 until October 2007, the RUC and then PSNI had lead responsibility for national security operations and intelligence in Northern Ireland, supported by the armed forces (Kenova, §§6.3, 7.1, 8.1-8.2). At the time of Liam Thompson’s death and the matters dealt with in the documents in Folder 7, the national security lead was therefore with the RUC.

4.5 On 31 July 2007, the armed forces deployment in Northern Ireland came to an end and, on 10 October 2007, lead responsibility for national security transferred from PSNI to MI5, bringing Northern Ireland into line with the rest of the UK. These changes were made pursuant to the St Andrews Agreement of 2006 and as a prelude to the devolution of policing and justice. Importantly, the transfer to MI5 was made subject to five key principles set out at Annex E of the Agreement (“Annex E”) [JB1/53-56] and related arrangements. These principles were identified by the then Chief Constable, Sir Hugh Orde. Annex

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E, §d provided, “The great majority of national security CHISs in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols” [JB1/56] (see also Kenova, §8.7). A published memorandum of understanding between PSNI and MI5 and a series of service level agreements emphasised the ongoing operational independence of PSNI [JB1/57-58]. The singling out of CHIS work reflects the fact it is necessarily a local function carried out face to face and on the ground. The contrast is with more remote functions like surveillance, interference with property and interception which do not have the same inter-personal front end.

- 4.6 On 10 April 2010, policing and justice ceased to be “reserved matters” within the Northern Ireland Act 1998, Sch.3 and became “transferred matters”. Certain policing matters were carved out of this transfer and remain “reserved” including the NCA and serious crime and disorder aspects of covert policing.
- 4.7 The dividing line between PSNI’s national security work and its non-national security work is drawn by government and the delineation has implications for policy, funding and accountability. In this regard, the government assesses that a number of dissident republican (DR) groups represent a threat to national security and fall within the “excepted” sphere and the remit of MI5. The government’s “National Security Strategy and Strategic Defence and Security Review 2015” (Cm 9161, 2015) thus describes “Northern Ireland related terrorism” as follows:

*3.10 Violent dissident republicans have sufficient numbers and weapons to pose an enduring threat in Northern Ireland primarily to the police, but also prison officers, members of the armed forces, national infrastructure and commercial targets. Violent dissident republicans aspire to target Great Britain, and some groupings remain capable of conducting one-off attacks, but currently consider Northern Ireland to be their main focus.*

- 4.8 By contrast, the government assesses that loyalist paramilitary groups do not represent a threat to national security and therefore fall within the devolved sphere and the remit of PSNI, the NCA, HMRC and the PCTF. (A number of republican groups that could be seen as DR but are not assessed as a national security threat also fall into this category.)



- 4.9 A helpful summary of the dividing line also appears in statements compiled in the Northern Ireland Affairs Committee (NIAC) report, “The effect of paramilitary activity and organised crime on society in Northern Ireland” (2024, HC 43), §§57-68 **[JB1/61-65]**. The logic is that a number of DR groups represent a threat to the state or emanations of the state, particularly police and prison officers and members of the armed forces, and loyalist paramilitary groups do not. The latter are seen as primarily concerned with the extortion and intimidation of communities, paramilitary style violence, drug dealing and the laundering of money and fuel. That said, the line is not fixed and it can be crossed, e.g. individuals associated with loyalism are capable of presenting a national security threat through involvement in “conventional” sectarian terrorism and/or extreme right-wing terrorism (ERWT). Accordingly, it is not unknown for an agent to be de-authorised for national security purposes and re-authorised for crime and disorder purposes - as their access changes - and *vice versa*.
- 4.10 As a result of the above delineation, PSNI receives an “additional security funding” uplift from central government (ASF) and support from MI5 for its work against DR. In terms of our cooperation in this area: PSNI and MI5 share intelligence and work closely together on investigative requirements and deconfliction (Annex E, §§a-c **[JB1/55]**); PSNI seeks MI5 “concurrence” on its authorisation, renewal and cancellation of CHIS and the dissemination of their intelligence, but not on reviews or day-to-day handling and PSNI owns and “carries the risk” on each case; and PSNI works closely with MI5 on the prioritisation and delivery of surveillance, interference with property and interception. MI5 concurrence is not strictly essential, but it is almost always in place and is a pre-requisite to provision of specialist MI5 expertise and support (which can be invaluable) and PSNI’s ability to draw down on the ASF.
- 4.11 It is important to recognise that the operational independence and the essential law and order functions of PSNI are and have remained the same on both sides of the national security line. We risk assess and decide ourselves on every operational deployment of PSNI officers. We are neither agents of nor

subordinate to MI5 and will investigate evidence of criminal offences, make arrests and bring charges without fear or favour and regardless of status. Suspects and subjects of interest can come from any quarter, ranging all the way from terrorist groups to government and the security forces.

## **5. Accountability of PSNI**

5.1 As set out in the Report of the Independent Commission on Policing For Northern Ireland, “A New Beginning: Policing In Northern Ireland” (1999) (Patten), the history of policing in Northern Ireland is complicated and contested. In consequence, PSNI is subject to accountability, oversight and scrutiny arrangements which are more rigorous and demanding than those applying to our GB counterparts. The majority of these arrangements operate on both sides of the national security line, albeit subject to restrictions on the disclosure of sensitive information to devolved bodies or in public reports.

5.2 In this regard, PSNI engages with NIAC, the Northern Ireland Assembly Justice Committee (NIAJC) and various other statutory bodies established by Parliament. In terms of Northern Ireland police-specific bodies, these include:

(1) The Northern Ireland Policing Board (NIPB)

Partly nominated by the Northern Ireland Assembly and partly appointed by the Minister of Justice (MOJ); produces annual and other reports; restrictions on access to national security information and related inquiries, but Human Rights Advisor is vetted and has greater access to sensitive information (Police (Northern Ireland) Act 2000, ss.33A, 57, 59-60, 76A and Sch.1).

(2) The Police Ombudsman for Northern Ireland (PONI)

Appointed by His Majesty on the joint recommendation of the First and Deputy First Ministers (Police (Northern Ireland) Act 1998, Sch.3); deals with complaints, subject to restrictions on their disclosure in national security cases (ss.52-54 and Royal Ulster Constabulary (Complaints etc) Regulations 2000, regs 21, 31); investigates other matters referred by NIPB, Department of Justice (DOJ), Secretary of

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State, PSNI or DPP, but the Secretary of State may only refer excepted or reserved matters (Police (Northern Ireland) Act 1998, ss.55-56); must send to the Secretary of State a copy of any s.55 report relating to excepted or reserved matters or statutory functions of the Secretary of State (reg.31 referred to above); power to investigate and report to PSNI and NIPB on policies and practices unless within the jurisdiction of the Investigatory Powers Tribunal (IPT) (Police (Northern Ireland) Act 1998, s.60A); reports under ss.60A and 61 must also be sent to (a) the Secretary of State if about excepted or reserved matters or (b) the DOJ if about its statutory functions or transferred matters; general obligation to have regard to Secretary of State guidance on “matters the disclosure of which may be prejudicial to the public interest on the ground of national security” (s.65(6)); PSNI and NIPB must supply PONI with information, but the disclosure of national security information under s.60A must be notified to the Secretary of State (Police (Northern Ireland) Act 2000, s.66).

(3) Chief Inspector of Criminal Justice in Northern Ireland (CJINI)

Appointed by DOJ and inspects PSNI and others; obligation to consult Secretary of State in relation to inspection of national security activities and inclusion of related information in reports and other disclosures restricted and may be prohibited by the Secretary of State (Justice (Northern Ireland) Act 2002, ss.45-47, 49 and Sch.8). CJINI reported on PSNI's management and disclosure of information in inquests in December 2016 and (together with PSNI) gave related evidence to the NIAJC on 12 January 2017.

(4) HM Inspectorate of Constabulary and Fire & Rescue Services

Northern Ireland Inspectors of Constabulary appointed by DOJ (from HMIC under Police Act 1996) and tasked with annual inspections and reports; specific inspections and reports can also be required by the Secretary of State on matters relating to excepted or reserved matters or to his statutory functions or by the DOJ on any other matter; inclusion of national security information in reports and other disclosures of

national security information restricted and may be prohibited by the Secretary of State (the Police (Northern Ireland) Act 1998, ss.41-42).

- 5.3 Furthermore, PSNI engages with other statutory bodies: the IRTL; the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007; the Information Commissioner; the Intelligence and Security Committee of Parliament (ISCP); the Investigatory Powers Commissioner (IPC); the IPT; the Northern Ireland Audit Office; Policing and Community Safety Partnerships; and the cross-border Independent Reporting Commission. Also non-statutory bodies: the National Policing Board; and IRNSA (monitors PSNI's relationship with MI5 and compliance with Annex E of the St Andrews Agreement).
- 5.4 Under the Police (Northern Ireland) Act 2000, s.61, PSNI can also be required to report to (a) the Secretary of State on any matter which relates (in whole or in part other than incidentally) to an excepted or reserved matter or one of his statutory functions or (b) the MOJ on any other matter. The inclusion of national security information in reports to the MOJ is then restricted and may be prohibited by the Secretary of State (s.61).

## **6. Neither confirm nor deny (NCND)**

- 6.1 The agreed statement of facts and issues asks whether I misunderstood or misapplied the government's NCND policy and I think it important that I address this. This policy is unwritten and it does not apply to or bind PSNI. However, like other law enforcement bodies, PSNI does take an NCND approach to the disclosure of sensitive information about security and intelligence and I believe this is consistent with the government's approach. Whether we are thereby following government policy or simply have identical policies of our own is debatable, but the government does not have any right or power to direct what we do in this regard. Each law enforcement body owes free-standing obligations to protect confidential and private information under common law, equity and statute, including the Official Secrets Act 1989, Human Rights Act 1998, Data Protection Act 2018 and UK GDPR.

6.2 Chapters 47-48 of the Kenova interim report set out my views on the importance and limits of secrecy in the security and intelligence context, my support for the NCND policy and my concerns about the way in which it is sometimes interpreted and applied in practice. In this context, the report refers to a Cabinet Office “Guidance note on NCND principle” dated October 2017 (Kenova, §§48.6-48.7) [JB1/66-71]. A separate undated “Statement on the NCND policy” was also annexed to a letter from the Home Secretary to the Attorney General for England and Wales dated 28 March 2024 [App/368]. This was apparently sent on the premise that the policy had “come under considerable pressure in recent weeks in the context of Northern Ireland legacy inquests” [App/369]. I did recommend that the government review, codify and define the proper limits to the NCND policy, but it has not actioned this (Kenova, §77(6)).

6.3 The 2017 Cabinet Office guidance and the Home Secretary’s 2024 statement refer to but do not set out a policy as such. Both documents appear sound to me, save that, in my view:

- (1) the 2017 guidance should refer to NCND as a policy or approach, not a principle, and §8 is difficult to reconcile with §13 (Kenova, §48.7(3));
- (2) the inclusion of “or the fact that agents were involved at all” in §8 of the 2024 statement goes too far and is not supported by the core rationale underpinning the policy or the judgments referred to [App/371];
- (3) contrary to §12 of the statement, I have never understood that a departure from NCND may only be made if and when this will positively benefit national security and, in any event, I find the language of “departures” problematic because the policy envisages exceptions [App/372].

6.4 More generally, I think each of (1)-(3) above reflects a tendency to confuse two different types of authoritative or official public disclosure which engage the NCND policy and its underlying rationale differently (Kenova, §§48.8-48.9):



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- (1) Statements made by public authorities about security and intelligence matters generally which can be and are made in the public interest provided they do not: put individuals at risk or subjects of interest on alert or notice; compromise covert capabilities, identities, methods, sources or techniques or (current or future) investigations, operations or plans; or deter or inhibit the recruitment or retention of agents or the cooperation of security partners. Such statements are not infrequently made, some examples are set out in part 7 below and I believe gist 2 falls into this category.
  
- (2) Statements made by public authorities confirming or denying (a) the agent status of a named individual or (b) the involvement in a specific case of an agent who is identified or identifiable. Whether or not the relevant individual has self-declared, been relocated or is deceased, statements of this kind are rarely made in public because they can put individuals at risk, deter or inhibit the recruitment or retention of agents and facilitate adverse inferences being drawn if and when NCND is maintained in another case. This is the NCND paradigm at the heart of most explanations for and judgments upholding the NCND approach and some exceptional examples are set out in part 8 below.

6.5 In my view, the release of gist 2 would not cause or risk any damage or harm to the public interest because it is general and not specific and (if this is relevant at all) it would not involve any “breach of” or “departure from” the government’s NCND policy. Two contextual points are important here. First, all parties and the wider public know that Liam Thompson was murdered by terrorists during the Troubles, the security forces were heavily involved in counter-terrorist security and intelligence activity at the time and police material is being withheld pursuant to PII claims made and allowed on “national security” grounds. Secondly, this is not a “question and response” situation and so the release of gist 2 in this case could not facilitate adverse inferences or deductions in or about other cases.



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**7. General statements about security and intelligence matters**

7.1 General information about the activities of the security and intelligence services has been published through: their official websites and authorised histories; reports of regulatory and oversight bodies such as the IPC, IRTL and ISCP and their predecessors; and proceedings before and decisions of courts, tribunals, inquests and inquiries. Provided it is kept general and sources are protected, information of this kind can relate to specific subjects of interest, incidents and operations. For example, the MI5 website refers to its work in the 2000s on major Islamist attack plots which resulted in criminal proceedings (Operations Crevice, Rhyme and Overt) and it has been involved in various inquests and inquiries into terror attacks, e.g. London Bombings of 7/7, Westminster 2017, London Bridge and Borough Market 2017, Fishmongers' Hall 2019 and Manchester Arena 2017. The ISCP also reported on (a) 7/7, (b) intelligence relating to the murder of Lee Rigby and (c) the 2017 attacks. In certain circumstances, the identities of security and intelligence service personnel are disclosed in connection with civil and criminal proceedings, inquests and inquiries, e.g. Michael Bettaney, George Blake, Anthony Blunt, Geoffrey Prime, David Shayler, Richard Tomlinson, Gareth Williams and Peter Wright. See also Kenova, §48.8 and the 2017 Cabinet Office guidance, §13 [JB1/70].

7.2 In the context of the Troubles, the extensive role and involvement of the security forces in covert intelligence gathering and counter-terrorism is well known as a result of legal proceedings and official inquiries and investigations. The Kenova interim report provides an overview of this (§§3.2-3.8, chs 5-11, §47.4, ch.75) and confirms that the army's Force Research Unit (FRU) ran an agent within PIRA's "Internal Security Unit" (the latter point was reiterated in Kenova prosecution decisions published by the Public Prosecution Service for Northern Ireland). Kenova, chs 51-55, 57 and 59-61 outline various other legacy inquests and inquiries into security and intelligence operations during the Troubles which reported on the use of surveillance and agents.

7.3 In addition:

- (1) 2007: PONI report on “Investigation into the circumstances surrounding the death of Raymond McCord Jnr and related matters” found likely links between unnamed police informants, particularly “Informant 1”, and 10 (or possibly 15) murders, 10 attempted murders and 72 other significant crimes between 1991-2003.
- (2) 2010: criminal case *R v Kearns & others* disclosed a sting operation against the Real IRA involving various MI5 agents, including a “freelance” agent referred to as “Amir” and a fake arms dealer referred to as “Ali” ([2010] NICC 28, [2010] NICC 32 and [2011] NICA 45).
- (3) 2016: PONI report on “The murders at the Heights Bar, Loughinisland, 18 June 1994” referred to unnamed police informants involved in loyalist terrorist groups, the importation of arms and suspected murder.
- (4) 2019: verdict in inquest into the death of Roseann Mallon in 1994 detailed an RUC Special Branch (SB) and armed forces surveillance operation against engineering works and the capabilities of the equipment used ([2019] NICoroner 1, §§18-37).
- (5) 2020: criminal cases *R v Morgan & others* and *R v Gleeson* disclosed surveillance operations against the Continuity IRA by “security services” (respectively [2020] NICC 14, §§ 2, 198 and [2023] NICC 13, §4).
- (6) 2020: disclosure of Operation Arbacia - a PSNI operation supported by MI5, An Garda Síochána, Police Scotland and MPS against New IRA.
- (7) 2021: PONI report on “The circumstances of the murder of Damien Walsh at the Dairy Farm Complex on 25 March 1993” found an unnamed police informant was linked to the murder but not treated as a suspect.



- (8) 2021: PONI report on “The circumstances of the murder of Constable Colleen McMurray and the attempted murder of Police Officer 1 at Merchants Quay, Newry, on 27 March 1992” found an unnamed police informant referred to as “Person A” provided intelligence on PIRA’s development of “flash-initiated” technology prior to a mortar attack.

7.4 Furthermore, on 3 May 2011, Lord Stevens told the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills that only three of the 210 people his team arrested were not agents (Kenova, §71.13).

## **8. Specific statements about covert agents**

8.1 Leaving aside MI5 agents operating in WW2 who are named on the MI5 website and in its authorised history, the following have been authoritatively / officially referred to as agents:

- (1) Raymond Gilmour: RUC SB agent in PIRA and INLA - referred to as such by Lord Chief Justice Lowry on collapse of “Derry 35” trial in 1984 (see also the same judge in *R v Robson* [1988] Lexis Citation 3103);
- (2) Oleg Gordievsky CMG: MI6 agent in KGB - defection confirmed by Foreign Office in 1985 and elsewhere including on gov.uk website [**JB1/72-76**];
- (3) Brian Nelson: FRU agent in UDA - confirmed at sentencing in 1992 and elsewhere (Kenova, §48.9(1));
- (4) Declan Casey: RUC SB agent in PIRA - confirmed by RUC and government in 1993 (following self-declaration in media) and at sentencing in 1995 [**JB1/77-79**];
- (5) William Stobie: RUC SB agent in UDA - confirmed in connection with his prosecution in 1999 and elsewhere (Kenova, §48.9(1));

- (6) Mohammed Othman (aka Abu Qatada): met with MI5 - confirmed in SIAC decision *Othman v Home Secretary*, SC/15/2002, 8 March 2004, §§17-18 (Kenova, §48.9(3));
- (7) Kenneth Barrett: RUC SB agent in UDA - confirmed in 2012 De Silva report, §§23.91-23.132 **[JB1/83-90]**;
- (8) Gary Haggarty: RUC SB agent in UVF - confirmed at sentencing in 2018 and elsewhere (see *R v Haggarty* [2018] NICC 1, §179 and *R v Smyth* [2023] NICC 29, §5(i)).

8.2 Agent status has been authoritatively / officially denied as follows:

- (1) in connection with some Troubles-related murders of alleged agents, the RUC denied their agent status in press statements and/or inquests (Kenova, §12.22), e.g. the deaths of Seamus Morgan in 1982 **[JB1/91-94]** and Brian McNally in 1984 **[JB1/95-97]** (the press release in connection with the latter described a PIRA statement as a “sickening attempt by the IRA to justify his murder. He was not an informer and had no connections whatsoever with the security forces. The IRA statement is a complete fabrication designed to cover up their own activities”);
- (2) Workers Revolutionary Party member who claimed he was an MI5 agent - denied by government in *Redgrave v UK*, App. No. 20271/92, 1 September 1993, pp.6-7 (Kenova, §48.9(2));
- (3) Jean McConville (deceased) - status as an agent for the army, MI5 or RUC denied by PONI in 2006 report (Kenova, §48.9(4));
- (4) Neil Heywood (deceased) - status as an agent for MI6 denied by Foreign Secretary in 2012 (Kenova, §48.9(5)).

8.3 In addition to the above, archive media reports, which I am unable to corroborate or gainsay, claim that: in 1981, the RUC denied PIRA claims that Anthony Braniff (deceased) had been a police agent [JB1/98-101]; and in 1993 it was confirmed during the trial of Martin McMonagle and Liam Heffernan that Patrick Daly had been an MI5 agent in the INLA [JB1/102-105].

## 9. The legacy of the Troubles and the public interest in transparency

9.1 The Patten report emphasised the importance of achieving cross-community trust in, support for and recruitment to the police in Northern Ireland as a prerequisite to effective community policing by consent (see §§1.3, 1.16, 1.18 [JB1/109, 115-116]). The report recommended “50:50 recruitment” (§15.10 [JB1/119]) and also contained connected recommendations about accountability and transparency - see at §§5.2 and 6.38 respectively [JB1/117, 123]:

*In a democracy, policing, in order to be effective, must be based on consent across the community. The community recognizes the legitimacy of the policing task, confers authority on police personnel in carrying out their role in policing and actively supports them. Consent is not unconditional, but depends on proper accountability, and the police should be accountable in two senses - the “subordinate or obedient” sense and the “explanatory and cooperative” sense.*

*The presumption should be that everything should be available for public scrutiny unless it is in the public interest - not the police interest - to hold it back... Transparency is not a discrete issue but part and parcel of a more accountable, more community-based and more rights-based approach to policing. We return to this subject again in the chapters on policing style and on management and personnel in the police service.*

9.2 Despite making significant progress since its formation in 2001, PSNI still does not have the trust and support it needs within communities. For the avoidance of doubt, the issue here is not about the recruitment and retention of covert agents, rather it is about ordinary overt policing and community relations. It is about members of the public reporting issues and telling us what they have seen and heard and what is going on around them, rather than turning a blind eye. And it is about local officers being able to do their jobs at all times of the day and night and in all weathers - responding to crimes, incidents and accidents, finding missing persons, safeguarding the vulnerable and supporting victims.

All of this requires community cooperation and engagement. The issue is reflected in some stark statistics:

- (1) We have consistently fallen short of 50/50 recruitment in each of the last three competitions and the overall numbers and breakdown have declined:

| <i>Applications</i> | <i>2025 campaign</i> | <i>2021 campaign</i> | <i>2020 campaign</i> |
|---------------------|----------------------|----------------------|----------------------|
| <i>Protestant</i>   | <i>3149 (65.3%)</i>  | <i>3534 (66.5%)</i>  | <i>4520 (65.7%)</i>  |
| <i>Catholic</i>     | <i>1389 (28.8%)</i>  | <i>1590 (29.9%)</i>  | <i>2116 (30.8%)</i>  |
| <i>Undetermined</i> | <i>284 (5.9%)</i>    | <i>187 (3.6%)</i>    | <i>243 (3.5%)</i>    |
| <i>TOTAL</i>        | <i>4822</i>          | <i>5311</i>          | <i>6879</i>          |

- (2) On average, 22 PSNI officers and one member of police staff are attacked every week and, importantly, these figures are much worse than for comparable services in GB. For example, in 2023-2024, the figures for assaults on constables were 1,861 for Greater Manchester, 2,709 for the West Midlands and 3,345 for PSNI. A 2022 survey by an internal Injury and Assault Reduction Working Group reported that more than half of local, neighbourhood and district police team respondents had been assaulted. The statistics speak to a historic and enduring belief in some quarters that it is acceptable to disrespect, abuse, threaten and attack the police.

The mistrust is reflected in other attitudes. For example, I have been struck by how much time I have to spend dispelling conspiracy theories about PSNI which achieve significant traction despite being fanciful.

- 9.3 As with so many issues facing PSNI, the legacy of the Troubles is a hugely important factor in all of this, particularly when it comes to deaths which were not properly investigated (let alone prosecuted) at the time. In this regard, many families who lost loved ones during the Troubles received no information or support from the RUC, often in circumstances where its involvement would not have been safe, let alone welcome. Murders were not properly investigated and

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cursory inquests were conducted without the knowledge or participation of families or not at all (Kenova, §§3.2-3.6, 16.19-16.23, 37.1-37.3). Many still do not know the truth and the resulting information vacuum is often filled with false and misleading claims and conspiracy theories (Kenova, §§70.1-70.5). The perception that the truth has been withheld by delay, obstruction and secrecy on the part of the police is hugely corrosive and an obstacle to trust and (therefore) effective community policing. Hence the vital importance of openness and transparency.

- 9.4 PSNI is, of course, obliged to protect confidential information and Convention rights and to claim PII as and when it arises and there are times when full disclosure is not possible. I do not shy away from the fact that “Folders 1-6” and Folder 7 were withheld from Liam Thompson’s family pursuant to a PSNI application and this meant an effective inquest was not viable. I am sorry this proved necessary. However, when situations like this arise I think it imperative that the reasons are explained as fully and openly as possible and families are given maximum disclosure. This is hugely in the public interest and, without this, the police are seen by some as “defenders of the state” and “symbols of oppression” rather than “upholders of the law”, the mistrust continues and we cannot do our job (Patten, §1.3) **[JB1/109]**.

## **10. Feasibility of gisting**

- 10.1 In the courts below, a certain amount was made of a statement to the effect that, “PSNI does not consider it feasible to provide a meaningful gist while at the same time ensuring the necessary protection of the identified public interests and their justifications” and it was claimed that I had abandoned this position and undertaken a “volte-face” without explanation (Humphreys J No.1, §11 **[App/27]**, McCloskey LJ, §§54, 58 **[App/49, 51]**):

- (1) This statement about the infeasibility of gisting appears in an NIO submission to ministers dated 19 March 2024 which related to the PII claim over “Folder 8” - this was not a PSNI document and it post-dated and did not relate to the PII claim over Folder 7 **[App/357]**.



- (2) The line about feasibility appears to derive from counsel's advice to PSNI on PII in connection with Folders 1-6 which (under the then arrangements) was shared with NIO in connection with the request for a ministerial certificate. Without waiving privilege, the relevant sentence reads in full, "It is not considered feasible or appropriate to provide a meaningful gist of the redacted information while at the same time ensuring the necessary protection of the identified public interests and their justifications". It is unclear whether this is a reference to the views of counsel or those instructing them - it could be either - but the same sentence does not appear in the later supplementary opinions relating to Folders 7 or 8.
- (3) I now realise that text of this kind was boilerplate in a great many such advices. If I had understood counsel to be advising that a high-level indication of the nature of sensitive material or the reasons for a PII claim could not safely be given, I would have challenged this for the reasons I gave at Kenova, §69.11, "There is almost always a way to 'gist' information by providing a form of words that explains the general meaning of sensitive intelligence without compromising its source."

## 11. Gist in Sean Brown case

- 11.1 As with this case, the coroner conducting the inquest into the death of Sean Brown (Kinney J) decided to uphold a claim for PII over sensitive PSNI material and issue an accompanying gist. He initially proposed and invited representations on a draft gist, we felt this was too detailed and proposed changes and the coroner published an amended gist on 27 February 2024 [App/441]. This included the following, "The intelligence material indicates that, at the time of the death of Sean Brown, a number of the individuals linked through intelligence to the murder were agents of the state". The coroner's written open ruling on PII was handed down on 4 March 2024: *Re Sean Brown* [2024] NICoroner 18.
- 11.2 Having consulted with senior officers responsible for PSNI's human intelligence work - ACC Crime Department, DCS Head of Intelligence,

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1. 3rd Resp
2. J.Boutcher
3. 1st
4. JB1
5. 17/03/25

**IN THE SUPREME COURT OF THE UNITED  
KINGDOM**  
**ON APPEAL FROM HIS MAJESTY'S COURT  
OF APPEAL IN NORTHERN IRELAND**  
**NEUTRAL CITATION OF JUDGMENT UNDER  
APPEAL [2024] NICA 39**

**Case No. UKSC 2024/0083**

**BETWEEN:**

**SECRETARY OF STATE FOR NORTHERN  
IRELAND**

**Appellant**

**-and-**

**(1) CORONER FEE  
(2) NEXT OF KIN (EUGENE THOMPSON)  
(3) CHIEF CONSTABLE OF THE POLICE  
SERVICE OF NORTHERN IRELAND (PSNI)**

**Respondents**

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**AFFIDAVIT OF JON BOUTCHER  
CHIEF CONSTABLE OF PSNI**

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