Case No. UKSC 2024/0083

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

SECRETARY OF STATE FOR NORTHERN IRELAND

Appellant

-and-

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

Respondents

WRITTEN CASE OF THE THIRD RESPONDENT

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INTRODUCTION

1. Abbreviations

1.1 References to materials:

"**Boutcher/x**"	affidavit of Jon Boutcher 17/03/25 / para(s);*****
"**HB/x/y**"	Hearing Bundle / tab / page(s);
"**JB1/x**"	exhibit JB1 / page(s);*****
"**Legacy Act**"	Northern Ireland Troubles (Legacy & Reconciliation) Act 2023;
"**SFI/x**"	Statement of Facts and Issues 26/02/25 / para(s) **[HB/5/108]**.

***** *An email from the Registry dated 23/05/25 recommended the submission of bundles which do not refer to the Chief Constable's further evidence pending the Court's decision on admission. Given the proximity of the hearing, this version of the Chief Constable's case does not rely on or quote from that evidence. References to other materials in* ***HB*** *have been added or substituted where appropriate instead. Bare references to numbered paragraphs or pages of* ***Boutcher*** *or* ***JB1*** *are left in place on the basis they can be followed up if the evidence is admitted or ignored if it is excluded.*

1.2 The abbreviations "**Gists 1-2**", "**Folders 1-7**", "**NCND**" and "**PII**" are adopted herein (SFI/3, 6, 9, 13 **[HB/5/110]**).

2. Overview

2.1 The Chief Constable opposes this appeal and furthermore submits that, regardless of its findings on the grounds of appeal, the Court should determine the application of PII to the text of Gist 2 and include this in its judgment.

2.2 The Chief Constable's position on the need for a confidential, private and ex parte PII procedure on this appeal (as opposed to a "closed material procedure") is set out in his submissions dated 25 March and 4 April 2025. Further to the email from the Court Registry dated 16 April 2025, an application for permission to rely on the Chief Constable's affidavit of 17 March 2025 will be filed as soon as possible. In the event that the Court decides not to consider any confidential PII materials (referred to in the courts below as "closed") or the abovementioned affidavit, a revised version of this case can be filed.

LEGAL FRAMEWORK

3. Public interest immunity (PII)

3.1 In its original guise as the doctrine of Crown privilege and as re-formulated by the House of Lords in *Conway v Rimmer* [1968] AC 910 **[HB/20.26/1335]**, the doctrine of PII is a part of the substantive law of evidence and of constitutional law and it follows that its application is a question of law for the court to determine. See *Duncan v Cammell Laird & Co Ltd (The Thetis) (Discovery)* [1942] AC 624 (HL) **[HB/20.30/1556]**, pp.641-642 (Lord Simon LC):

> *The withholding of documents, on the ground that their publication would be contrary to the public interest, is not properly to be regarded as a branch of the law of privilege connected with discovery. "Crown privilege" is for this reason not a happy expression. Privilege, in relation to discovery, is for the protection of the litigant and could be waived by him, but the rule that the interest of the state must not be put in jeopardy by producing documents which would injure it is a principle to be observed in administering justice, quite unconnected with the interests or claims of the particular parties in litigation, and, indeed, is a rule on which the judge should, if necessary, insist, even though no objection is taken at all.*

3.2 See also: *D v NSPCC* [1978] AC 171 (HL) **[HB/20.27/1473]**, p.221C "It is, in short, primarily a question of the law of evidence rather than discovery" (Lord Hailsham); and *In re Grosvenor Hotel, London (No.2)* [1965] 1 Ch 1210 (CA) **[HB/20.39/1861]**, at p.1243C-D (Lord Denning MR), p.1249F (Harman LJ) and p.1262C-D (Salmon LJ) respectively:[1]

[1] The Court of Appeal's approach in *Grosvenor Hotel* was upheld by the House of Lords in *Conway v Rimmer* (see *R v Lewes Justices, ex p Home Secretary* [1973] AC 388 (HL) **[HB/20.67/3195]**, p.414B-C (Lord Salmon)).

> *The law as to Crown privilege is not mere procedure or practice. It may perhaps be said to be a rule of evidence, but I would rank it higher. It is a principle of our constitutional law which is to be observed in the administration of justice, not only when a witness is called to give oral evidence, but also when a party is called upon to give discovery.*
>
> *Now in my judgment this question of Crown privilege is more than a mere question of practice and is a matter of substantive law...*
>
> *I agree with my Lords that the power of the executive to intervene in litigation for the purpose of vetoing the production of documents and the power of the courts in the last resort to override this veto are matters of substantive law and not mere practice and procedure.*

3.3 When PII applies, it thus operates as "an exclusionary rule" preventing not only the disclosure, inspection or production of the material in question, but also its admission or exploration in evidence and its substantive adjudication. See *R v Chief Constable of West Midlands Police, ex p Wiley* [1995] 1 AC 274 (HL) **[HB/20.61/2999]**, p.295G-H (Lord Woolf, endorsing previous comments of Bingham LJ):

> *Where a litigant asserts that documents are immune from production or disclosure on public interest grounds he is not (if the claim is well founded) claiming a right but observing a duty. Public interest immunity is not a trump card vouchsafed to certain privileged players to play when and as they wish. It is an exclusionary rule, imposed on parties in certain circumstances, even where it is to their disadvantage in the litigation.*

3.4 Claiming PII is thus a duty owed by all litigants - whether public or private - and it may also be raised by non-party witnesses. See *R v Lewes Justices, ex p Home Secretary* [1973] AC 388 (HL) **[HB/20.67/3181]**: p.400E-F "A minister of the Crown is always an appropriate and often the most appropriate person to assert this public interest... But, in my view, it must always be open to any person interested to raise the question…" (Lord Reid); p.406E "it must be open to the party or witness concerned or the court itself to raise the question" (Lord Pearson); and p.407D "Any litigant or witness may draw attention to the nature of the evidence with a view to its being excluded" (Lord Simon of Glaisdale). Similarly, in *D v NSPCC* **[HB/20.27/1472]** the House of Lords confirmed that PII is not confined to protecting the effective functioning of central government, it may be claimed by any litigant and it may not be waived where damage to the public interest is apprehended (p.220H (Lord Diplock), pp.234E, 235H-236F (Lord Simon) and pp.245E-246A (Lord Edmund-Davies)).

3.5 Even if not claimed by a party or witness, PII should be raised by the court of its own motion: *Conway v Rimmer* **[HB/20.26/1375]**, p.950F-G "Moreover, it is the duty of the court to do this [i.e. prevent disclosure or evidence which would injure the national interest] without the intervention of any minister if possible serious injury to the national interest is readily apparent" (Lord Reid); *R v Lewes Justices* **[HB/20.67/3181]**: p.400E-F "there may be cases where the trial judge should himself raise the question if no one else has done so" (Lord Reid), p.406E "it must be open to… the court itself to raise the question" (Lord Pearson) and p.407D "The court will proprio motu exclude evidence the production of which it sees is contrary to public interest" (Lord Simon).

3.6 The final decision on PII is taken by the court. See *Wiley* **[HB/20.61/3000]**, per Lord Woolf at p.296C-H:

> *It should be remembered that the principle which was established in Conway v. Rimmer… is that it is the courts which should have the final responsibility for deciding when both a contents and a class claim to immunity should be upheld… What was inherent in the reasoning of the House in that case was that because of the conflict which could exist between the two aspects of the public interest involved, the courts, which have final responsibility for upholding the rule of law, must equally have final responsibility for deciding what evidence should be available to the courts of law in order to enable them to do justice.*

3.7 Accordingly, ministerial certificates are neither necessary nor sufficient to found a claim for PII and, in any event, they are not conclusive of the outcome. This is particularly important given that the language of "certification" is liable to give the false impression that the certificate itself produces legal effects or bestows or confers PII status. In this regard, the modern practice of recording ministerial PII claims in "certificates" rather than, e.g. affidavits or witness statements has no particular basis or import. At the time of *Duncan v Cammell Laird* **[HB/20.30/1553]**, Crown privilege was not always claimed by certificate - Lord Simon LC explained that pre-trial objections were raised by affidavit, it was "not uncommon" for objections to subpoenas to be made at the hearing by "a certificate which the minister has signed" and there was "no harm in that procedure, provided it is understood that this is only for convenience and that if the court is not satisfied by this method, it can request the minister's personal attendance" (p.638). The PII claims in *Grosvenor Hotel* **[HB/20.39/1828]** and *Conway v Rimmer* **[HB/20.26/1338]** were made by affidavit and the Home Secretary's affidavit in the latter case was then referred to as "the minister's certificate" (see pp.913A-C,

940G, 943E (Lord Reid)).

3.8 In the light of the above authorities, parties considering and courts determining claims for PII apply a three stage analysis:

(1) *Is the material disclosable*?

(2) *If so, does it attract PII because its disclosure or use would cause serious harm or real damage to the public interest or a real risk of serious harm or prejudice to an important public interest*? In *Wiley* **[HB/20.61/3012]**, Lord Lloyd referred to "substantial harm" (p.308C); in *R v H* [2004] UKHL 3, [2004] 2 AC 134 **[HB/20.63/3066]**, Lord Bingham referred to "a real risk of serious prejudice to an important public interest" (§36(3)); and in *R (Mohamed) v Foreign Secretary* [2009] EWHC 152 (Admin) (DC) **[HB/20.56/2597]** (*Binyam Mohamed DC*) Thomas LJ (giving the judgment of the court) referred to "a real risk of serious harm to an important public interest" (§34(ii)).[2]

(3) *If so, is the public interest in disclosure or admission for the purpose of doing justice in the proceedings outweighed by the public interest in avoiding such harm or damage*? This is known as "the *Wiley* balancing exercise". In *Wiley* **[HB/20.61/3002]**, Lord Woolf said at p.298E-F, "Although it is the practice to talk of conflicting public interests this can be misleading. The conflict is more accurately described as being between two different aspects of the public interest. If it is decided that the aspect of the public interest which reflects the requirements of the administration of justice outweighs the aspect of the interest which is against disclosure, then it is the public interest which requires disclosure". In *Al Rawi v Security Service* [2011] UKSC 34, [2012] 1 AC 531 **[HB/20.19/1080]**, Lord Clarke JSC (dissenting as to the result) put it this way, "If the public interest in withholding the evidence does not outweigh the public interest in the administration of justice, the document must be disclosed unless the party who has possession of the document concedes the issue to which it

[2] Approved in *Binyam Mohamed CA* **[HB/20.57/2724]**, §229 (Sir Anthony May P).

relates" (§145(vi)).

3.9 Following the decision of the House of Lords in *Wiley* and the publication of the Scott Inquiry Report,[3] the government formally abandoned "class based" PII claims and announced a new approach to "contents based" PII claims. This was set out in a Parliamentary statement dated 18 December 1996 (*Hansard HC Deb*, 18 December 1996, vol.287, cols.949-950 **[HB/19.17/497]**)[4] which has since been followed by successive administrations and is referred to in the ministerial submissions and certificates in this case **[HB/19.34/643]**. The statement emphasises: PII "should only be claimed for the bare minimum of documents for which the claim of serious harm can be seen to be clearly justified"; "certificates will in future set out in greater detail than before what the document is and what damage its disclosure would be likely to do"; and "The new emphasis on the test for serious harm means that ministers will not, for example, claim PII to protect either internal advice or national security material merely by pointing to the general nature of the document. The only basis for disclosure will be a belief that disclosure will cause real harm".

3.10 The statement refers to an accompanying report placed in the Parliamentary Libraries **[HB/19.17b/512]** which stressed the need to consider mitigating measures such as redactions, summaries, gists and admissions (§6.6) and the fact that non-government bodies (e.g. the police) will need to determine their own PII procedures (§§1.7 and 4.6).

3.11 The Coroners Act (Northern Ireland) 1959 **[HB/20.2/751]**, s.8 requires PSNI to provide coroners with information concerning deaths and s.17B(3) provides that:

> *The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquest as they apply in relation to civil proceedings in a court in Northern Ireland.*

3.12 In *R v H* **[HB/20.63/3059]** Lord Bingham said, in the context of police material, at §18:

> *The public interest most regularly engaged [in criminal proceedings] is that in*

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[3] *Report of the Inquiry into the Export of Defence Equipment and Dual Use Goods to Iraq and Related Prosecutions* (HC 115, 15 February 1996).

[4] *Hansard HL Deb*, 18 December 1996, vol.576, cols.1507-1508.

> *the effective investigation and prosecution of serious crime, which may involve resort to informers and undercover agents, or the use of scientific or operational techniques (such as surveillance) which cannot be disclosed without exposing individuals to the risk of personal injury or jeopardising the success of future operations.*

3.13 It is well-established that PII attaches to information identifying police and other agents: in *R v Lewes Justices* **[HB/20.67/3182]**, Lord Reid said, "It has long been recognised that the identity of police informers must in the public interest be kept secret... Indeed, it is in evidence that many refuse to speak unless assured of absolute secrecy" (p.401D and see p.405F (Lord Morris), p.413C-D (Lord Salmon)); in *D v NSPCC* **[HB/20.27/1470]**, Lord Diplock referred to "the well established rule of law that the identity of police informers may not be disclosed in a civil action… If their identity were liable to be disclosed in a court of law, these sources of information would dry up and the police would be hindered in their duty of preventing and detecting crime" (p.218C-E), Lord Hailsham referred to an informant's "right to anonymity" (p.230B) and Lord Simon said "the police can function effectively only if they receive a flow of intelligence about planned crime or its perpetrators. Such intelligence will not be forthcoming unless informants are assured that their identity will not be divulged…" (p.232F-H); *Chief Constable of Greater Manchester v McNally* [2002] EWCA Civ 14, [2002] 2 Cr App R 37 **[HB/20.24/1310]**, §14 "it is important to protect informers in order to preserve and encourage the flow of information" (Auld LJ).[5]

4. The *Wiley* balance: gisting, reasons and open justice

4.1 In *Wiley* **[HB/20.61/3003]**, Lord Woolf emphasised that the public interest balance can change over time (at p.299D-E) and said at pp.306H-307B:

> *If the legal advisers of a party, who is in possession of material which is the subject of immunity from disclosure, is aware of the contents of that material, they will be in a better position to perform what they should consider to be their duty, that is to assist the court and the other party to mitigate any disadvantage which results from the material being not disclosed. It may be possible to*

[5] The above reflects the wider legal protection of confidential information about the identities of agents: *Attorney General v Blake* [2001] 1 AC 268 (HL) **[HB/20.22/1169]**, p.287E (Lord Nicholls); *R v Shayler* [2002] UKHL 11, [2003] 1 AC 247 **[HB/20.68/3220]**, §§30, 33 (Lord Bingham) and §100 (Lord Hutton)); *An Informer v A Chief Constable* [2012] EWCA Civ 197, [2013] QB 579 **[HB/20.20/1107]**, §§62, 65, 82 (Toulson LJ); *AB v Sunday Newspapers (t/a The Sunday World)* [2014] NICA 58 **[HB/20.17/980]**, §§22-25 (Morgan LCJ (giving the judgment of the court)); and *Attorney General v BBC* [2022] EWHC 826 (QB), [2022] 4 WLR 74 **[HB/20.21/1139]**, §27 (Chamberlain J).

> *provide any necessary information without producing the actual document. It may be possible to disclose a part of the document or a document on a restricted basis. An assurance may be accepted by counsel. In many cases co-operation between the legal advisers of the parties should avoid the risk of injustice. There is usually a spectrum of action which can be taken if the parties are sensible which will mean that any prejudice due to non-disclosure of the documents is reduced to a minimum.*

4.2 See also: *Commissioner of Police of the Metropolis v Bangs* [2014] EWHC 546 (Admin) (DC) **[HB/20.25/1328]**, §42 "It is well recognised that where a claim to PII is established, and a complete document cannot be disclosed, it is incumbent on the court to consider whether relevant extracts can be disclosed or a summary made of the relevant effect of the material" (Beatson LJ); and *De Smith's Judicial Review* (9th ed, 2023), §10-015 **[HB/20.108/5551]** (footnoted references omitted):

> *Once the court has decided that the material is relevant, and that it is properly covered by public interest immunity, it has to consider whether there are ways in which the salient points can be disclosed without any harm being done, for example by sharing the essence of the case or "gisting" or concession. In short, any denial of disclosure or inspection must be limited to circumstances where such denial is strictly necessary, and where some restriction is necessary, consideration should be given to the use of redaction, confidentiality rings, anonymity orders and other steps to respect protected interests.*

4.3 In *Binyam Mohamed DC* **[HB/20.56/2597]** - a case concerned with a PII claim made by the government on national security grounds in connection with passages in a judgment - Thomas LJ (giving the judgment of the court) set out four questions that arise when carrying out the *Wiley* balancing exercise (at §34) (drawing on §36(3)-(5) of Lord Bingham's speech in *R v H* **[HB/20.63/3066]**):

> *(i) Is there a public interest in bringing the redacted paragraphs into the public domain?... (ii) Will disclosure bring about a real risk of serious harm to an important public interest, and if so, which interest?... (iii) Can the real risk of serious harm to national security and international relations be protected by other methods or more limited disclosure?... (iv) If the alternatives are insufficient, where does the balance of the public interest lie?*

4.4 The preface to the above emphasised the context, "We therefore turn to consider, in the novel circumstances of the case, where the balance lies in accordance with the principles set out in *ex p Wiley*, the ministerial statements by the Lord Chancellor and Attorney General to Parliament on 18 December 1996 and the accompanying paper". The novelty is explained at §18 and the dispute about Gist 2 arises in the same context:

> *The issue which arises here is not the balance between the public interest and fairness to a litigant by making material available to him to enable a fair trial to take place… It is a novel issue which requires balancing the public interest in national security and the public interest in open justice, the rule of law and democratic accountability.*

4.5 The above was approved in *R (Mohamed) v Foreign Secretary (No.2)* [2010] EWCA Civ 65, [2011] QB 218 **[HB/20.57/2724]** (*Binyam Mohamed CA*), §229 (Sir Anthony May P) and *Al Rawi v Security Service* **[HB/20.19/1090]**, §§182-183 (Lord Clarke JSC (dissenting as to the result)).[6] Questions (iii) and (iv) effectively relate to stage 3 of the overall PII analysis set out above - the *Wiley* balance - and reflect the court's duty to consider summaries and gists and explain its reasons as fully as possible. Furthermore, and as emphasised by Lord Woolf in *Wiley*, the party in possession of material subject to PII is under a duty to assist the court discharge this duty, mitigate the effect of non-disclosure and maximise transparency around why it is necessary.

4.6 The Divisional Court and Court of Appeal judgments in *Binyam Mohamed* set out the guiding principles under the common law and articles 6 and 10 of the ECHR, namely, (i) the importance of public hearings and open justice, (ii) the principle that decisions and reasons must be made public, (iii) public justice, the rule of law, free speech and democratic accountability, including as instruments of public confidence in the administration of justice and informed public debate and (iv) media access to information and freedom of expression: [2009] EWHC 152 (Admin) (DC) **[HB/20.56/2598]**, §§35-54; and [2010] EWCA Civ 65 **[HB/20.57/2674]**, §§37-42 (Lord Judge CJ), §§134-135, 176, 179-181 (Lord Neuberger MR) and §230 (Sir Anthony May P).

4.7 These principles:

(1) Have a double-relevance in this case. They were and are applicable, first, to the determination of Gist 2 by the coroner and the reviewing and appellate courts (bearing in mind the application of the open justice principle to the inquest

[6] Lord Clarke JSC considered that all three Court of Appeal judges agreed with the Divisional Court's "general approach in principle" (§184).

proceedings) and, secondly, to the determination of the judicial review and appeals (bearing in mind the application of that principle to those proceedings).

(2) Need to be applied with proper regard to the context. To this end: the coroner's provisional list of issues within the scope of the inquest included a number of items relating to possible security force knowledge of or involvement in the attack on Liam Thompson (see esp. items 8 and 12-15);[7] and the importance of transparency in Troubles legacy cases and the serious adverse effects of secrecy on cross-community trust and confidence in and recruitment to PSNI and (therefore) the effectiveness of community policing is well known (Report of the Independent Commission on Policing For Northern Ireland, *A New Beginning* (1999) **[HB/20.119/5688]**, §§1.3, 1.16, 1.18, 5.2, 6.38; Boutcher, *Interim Report of Operation Kenova* (2023) **[HB/20.121/5711]**, §§3.2-3.6, 16.19-16.23, 37.1-37.3, 70.1-70.5; **Boutcher/9.1-9.4**). The public interest in avoiding grievance of this kind was emphasised by Lord Judge CJ in *Binyam Mohamed CA* **[HB/20.57/2673]**, §34:

> *However, the stark fact remains that if the redacted paragraphs are not revealed to Mr Mohamed, the parties to this litigation will not be treated equally. Although this may be a necessary consequence of the application of the wider public interest, as a matter of principle, and for obvious reasons, this is always undesirable, not least because it almost inevitably and unsurprisingly leads to a sense of grievance in the mind of the party subjected to this disadvantage.*

4.8 In reality, Gist 2 is "a partial gist and also a summary of the actions of the coroner to date and proposed actions going forward in the investigation" (CA majority, §60 **[HB/19.2/319]**) and is more akin to a high level indication of the nature of the information redacted from Folder 7 and the coroner's reasons for upholding the related PII claim.

5. Role and responsibilities of PSNI

5.1 Like the RUC before it, PSNI has the same law and order functions and operational independence as every other United Kingdom police service. The Police (Northern

[7] Note headed "DRAFT SCOPE" at exhibit LF1 - non-confidential document treated as "closed".

Ireland) Act 2000 gives PSNI the general functions of (a) protecting life and property, (b) preserving order, (c) preventing the commission of offences and (d) bringing offenders to justice (s.32 **[HB/20.12/808]**) and it requires that it carry out these functions with the aim of securing the support and co-operation of the local community (s.31A **[HB/20.12.806]**). Like all police services, PSNI also has primary responsibility for discharging the state's positive operational duties under articles 2-3 of the ECHR to protect life and to counter real and immediate risks of life-threatening, physical or psychological harm.

5.2 On independence, see *R v Commissioner of Police of the Metropolis, ex p Blackburn (No.1)* [1968] 2 QB 118 (CA) **[HB/20.62/3030]**, at pp.135F-136C (Lord Denning MR):

> *But I have no hesitation in holding that, like every constable in the land, [the Commissioner of Police of the Metropolis] should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, save that under the Police Act, 1964 , the Secretary of State can call upon him to give a report, or to retire in the interests of efficiency. I hold it to be the duty of the Commissioner of Police of the Metropolis, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought. But in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.*

5.3 The above was approved and elaborated on in *R v Home Secretary, ex p Northumbria Police Authority* [1989] 1 QB 26 (CA) **[HB/20.65/3121]** at p.39D-G (Croom-Johnson LJ) and p.46G-H (Purchas LJ) respectively:

> *It is common ground that the chief constable has complete operational control of his force. Neither the police authority nor the Secretary of State may give him any directions about that…. The independence of a constable, and a fortiori a chief constable, from outside control, whether by a local authority or the executive, has been repeatedly upheld.*
>
> *In carrying out these duties, the powers of the chief constables must stem from delegated power to exercise the prerogative power to keep the peace... How he disposes of the personnel available to him or what use he may make of any particular equipment in any given set of circumstances has not been altered by the Act.*

5.4 The national security role of the police is well-known particularly in the context of Special (or Counter-Terrorism) Branches. See e.g. The Intelligence and Security Committee, *Annual Report 2002-2003* (Cm 5837, 2003), §69 **[HB/20.120/5710]**:

> *There is a very close relationship between the individual SBs and the Security Service; in fact the SBs were described to the Committee as an executive partner of the Security Service. For example, SBs recruit and run agents either alone or in support of and co-operation with the Security Service, supplying the intelligence to the Security Service if it is relevant to its work… The SBs have sight of the relevant intelligence and security Agencies' requirements and work towards them in addition to their normal policing role, which is to safeguard the public. The Director General of the Security Service stated that the SBs continue to be a "major extension" to the Security Service in terms of intelligence collection capability.*

5.5 From the mid-1970s until 2007, the RUC and then PSNI had primacy in relation to counter-terrorism and national security intelligence gathering in Northern Ireland, its Chief Constable was one of the Secretary of State's three primary security advisers and it ran the majority of agents in all terrorist groups (De Silva, *Report of the Patrick Finucane Review* (HC 802-I, 2012), ch.3 **[HB/20.131/5977]**, §§3.4, 3.6-3.7, 3.11, 3.27; Boutcher, *Interim Report of Operation Kenova* (2023) **[HB/20.121/5711]**, §§3.2-3.8, 6.3, 7.1, 8.1-8.2, 47.4; **Boutcher/4.4**). PSNI's national security and serious crime role was not greatly affected by either the transfer of lead responsibility for national security intelligence to MI5 in 2007 or the devolution of policing and justice in 2010 (Annex E to the St Andrews Agreement 2006 **[HB/20.129/5960]**; Northern Ireland Affairs Committee, *The effect of paramilitary activity and organised crime on society in Northern Ireland* (2024, HC 43) **[HB/20.128/5953]**, §§57-68; **Boutcher/4.5-4.11**). In particular, PSNI: continues to run the great majority of national security agents in dissident republican groups, as well as agents in loyalist paramilitary groups (Annex E to the St Andrews Agreement 2006 **[HB/20.129/5960]**); has access to both its own intelligence and intelligence provided by the security and intelligence services (*ibid.* §§a-c **[HB/20.129/5962]**); owes statutory and common law duties of care to protect the security and welfare of those agents (Regulation of Investigatory Powers Act 2000 (RIPA), s.29(2)(c) and (5)(a) **[HB/20.15/856]** and *An Informer v A Chief Constable* [2012] EWCA Civ 197, [2013] QB 579 **[HB/20.20/1094]**, §§65, 82 (Toulson LJ), §§113-117 (Arden LJ) and §§184, 191 (Pill LJ)); assesses and "carries the risk" on its agent handling work and other operational deployments (**Boutcher/4.2-4.3, 4.10-4.11**); and works in partnership *with* (but not *for*) the NCA, HMRC and MI5 (**Boutcher/4.11**).

5.6 Parliament has conferred numerous national security functions on PSNI thereby confirming its status as an integral but operationally independent part of the United Kingdom's national security and intelligence machinery:

(1) **National security law enforcement**: creation of offences relating to terrorism, proscribed organisations, terrorist fund-raising, espionage, sabotage and state threats under the Terrorism Acts 2000 and 2006, Counter-Terrorism and Border Security Act 2019 and National Security Act 2023; port and border control powers (Terrorism Act 2000, Sch.7); special counter-terrorist and state threat investigation powers relating to police cordons, arrests without warrant, searches, detention, disclosure orders, customer information orders, account monitoring orders and the retention of materials (Terrorism Act 2000 and National Security Act 2023); powers to apply for terrorism related serious crime prevention orders and notification and foreign travel restriction orders (Serious Crime Act 2007, Counter-Terrorism Act 2008).[8]

(2) **Covert policing powers exercisable on national security grounds**:[9]

(a) power to authorise property interferences and equipment interference warrants for national security and serious crime purposes (Police Act 1997, s.93 **[HB/20.13/809]** and the Investigatory Powers Act 2016 (IPA), Pt 5 **[HB/20.6/783]** - *NB* the exercise of these powers by police on national security grounds is unique to PSNI - respectively ss.93(2A) and 106(6));

(b) power to authorise directed surveillance and the conduct and use of covert human intelligence sources on national security, crime and disorder, economic well-being of the United Kingdom, public safety and

[8] *Commissioner of Police of the Metropolis v Aswat* [2025] EWHC 786 (KB), §10 "The notification requirements imposed by the 2008 Act provide important national security safeguards" (Jay J).

[9] In practice, PSNI's exercise of these powers is also subject to non-statutory arrangements with its operational partners **[Boutcher/4.5-4.10]**.

public health grounds (RIPA, ss.28-29 **[HB/20.15/854]** plus SI 2010/521 **[HB/20.14/824]**);

(c) power to authorise intrusive surveillance and criminal conduct by covert human intelligence sources on national security, crime and disorder and economic well-being of the United Kingdom grounds (RIPA, ss.29B and 32 **[HB/20.15/860]** plus SI 2010/521 **[HB/20.14/824]**);

(d) power to apply for interception warrants under Pt 2 of IPA on national security, crime and disorder and economic well-being of the United Kingdom grounds (ss.18-20 **[HB/20.6/775]**).

(3) **Official secrets**: inclusion of PSNI officers within the definition of "Crown servant" for the purposes of the Official Secrets Act 1989 (s.12(1)(e) **[HB/20.11/803]**), making it an offence for them to make damaging unauthorised disclosures of information relating to security and intelligence, defence or international relations contrary to ss.1-3 **[HB/20.11/798]**, i.e. they are a category of person liable to be entrusted with such information.

5.7 So far as concerns accountability, Parliament has chosen to subject PSNI to oversight and scrutiny arrangements as follows: Northern Ireland Affairs Committee and Intelligence and Security Committee of Parliament; Northern Ireland Assembly Justice Committee; Northern Ireland Policing Board; Police Ombudsman for Northern Ireland; Chief Inspector of Criminal Justice in Northern Ireland; HM Inspectorate of Constabulary; Independent Reviewers of Terrorism Legislation and of the Justice and Security (Northern Ireland) Act 2007 and National Security Arrangements in Northern Ireland; Information Commissioner; Investigatory Powers Commissioner and Tribunal; Northern Ireland Audit Office; Policing and Community Safety Partnerships; and Independent Reporting Commission **[Boutcher/5.1-5.4]**. Importantly, these arrangements are no less rigorous, and no more remote from Parliament, than those in place for the security and intelligence services.

5.8 In consequence of its exercise of national security functions, PSNI holds related records and information and is responsible for their disclosure in the context of, e.g.

investigations, inquiries and legal proceedings and under statutory information rights. In this regard, PSNI is responsible for assessing whether and when to rely on (a) IPA, s.56 (exclusion of interception related matters from legal proceedings) **[HB/20.6/781]**, (b) PII[10] or (c) a national security exemption under the Freedom of Information Act 2000, ss.23-24 **[HB/20.5/772]**, Environmental Information Regulations 2004, reg.12 **[HB/20.4/770]** or Data Protection Act 2018, ss.26, 28, 44-45, 48, 68 and 110 **[HB/20.3/756]**.

5.9 Indeed, in *Fryers & Hogg v Northern Ireland Secretary* [2024] UKUT 48 (AAC) **[HB/20.35/1643]** - appeals against national security certificates issued under the Data Protection Act 1998, s.28 **[HB/20.3/759]** following subject access requests connected with internment-related files held by the Public Records Office of Northern Ireland - PSNI advised the Secretary of State on national security sensitivities (§§27-28, 90-93) and gave closed evidence at the appeal hearing (§§36, 80-81, 94).

6. Relevance of national security context

6.1 It is not in dispute that the judiciary should attach special respect and weight to assessments of the executive connected with national security matters because of its constitutional responsibilities, institutional competence and expertise and democratic accountability: *Home Secretary v Rehman* [2001] UKHL 47, [2003] 1 AC 153 **[HB/20.37/1684]**, §§15-17, 22 and 26 (Lord Slynn) and §§50-58, 62 (Lord Hoffmann); *R (Lord Carlile of Berriew QC) v Home Secretary* [2014] UKSC 60, [2015] AC 945 **[HB/20.52/2381]**, §§ 22-34 and esp. 32 (Lord Sumption JSC) and §99 (Baroness Hale DPSC); and *R (Begum) v SIAC* [2021] UKSC 7, [2021] AC 765 **[HB/20.48/2217]**, §§53-62, 70, 109 (Lord Reed PSC).

6.2 However, it should be borne in mind that the above cases were primarily concerned with the separation of powers and the relative responsibilities, competence, expertise and accountability of the elected executive, on the one hand, as against the unelected judiciary, on the other. They also arose in connection with decision making powers

[10] PII claims by police bodies are not uncommon (e.g. *O'Sullivan v Commissioner of Police for the Metropolis* (1995) 139 SJLB 164, [1995] Lexis Citation 2136, *R (X) v Chief Constable of Y* [2015] EWHC 484 (Admin); *R (Jordan) v Chief Constable of Merseyside* [2020] EWHC 2274 (Admin)), including on national security grounds (e.g. *R (AIG) v HM Courts and Tribunal Service* [2021] EWHC 584 (Admin) **[HB/20.44/2088]**).

exercisable on national security or public interest grounds and belonging exclusively to central government ministers, i.e. deportation, exclusion from the United Kingdom and deprivation of citizenship.[11] Claiming PII is not a function at all, let alone one that is exclusive to central government, and it is intrinsically within the province of the person or body which owns the information in question and is party to the relevant proceedings.

6.3 In this context, it should be borne in mind that the police have national security functions (see §§5.4-5.9 above) and are instruments of executive government in the wider sense: in *Conway v Rimmer* **[HB/20.26/1378]**, Lord Reid said, "The position of the police is peculiar. They are not servants of the Crown and they do not take orders from the government. But they are carrying out an essential function of government, and various Crown rights, privileges and exemptions have been held to apply to them" (p.953F); in *Binyam Mohamed CA* **[HB/20.57/2697]**, Lord Neuberger MR referred to "the maintenance of law and order" as one of "the fundamental roles of Government" (§131); and in *Coomber v Berkshire Justices* (1883) 9 App Cas 61 (HL), Lord Blackburn said at p.67:

> *I do not think it can be disputed that the administration of justice, both criminal and civil, and the preservation of order and prevention of crime by means of what is now called police, are among the most important functions of Government, nor that by the constitution of this country, these functions do, of common right, belong to the Crown.*

6.4 *Rehman* **[HB/20.37/1684]**, *Lord Carlile* **[HB/20.52/2381]** and *Begum* **[HB/20.48/2217]** certainly do not stand for the proposition that central government ministers have an *exclusive* "primacy" or a monopoly of expertise in connection with national security matters falling outside or overlapping with their own responsibilities. Indeed, they all emphasise the importance of the executive having:

(1) "the advantage of a wide range of advice from *people with day-to-day involvement in security matters* which [SIAC], despite its specialist membership, cannot match" and "access to special information and expertise" (*Rehman* **[HB/20.37/1725]**, §57 and §62 (Lord Hoffmann) (emphasis added));

[11] Other comparable powers include those relating to proscribed organisations, terrorism and state threat prevention and investigation measures, asset freezing and sanctions and interventions under the National Security and Investment Act 2021.

(2) "access to sources of information which cannot be put before any court" and "advisers whose job it is to assess what is likely to happen in the future and how serious that will be" (*Lord Carlile* **[HB/20.52/2429]**, §99 (Baroness Hale DPSC)).

6.5 In the context of this case and the PII claim in relation to Folder 7, PSNI (not the NIO) is made up of the "people with day-to-day involvement in [the relevant] security matters". Neither the Secretary of State nor MI5 undertakes the relevant type of operational policing work or national security intelligence gathering on the ground. It is the Chief Constable who is institutionally qualified to form a view of the likely impact of a disclosure of Gist 2 on the ongoing discharge of those functions and whose view should be afforded special weight and respect. He is not elected or accountable to Parliament in the same way as ministers, but this reflects his independence and the fact he may be called upon to investigate government ministers and officials. Furthermore, he is subject to the accountability arrangements Parliament has seen fit to establish as part of our national constitutional settlement. Comparable arrangements govern the Secretary of State's other main source of national security advice - the security and intelligence services.

6.6 The national security functions of PSNI are referred to at §§5.4-5.9 above and it has institutional competence and expertise in connection with the matters for which it is responsible. This was confirmed in *R (Miranda) v Home Secretary* [2016] EWCA Civ 6, [2016] 1 WLR 1505 **[HB/20.55/2557]** where Lord Dyson referred to the fact that the police were "entitled to rely on intelligence emanating from the Security Service", but nevertheless had to exercise their own judgement and "could not act as a conduit for the furtherance of the purposes of the Security Service" (§§ 30 and 37). In terms of their expertise, he also said at §§79 and 82 respectively:

> *When determining the proportionality of a decision taken by the police in the interests of national security, the court should accord a substantial degree of deference to their expertise in assessing the risk to national security and in weighing it against countervailing interests. This is because the police have both the institutional competence and the constitutional responsibility to make such assessments and decisions. As regards the latter, they are ultimately accountable to Parliament and the constitutional responsibility for the protection of national security lies with the elected government…*

> *There is no reason to disagree with their assessment of the risk. Indeed, the court is ill equipped to do so. The police and the Security Service have the expertise and access to secret intelligence material which rightly make it very difficult to challenge such an assessment in a court of law.*

6.7 Likewise, in *Commissioner of Police of the Metropolis v Bangs* **[HB/20.25/1330]** Beatson LJ said at §§48-49:

> *While the ultimate decision is a matter for the court, it is well established that proper weight must be given to the view of the public official, whether a government minister or a police officer, who has claimed PII. The statements to this effect are primarily in cases where PII is claimed by a government minister, often in the context of national security, but, with due allowance for the difference of context, they are also of relevance where PII is claimed by another public body such as the police.*
>
> *… The margin accorded to the responsible official is likely to be widest where the view concerns risks to national security and relationships with other governments, or the risks of identifying methods of covert surveillance, or informers. The position will generally be different where the view concerns the risk of a miscarriage of justice, because that is a matter within the particular expertise of the judge.*

7. Neither confirm nor deny (NCND)

7.1 The Secretary of State's case before the coroner, the High Court and the Court of Appeal rested largely on a claim that Gist 2 breaches the government's NCND policy and any such breach necessarily damages national security. This is not stressed as heavily in the Secretary of State's submissions before this Court, but the second reason he gives for allowing the appeal is, "The majority erred in law in concluding that the disclosure of Gist 2 would not result in breach of the NCND policy and damage to the national security interest".

7.2 In this regard, the Secretary of State conflates PII and NCND and then stretches the latter beyond its breaking point. The two are not coextensive, the policy cannot identify or designate sensitivity and it cannot prescribe or extend the scope of PII. As the Court of Appeal majority found, "It is self-evident that the NCND policy does not define the scope of PII although it may be raised within such applications" (§32 **[HB/19.2/312]**).

7.3 The NCND policy is no more than a means of protecting sensitive information: "It requires justification similar to the position in relation to public interest immunity (of which it is a form of subset). It is not simply a matter of a governmental party to

litigation hoisting the NCND flag and the court automatically saluting it" (*Home Secretary v CC* [2014] EWCA Civ 559, [2014] 1 WLR 4240 **[HB/20.36/1674]**,[12] §20 (Maurice Kay LJ)).

7.4 The first affidavit of Ruth Sloan dated 13 March 2024 focuses exclusively on NCND, describing it as "a mechanism used to protect sensitive information" that applies when two conditions are satisfied (1) "secrecy is necessary in the public interest" and (2) use of the mechanism "avoids the risk of damage that a confirmation or denial would create" (§6 **[HB/19.22/529]**):

(1) **Condition 1**. She refers to information about security and intelligence service investigations and operations, methods, capabilities, techniques and the identities of personnel and agents (§10).

(2) **Condition 2**. She says government needs to give a consistent NCND response to "assertions, allegations or speculation" and "questions" about security and intelligence services operations, investigation, relationships and information in order to avoid damaging inferences being drawn from the inconsistent use of confirmation or denial (§§11-12, 15).

7.5 Ms Sloan then emphasises that the maintenance of NCND involves a fact-specific balancing exercise (§§17, 23) and, if this is challenged, the court should conduct its own balancing exercise and, "The government does not maintain, and has never maintained, that the NCND principle simply has to be asserted and then adhered to by courts" (§20). So far as concerns the application of the policy to PSNI, Ms Sloan says that the concerns she refers to at §10 are "likely to apply to undercover operations conducted by the police" and she understands "police forces in England and Wales also adopt a similar position" (§11).

7.6 Much of Ms Sloan's affidavit is lifted from a Cabinet Office "Guidance note on NCND principle" dated October 2017 **[HB/20.117/5681]**, albeit that this is not referred to or

[12] Aka *Mohamed and CF v Home Secretary*.

exhibited and the examples of cases where "public confirmation or denial of the agencies' involvement or interest would not cause damage to national security" are omitted (§13).[13] Of relevance to Gist 2 is the following **[HB/20.117/5685]**:

> *Where the agency judges that its involvement should be acknowledged publicly, and even that the information should be disclosed, in the public interest eg where information is deployed by an agency with its authority in court proceedings.*

7.7 While largely uncontentious, Ms Sloan's evidence is vague and, crucially, does not apply to Gist 2 which does not meet either of the above conditions because: (1) it is not about the security or intelligence services, it relates to 30 year old police information which is not sufficiently specific to be sensitive and the information owner has assessed it to be non-damaging; and (2) it will not be issued in a responsive context, i.e. there is no sense in which the release of Gist 2 in this inquest could allow an adverse inference to be drawn from the non-release of a similar gist in another inquest. Furthermore, it is already known that Liam Thompson was killed by terrorists, the RUC was heavily involved in counter-terrorism and seven folders of PSNI material are being withheld on "national security" grounds (**[Boutcher/6.5]**).

7.8 The Home Secretary's "Statement on the NCND policy" dated 28 March 2024 **[HB/19.43/668]** - issued in response to perceived "pressure in recent weeks in the context of Northern Ireland legacy inquests"[14] - suffers from the same defects as the evidence of Ms Sloan and are not relevant to Gist 2: §§1-2 refer to non-specific sensitivities; §§3-5, 9 and 10-12 focus on the identification of agents; and §7 refers to foreign partners sharing information with the security and intelligence services. It also contains some striking examples of over-reach:

(1) statement that "disclosing information, in any form, regarding [special forces] will increase operational risk and undermine the UK's ability to deploy its special forces capability" (§6) - not relevant to Gist 2 and inconsistent with *R*

[13] The first judgment of Humphreys J refers to the guidance at §24 **[HB/19.9/394]**.

[14] A coded reference to the gist issued in the Sean Brown inquest on 27 February 2024 **[HB/19.49/739]**, the first judgment of Humphreys J on 25 March 2024 **[HB/19.9/388]** and the exchange of correspondence between the Secretary of State and Chief Constable on 26-27 March 2024 **[HB/19.34/662]**.

(Craighead) v Defence Secretary [2023] EWHC 2413 (Admin), §22 (Steyn J);[15]

(2) statement that "relevant decisions" must be made by ministers "rather than members of the police, agencies or armed forces" in order to ensure consistency (§8) - non sequitur and inconsistent with the fact that the police are independent of government;

(3) statement that NCND may be departed from "when the judgment is made that national security would be best served by a departure" (§12) - unjustified new condition.

7.9 None of the authorities upholding the adoption of an NCND approach upon which the Secretary of State relies extends to information of the kind contained in Gist 2: *Re Scappaticci's Application* [2003] NIQB 56 **[HB/20.88/4448]**, *Frank-Steiner v SIS* [2008] UKIPTrib 06_81-CH **[HB/20.34/1618]** and *DIL v Commissioner of Police of the Metropolis* [2014] EWHC 2184 (QB) **[HB/20.29/1524]**[16] all built on the narrower body of informant confidentiality / PII caselaw referred to at §3.13 above and (like that caselaw) were concerned with the anonymity or identification of alleged agents. In *R (Al Fawwaz) v Home Secretary* [2015] EWHC 166 (Admin) (DC) **[HB/20.45/2125]**, the government confirmed that MI5 held material about the claimant but withheld its contents (§§73-74 (Burnett LJ)).[17] Crucially, all these cases involved claims or requests for information about alleged agents which a public authority was responding to and where Ms Sloan's second condition was therefore met. Furthermore, none of them supports the argument that "the fact that agents were involved at all" is inherently sensitive information **[HB/19.34/669]**.

7.10 The minority judgment of McCloskey LJ states that "the specific context under scrutiny

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[15] "There have been exceptions to this policy, including Parliamentary statements confirming the deployment of UKSF to specific conflicts, events or places, usually when UK military involvement is a matter of public record and it would have made little sense to maintain special forces and not use this capability in the circumstances".

[16] The real identities and status of all the undercover officers referred to in the judgment of Bean J and many others have since been confirmed in the context of the Undercover Policing Inquiry.

[17] The Secretary of State also refers to two leave / arguability decisions, which should not be cited: *Re JR209's Application* [2022] NIKB 30 was concerned with whether a named individual was an agent; and *Re Bassalat's Application* [2023] NIKB 8 was not an NCND case.

in these proceedings" involves an NCND approach "to the existence of a state agent and/or the conduct or involvement of a state agent in any given situation or circumstances" (§27 **[HB/19.3/329]**) and criticises the Chief Constable and the coroner for not openly addressing the argument that departures from such an approach may inhibit the recruitment and retention of agents more generally (§§58, 64(i) **[HB/19.3/349, 351]**). However, that argument only makes sense in connection with disclosures which identify or could lead to the identification of an agent. In this regard, a distinction can be drawn between two different types of disclosure which engage the NCND policy and its underlying rationale differently (**Boutcher/6.4-6.5**):

(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 Boutcher, *Interim Report of Operation Kenova* (2023), §48.8 **[HB/20.121/5748]** and the abovementioned Cabinet Office guidance, §13 **[HB/20.117/5685]**. 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: *Hansard HL Deb*, 15 June 1993, vol.546, col.1555 **[HB/20.118/5687]**; De Silva, *Report of the Patrick Finucane Review* (HC 802-I, 2012), §§23.91-23.132 **[HB/20.131/5990]**; and Boutcher, *Interim Report of Operation Kenova* (2023), §48.9 **[HB/20.121/5748]**.

7.11 There have been numerous authoritative and official public disclosures, first, about

security and intelligence operations and intelligence gathering during the Troubles generally (**Boutcher/7.2-7.3**) and, secondly, confirming or denying that an individual was an agent (**Boutcher/8.1-8.3**). It is self-evident that these have not inhibited the recruitment or retention of agents - a point further borne out by the absence of any adverse consequences following on from the release of the gist issued by the coroner in the Sean Brown inquest (**Boutcher/11.2**).

7.12 The lack of a formal, published statement setting out the NCND policy means it does not meet basic principles of good administration including consistency, equal treatment, certainty and protection from arbitrariness. Instead, the policy has the qualities of Schrödinger's cat - not an absolute blanket policy but it must be applied consistently and reference to previous departures are unhelpful because they "pale in comparison to the number of times the policy has been upheld" ("Statement on the NCND policy" **[HB/19.34/670]**). This is particularly problematic given the Secretary of State's submission that his assessment of the policy's application must be followed by the courts unless it can be demonstrated that it has no proper basis (case for the appellant, §50). It is government policy which does not bind the courts (or PSNI), its terms and scope are uncertain and, therefore, meaningful judicial supervision of its application and whether it has a proper basis is impossible.

FACTUAL AND PROCEDURAL BACKGROUND

8. Ministerial involvement in PII claims by PSNI

8.1 The Chief Constable discontinued the former PSNI practice of routinely seeking a ministerial certificate in support of all its PII claims in civil proceedings and inquests on 29 March 2024: *Re Kevin McGuigan* [2025] NICoroner 2, §§10-12 **[HB/20.77/3832]**; **Boutcher/3.1-3.4**; correspondence with the Secretary of State at **JB1/1-32**. There was no legal or principled basis for this anomalous practice, its origins remain obscure and the instant proceedings illustrate some of its inherent difficulties. The change of approach is significant for two reasons. First, for all the Secretary of State says about his "primacy" and role as "the primary decision maker", the only reason he was involved in the first place was by reason of an optional and now discontinued process whereby PII claims by PSNI were supported by a ministerial certificate. Secondly, if a similar case arises in future and the Secretary of State

becomes involved, any differences of opinion will be more easily identified and resolved by the court.

8.2 In the inquest into the post-Troubles death of Kevin McGuigan, the Secretary of State unsuccessfully argued that the former practice should be resumed: *Re Kevin McGuigan* [2025] NICoroner 2 **[HB/20.77/3830]**. On 7 March 2025, the Chief Constable shared draft in-house guidance on PII with the Secretary of State and a response is awaited **[JB1/33]**.

9. Claim that Chief Constable changed his position

9.1 The Secretary of State's claim that the Chief Constable changed his position on the scope for gisting the PII material within Folder 7 is demonstrably false (see e.g. case of appellant, §§2(2), 7(3), 21, 83, 85(1), 87 and 90-91).

9.2 The claim is based on a statement which appears in §8 of a submission to ministers dated 19 March 2024, "In this case, 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" **[HB/19.34/657]**:

(1) **The submission to ministers**: was written by one of the Secretary of State's officials and cleared by Ruth Sloan **[HB/19.34/655]** and was not a PSNI document; did not relate to Folder 7 or the connected PII claim at issue in this case; was sent three weeks after the Chief Constable had engaged with the coroner in the Sean Brown inquest on the wording of the gist released on 27 February 2024 **[HB/19.49/739]**; was sent one week after the issue of these proceedings, the day before the Chief Constable engaged separate representation and two days before he proposed Gist 2 (SFI/12-13 **[HB/5/111]**); contained redacted comments at §9 about the Chief Constable's letter to the Secretary of State dated 7 February 2024 stating that ministerial involvement in all PSNI PII claims was unnecessary and inappropriate and should be discontinued **[JB1/1-3]**; and is of such irrelevance that it is not even referred to in the agreed SFI **[HB/5/108]**.

(2) **The statement about the infeasibility of gisting**: does not appear in a PSNI

document and paraphrases a sentence from the advice of counsel to PSNI on the PII claim relating to Folders 1-6 **[Boutcher/10.1(2)-(3)]**; was not considered significant enough to include in the submission to ministers dated 5 February 2024 relating to that claim **[HB/19.34/639]**; and was incompatible with the Chief Constable's publicly expressed view that, "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" (Boutcher, *Interim Report of Operation Kenova* (2023), §69.11 **[HB/20.121/5769]**).

9.3 The reality is that the Chief Constable and Secretary of State were never aligned on the scope for gisting and the latter issued his own challenge to Gist 1 on 12 March 2024 for this very reason.

9.4 Notwithstanding the above, the minority judgment of McCloskey LJ accepts and appears to have been greatly influenced by the claim that the Chief Constable did change his position: §11 (erroneous belief that the above statement appears in the submission to ministers dated 5 February 2024); §54 (erroneous belief that the PII certificates were underpinned by a PSNI assessment that a gist was not feasible); and §58 (erroneous belief that the Chief Constable's ultimate stance "flatly contradicted" his initial stance and he failed to explain a supposed "volte-face") **[HB/19.3/325, 347, 349]**.

9.5 Furthermore, and in any event, even if the Chief Constable (or Secretary of State) had considered that the contents of Folder 7 were incapable of being gisted in any way, this would have been irrational and they would have been obliged to keep the matter under review and to change position as required.[18]

10. The relevant PII claims

10.1 Following on from the above, it is important to appreciate that:

[18] For completeness, submissions were made on behalf of PSNI to the effect that Folder 7 was not amenable to gisting, but this was in opposition to Gist 1: Court of Appeal majority, §17 **[HB/19.2/309]**; Court of Appeal minority §§16, 61 **[HB/19.3/326]**; Humphreys J first judgment, §10 **[HB/19.9/390]**; Coroner's first PII ruling, §22 **[HB/19.12/414]**.

(1) PSNI is the "information owner", i.e. Folders 1-7 contain police information relating to operational police work conducted at a time when the RUC had primacy for national security and counter-terrorism intelligence gathering.

(2) The PII claims relating to Folders 1-7 were made by PSNI pursuant to its assessment that "disclosure… without redaction would cause real risk of serious harm to the public interest" (letters from Chief Constable dated 18 January 2024 re Folders 1-6 **[HB/19.34/638]** and 12 February 2024 re Folder 7 **[HB/19.34/652]**). See the submission to ministers dated 5 February 2024 re Folders 1-6, "PSNI wishes to make a claim for public interest immunity (PII) in respect of sensitive documents which have been deemed potentially relevant…" (§3 **[HB/19.34/640]**). The "sensitive schedules" identifying the relevant information and the grounds for claiming PII were prepared by PSNI and the product of a PSNI damage assessment. Under the practice then followed, these schedules were forwarded to NIO with the request for ministerial support and then referred to in and annexed to the signed certificates.

(3) The ministerial submission dated 5 February 2024 included advice on the "Secretary of State/Minister's role" (Annex B, §2 **[HB/19.34/643]**):

> *The 'harm test' is conducted by the information owners (in our cases this could be NIO, MI5 or PSNI). NIO officials scrutinise and challenge the information owners' assertions as to harm, ensuring that the rationale for seeking to protect the information is robust. NIO officials also confirm with the information owners that the information's protection (or release) is consistent with previous disclosure exercises and that the information is not already in the public domain. Consideration can also be given to providing a summary or 'gist' of the information, if that would provide sufficient protection to the information. After scrutiny, should the information owners' perspective remain at odds with NIO officials', we will expose those different positions to the SoS or Minister in order fully to inform the next step.*

(4) In other words, the damage assessment and PII claim belonged to PSNI as "information owner", the Secretary of State's role was supplementary and the possibility of gisting was expressly contemplated and <u>not</u> ruled out. Indeed, the advice for ministers on the "Judge/Coroner's role" read, "The judge or coroner may consider that it is possible and appropriate to take further steps to protect

the interests of the other party or next of kin, for example to provide a gist of the material" (Annex B, §4 **[HB/19.34/643]**). The possibility of judicial review in the event of disagreement would have to be considered by the Secretary of State "or the information owner as appropriate" (Annex B, §5 **[HB/19.34/644]**).

(5) Finally, the NIO "Comms and media approach" contemplated stressing "the limited role of the NIO in any PII application" (Annex D, §3 **[HB/19.34/646]**) and a pre-prepared "spokesperson statement" read:

> - *When the PSNI holds information which is relevant to court proceedings in Northern Ireland, the disclosure of which would cause a real risk of serious harm to an important public interest, a PII application is made. The application is supported by a certificate signed by the Secretary of State for Northern Ireland, or another Northern Ireland Office Minister.*
>
> - *The NIO has a limited role in approving PII applications. The PSNI will make an application on the basis that the disclosure of some of the information contained in their documents would bring about a real risk of serious harm to an important public interest. The decision as to whether information is subject to PII is made by the Judge or Coroner.*
>
> - *Whilst the PSNI can make an application and a Minister can certify it, there is a significant amount of further scrutiny that goes into whether or not any information is withheld. This includes a PII hearing where representatives for the applicant can make representations to the Judge asking him or her to disclose particular information.*

10.2 The second ministerial certificate dated 19 February 2024 relating to Folder 7 was not supported by any further submission or different advice **[HB/19.34/653]**.

10.3 Accordingly, the relevant ministerial submission and certificates did not refer to NCND or contemplate, extend to or rule out anything along the lines of Gist 2 and they were expressly incompatible with the Secretary of State's subsequent description of himself as the "primary decision maker" (see e.g. case of appellant, §§64(1), 66(3), 73, 80, 91). This reclassification of the Secretary of State's "limited role" was combined with a misunderstanding and misdescription of the nature and effect of ministerial PII certificates (see §3.7 above regarding the language of "certification").[19]

[19] For example, references to "the certifying minister" (submissions dated 27 April 2024, §§26, 67 **[HB/19.14/438]**) and claims about "departures" from and "breaches" / "contraventions" of PII certificates (letter

10.4 The coroner was not therefore faced with a claim for PII or a "national security assessment" submitted by the Secretary of State in connection with Gist 1 or Gist 2, rather she was faced with:

(1) **Gist 1**: Claims by the Chief Constable and Secretary of State that this contained information within the scope of the former's claim for PII in connection with Folder 7 and that its publication would risk damage to the public interest. The PII claim itself was made on behalf of the Chief Constable, advanced by his counsel and set out in his "sensitive schedule" and marked up materials. This claim was supported by two ministerial certificates which referred to the sensitive schedule and those materials: original certificate dated 5 February 2024 re Folders 1-6, §§2, 11-12 and 16-17 **[HB/19.34/647]**; and certificate dated 19 February 2024 re Folder 7, §3 "Details of the documents have been added to the original schedule prepared for the benefit of the Coroner, and an amended schedule is now attached to this certificate" **[HB/19.34/653]**.

(2) **Gist 2**: A claim by the Chief Constable that this did not contain information within the scope of his Folder 7 PII claim and a competing claim by the Secretary of State that it did. Neither claim was supported by any additional written assessments or evidence until service of the confidential evidence prepared for the second phase of the judicial review relating to Gist 2:

(a) Affidavit of Detective Chief Superintendent Claire McGuigan, Head of PSNI Legacy Branch dated 18 April 2024: specifically addresses the contents of and difficulties with Gist 1 (§11) and PSNI's assessment of Gist 2 and the claim that its publication might damage the public interest (§§16-20).

(b) Affidavit of a solicitor on behalf of the Secretary of State dated 10 April 2024: deponent had seen the text of Gist 2 and no other material relating

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dated 12 April 2024 **[JB1/19]**, submissions dated 27 April 2024, §§15, 20, 35, 44, 80, 82, 88, 91, 93, 106, 109 **[HB/19.14/436]]**, application to intervene dated 29 April 2024, §§1-3 **[HB/19.19/519]** and letter dated 26 March 2024 **[HB/19.34/662]**).

to the inquest and gives a view on risk. As things stand, further submissions as to the assumptions underlying and basis for that evidence can only be made in private and ex parte. The following points require close attention:

(i) the explanation for the decision not to make representations about or challenge the gist which was ultimately issued by Kinney J in the Sean Brown inquest **[HB/19.49/739]**;

(ii) the difficulty reconciling what is said about that gist with the PSNI assessment of its actual impact **[Boutcher/11.2]**;

(iii) the difficulty reconciling what is said about Gist 2 with the well-known "matters of public record" referred to in the Court of Appeal majority judgment, §65 **[HB/19.2/319]**, the first open judgment of Humphreys J, §25 **[HB/19.9/394]** and at §§7.10-7.11 above;

(iv) the role apparently played in the Secretary of State's thinking by "floodgates" fears about a coronial rebellion against NCND.

10.5 In this regard, it is standard practice for courts to probe, test and push back against PII claims and for those claiming PII to trim and make concessions without reference back to senior personnel at Chief Constable or ministerial level. See for example the PII ruling of: Kinney J in *Re Sean Brown* [2024] NI Coroner 18 **[HB/20.89/4469]**, §28(3) "I have agreed with the relevant agencies in closed hearings that there will be a rollback of claimed PII in respect of certain information. That means some material for which PII was originally claimed by the state agencies is now available"; and Huddleston J in *Re Daniel Doherty and William Fleming* [2023] NICoroner 4, §12(a)-(b) "I have agreed in CLOSED hearings with those that represent the various agencies that there will be a roll-back of PII in respect of certain pages… In conjunction with the roll-backs which I have agreed in the CLOSED sessions (see above) the parties are also to be provided with a gist of the context leading up to this incident".

11. Context: the five year plan for legacy inquests and the effect of the Legacy Act

11.1 In February 2016, the then Lord Chief Justice, Sir Declan Morgan, proposed a five year plan for the completion of all outstanding legacy inquests following a comprehensive review by Weir LJ. The initial caseload comprised 53 inquests relating to 94 deaths. Funding for the five year plan was announced in February 2019 and preliminary hearings began in September 2019, albeit that progress was soon delayed as a result of the Covid-19 pandemic. The (then) Presiding Coroner, Huddleston J, issued a "Legacy Inquests Case Management Protocol" in January 2021 **[HB/20.130/5964]** and the last of a series of updates was published by the (then) Presiding Coroner, Humphreys J, by way of a statement dated 17 November 2023 **[HB/20.132/5998]**. This addressed the implications of the Legacy Act for the outstanding Troubles-related inquests within the five year plan:

> *23. I am, of course, conscious of the obligation imposed on coroners both by Rule 3 of the Coroners (Practice and Procedure) Rules 1963 and, where appropriate, article 2 of the ECHR to act promptly and to hold inquests as soon as practicable.*
>
> *24. The ability to comply with such obligation is tempered by the finite nature of resources. As will be evident, there are a series of inquests which are part heard and where coroners intend to complete hearing evidence over the course of the next five months. The net result of this is that resources have been stretched to their limit. These are resources in terms of LIU solicitors and support staff, legal representatives and disclosure experts in the various state agencies, courtrooms and court staff, counsel with expertise in the field, expert witnesses and coroners.*
>
> *25. Coroners have displayed a willingness to bring the inquests they are managing to conclusion before 1 May 2024. In order to achieve this, they will require the focussed input of all concerned.*

11.2 This set the context for the proceedings in the courts below and it is important to keep in mind that all parties were operating under considerable pressure of time and workload whilst also endeavouring to discharge their national security responsibilities. It was inevitable that positions were formulated and decisions taken on the hoof, timetables were abridged and procedural corners cut and the preparation of comprehensive evidence and submissions was not possible.

11.3 So far as concerns the Secretary of State's criticism of the coroner's active role in the judicial review (case of appellant, §6): the passage referred to from Brooke LJ's judgment in *R (Davies) v Birmingham Deputy Coroner* [2004] EWCA Civ 207, [2004]

1 WLR 2739 **[HB/20.50/2323]** deals only with the costs consequences of neutrality; and the coroner in the Litvinenko inquest played a similar role in the government's challenge to his PII rulings without judicial complaint (*Foreign Secretary v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (DC) **[HB/20.33/1600]** (*Litvinenko*)). The orders for costs made in the coroner's favour by the High Court and Court of Appeal reinforce that they were clearly assisted by her involvement.[20]

GROUNDS

12. Ground 1. Reviewing and appellate functions (issue (a))

12.1 It is telling that the Secretary of State's characterisation of the multiple layers of decision making involved in this case entirely fails to mention the key role of the Chief Constable (as the information owner and person claiming PII) and over-states the "limited role" of the ministerial certificates provided in support of that claim (case of appellant, §60). In particular, this obscures a number of points:

(1) the Secretary of State was not represented before the coroner at any stage, was not the information owner or the person claiming PII and (therefore) was not the "primary decision maker";

(2) the coroner's primary task was to consider materials disclosed by PSNI, sensitive schedules produced by PSNI and a PII claim advanced by PSNI;

(3) at the time of taking her decisions on Gist 1 and Gist 2, the coroner had not been provided with a ministerial "national security assessment" specifically directed to the terms of either gist (see §10.4 above);

(4) it is more accurate to see this as a case where an inferior court or tribunal has refused a PII claim made on national security grounds than one where it has disagreed with "a national security assessment" and, in any event, the coroner

[20] Court of Appeal order dated 1 May 2024, §4 **[HB/19.1/301]**; High Court order dated 26 April 2024, §2 **[HB/19.4/375]**.

accepted the competing assessment of the Chief Constable.

12.2 **The coroner**. The primary judicial decision to release Gist 2 had two aspects. First, refusal of the Secretary of State's claim that the contents of Gist 2 fell within that claim and were subject to PII. Secondly, fulfilment of the coroner's ancillary duty to mitigate the adverse effects of, and maximise transparency about, her decision to uphold the substantive PII claim in relation to Folder 7. Her task was not to conduct a judicial review of the lawfulness of the Secretary of State's PII claim, it was to conduct the three stage PII analysis referred to in pts 3-4 above. To this end, she needed to evaluate the competing materials and arguments provided by or emanating from both the Chief Constable and (given his involvement) the Secretary of State. The views of both were "entitled to the utmost respect" but they could not "command the unquestioning acquiescence of the court": *Binyam Mohamed CA* **[HB/20.57/2677]**, §46 (Lord Judge CJ).

12.3 **The High Court**. Challenges to the lawfulness of decisions to uphold or refuse PII claims made on national security grounds fall to be determined on ordinary public law principles and do not require a modified standard of review. The reviewing court should be cognisant of the seriousness of national security issues and place due weight on any related assessments of risk or damage made by bodies with relevant responsibilities, competence and expertise. This was the approach taken by the Divisional Court in the *Litvinenko* case **[HB/20.33/1616]** where the court considered the circumstances in which "disclosure could reasonably be ordered" by a coroner faced with a "careful" and "cogent" explanation of the risk of damage to national security (§62). Goldring LJ reviewed the coroner's ruling in favour of disclosure in accordance with the applicable legal principles and concluded, at §67:

> *Had the Coroner approached the balancing exercise in accordance with the way I have summarised, he would have been bound similarly to have found. No coroner could reasonably have done otherwise. That is why we quashed the Coroner's decision and declined to remit the matter.*

12.4 Humphreys J correctly articulated the approach in his second judgment concerning Gist 2 when he emphasised the need for the reviewing court to "be alive to scrutinise the correct identification of the legal principles" and, subject to there being no error of law by the coroner in this respect, "only interfere with the merits of a coroner's decision

within the traditional and limited scope of judicial review" (§17 **[HB/19.6/383]**).

12.5 The latter passage referred back to Humphreys J's first judgment concerning Gist 1 and this in turn referred (§17 **[HB/20.9/391]**) to *Re Officer C* [2012] NICA 47 **[HB/20.84/4157]**, an appeal of a judicial review of a "procedural ruling" by a coroner. It is accepted that the decisions under review in relation to Gists 1-2 were substantive, not procedural or matters of discretion (§§3.1-3.3 above). Strictly speaking, PII inheres in material meeting the relevant tests and its application is a question of law susceptible of only one right answer. However, the second and third stages of the PII analysis involve the determination of mixed questions of fact and law and, on occasion, the evaluation of judgements arrived at by those claiming PII. These are not hard-edged issues. In *Wiley* **[HB/20.61/3003]**, Lord Woolf also emphasised that, "The balance can, however, change and the court could take one view of where the balance lay before a trial started and a different view during the course of the trial" (at p.299D-E), i.e. PII can evolve and so must be kept under review.

12.6 In the event, Humphreys J did not, contrary to the submissions of the Secretary of State, develop or derive anything from *Re Officer C* **[HB/20.84/4157]**, characterise the coroner's decisions as "procedural" or "discretionary" or proceed on the basis that she should be afforded a "generous width of discretion" or "wide margin of appreciation". Rather, in his second judgment, he made clear that a PII claim is a matter of judgment that encompasses "the scope of the inquest, the issues to be determined and the evidence available" (§17 **[HB/19.6/383]**). In other words, matters which the coroner was particularly well placed to determine. His first judgment correctly stated that: the judicial review court exercised "a supervisory jurisdiction only" in contrast to a "court of appeal" or a "court of second opinion"; and "In respect of decisions made by inferior tribunals which are exercising statutory functions, it will only intervene when the decision maker has acted unlawfully or irrationally or where there has been some material procedural unfairness" (§§15-16 **[HB/19.9/391]**).

12.7 The Secretary of State's contends that the coroner was not better placed to evaluate the evidence in this case as there was no oral evidence or fact finding process. In reality, the coroner was evaluating conflicting positions on damage to the public interest as an exercise of judgment. The benefit of oral testimony is not the only advantage that a first

instance court can hold over a reviewing court. In *Re DB's Application for Judicial Review* [2017] UKSC 7 **[HB/20.28/1522]**, Lord Kerr remarked at §80:

> *… that the first instance trial should be seen as the "main event" rather than a "tryout on the road" has resonance even for a case which does not involve oral testimony. A first instance judgment provides a template on which criticisms are focused and the assessment of factual issues by an appellate court can be a very different exercise in the appeal setting than during the trial. Impressions formed by a judge approaching the matter for the first time may be more reliable than a concentration on the inevitable attack on the validity of conclusions that he or she has reached which is a feature of an appeal founded on a challenge to factual findings. The case for reticence on the part of the appellate court, while perhaps not as strong in a case where no oral evidence has been given, remains cogent.*

12.8 **The Court of Appeal**. The majority articulated its jurisdiction as follows, "the appeal requires us to determine whether Humphreys J was wrong in finding that the coroner's ruling was lawful, rational, and procedurally sound and that she had power to order disclosure of the gist" (§23 **[HB/19.2/310]**). It was not the appellate court's role to "conduct a merits-based review" or to substitute its own view for that of the coroner, but "in a case such as this concerning national security matters, we must apply particularly close attention to the issues" and "take time to consider the CLOSED material and gist at issue before determining whether a public law wrong is evident" (§§41, 43 **[HB/19.2/315]**). The majority was correct that it was required to ask whether Humphreys J had been wrong (see *Re DB's Application for Judicial Review* **[HB/20.28/1521]**, §78).

13. Ground 2: Correct approach to assessment of damage (issue (e))

13.1 The Chief Constable did not and does not consider that disclosure of Gist 2 would cause any damage to national security **[Boutcher/1.2, 1.5, 6.5]**, the Secretary of State disagrees. The coroner's closed ruling on Gist 1 made clear that she accepted that disclosure of the contents of Folder 7 would cause a real risk of serious harm, but did not accept that the disclosure of Gist 1 would have this effect: it would carry a low-level risk which would be mitigated and not amount to a real risk of serious harm (§§36, 41).[21] As a fall-back, if wrong about this, she decided in relation to Gist 1 that any public interest in non-disclosure was outweighed by the public interest in the

[21] See also first open PII ruling dated 8 March 2024, §§30, 32 **[HB/19.12/417]**.

administration of justice (§42).[22] Her reasoning in relation to Gist 2 was the same.

13.2 In *Litvinenko* **[HB/20.33/1615]**, the first of Goldring J's nine principles on "The balancing exercise" was that "it is axiomatic… that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for courts, not the Government, to decide whether or not PII should prevent disclosure of a document or part of a document" (§53). Furthermore, if there is no "evidence" of a real risk of damage to national security, "the claim fails at the first hurdle" (§55).[23]

13.3 By contrast with *Rehman* **[HB/20.37/1684]**, *Lord Carlile* **[HB/20.52/2381]**, *Begum* **[HB/20.48/2217]**, *Binyam Mohamed CA* **[HB/20.57/2651]** and *Litvinenko* **[HB/20.33/1600]**, this was not a case where a judicial body was considering a single damage assessment from an executive body. Rather, in connection with Gist 2, the coroner was faced with an assessment by the Chief Constable (the information owner and the person raising PII) to the effect that release of Gist 2 would not cause damage and a competing assessment by the Secretary of State (an interested party). The Chief Constable submits that the assessment of the person with responsibility for and expertise in the material and related police activity should take precedence and be given presumptive weight. Alternatively, he submits that the arguments and materials provided on each side and the extent to which they were specific and well-founded should have been evaluated. Either way, the inevitable conclusion would have been to reject the view of the Secretary of State and prefer that of the Chief Constable.

13.4 The courts have shifted from the language of "deference" to speak of "relative institutional competence" since *A v Home Secretary* [2004] UKHL 56, [2005] 2 AC 68 **[HB/20.16/899]**. In that case, Lord Bingham conceptualised the relative institutional competencies of the executive and judiciary as a spectrum, at §29:

> *The more purely political (in a broad or narrow sense) a question is, the more appropriate it will be for political resolution and the less likely it is to be an appropriate matter for judicial decision. The smaller, therefore, will be the potential role of the court. It is the function of political and not judicial bodies*

[22] See also first open ruling dated 8 March 2024, §§33 **[HB/19.12/418]**.

[23] Principles 3-9 all proceeded on the premise that there was unarguably evidence of a real risk to national security in the *Litvinenko* case.

> *to resolve political questions. Conversely, the greater the legal content of any issue, the greater the potential role of the court, because under our constitution and subject to the sovereign power of Parliament it is the function of the courts and not of political bodies to resolve legal questions.*

13.5 This has been followed in, e.g. *Begum* **[HB/20.48/2259]**, §109 (Lord Reed PSC) and *R (El Gizouli) v Home Secretary* [2019] EWHC 60 (Admin), §99 (Lord Burnett CJ). In *Lord Carlile* **[HB/20.52/2401]**, Lord Sumption JSC explained that "deference" had "overtones of cringing abstention in the face of superior status" which obscured two operative principles, (1) the separation of powers and (2) "a pragmatic view about the evidential value of certain judgments of the executive, whose force will vary according to the subject matter". The weight afforded by the court to a particular body's evidence will be commensurate with the expertise of that body on the given subject matter and the issues before the court.

13.6 The coroner was not, as the Secretary of State asserts, "obliged to accept the minister's assessment on the nature and extent of the national security risk as correct, unless there was no proper basis for that assessment (i.e. it was irrational)" (case of appellant, §71). This mischaracterises the coroner's role as conducting a process akin to a quasi-judicial review, rather than making a substantive determination on a matter of law in her capacity as a judicial office-holder. See Ward and Blundell, *National Security: Law, Procedure and Practice* (2nd ed, 2024), §2.78 **[HB/20.116/5680]**:

> *Issues of relative institutional competence are also likely to be of critical importance when a court has to determine an application for PII by deciding whether the disclosure of intelligence, or other material that is sensitive on national security grounds, is required to enable a fair hearing. In such cases, the court will not treat as determinative the executive's judgement as to whether fair trial considerations require disclosure, intervening only if it considers the judgement irrational. Instead, it will itself weigh the two aspects of the public interest against each other and decide which should prevail.*

13.7 The Secretary of State derives his "accept unless irrational/unlawful" approach from the judgment of Sir Anthony May P in *Binyam Mohamed CA* **[HB/20.57/2734]**, §262, "the court should not substitute any view of its own of the existence or seriousness of such a risk for that of the Foreign Secretary (in this instance), unless it is persuaded that there is no proper basis for that view". Elsewhere in that case, Lord Neuberger MR held at §131 that a judge would require "cogent reasons" to differ from an assessment made

by a minister on the risk of harm to national security **[HB/20.57/2697]**. It is submitted that both dicta concern the assignment of weight to the evidence on national security and are to like effect. Neither was seeking to recast a coroner or judge considering a PII claim as performing the same role as a court in a judicial review - doing this would have returned the "blank cheque" to the executive which was withdrawn by *Conway v Rimmer* **[HB/20.26/1410]** (see at p.985B (Lord Pearce quoting Professor Wade)). See the majority Court of Appeal judgment, §63, "Otherwise, the logical conclusion is that the SoSNI has an absolute veto by virtue of the PII certificate" **[HB/19.2/319]**. This is precisely the position Sir Anthony May P said "is not the law", at §295, a view supported by Lord Clarke JSC in *Al Rawi* **[HB/20.19/1090]**, §184.

13.8 Furthermore, and in any event, the Court of Appeal in *Binyam Mohamed* was not addressing the approach to take when faced with, or how to prioritise and evaluate, competing assessments.

13.9 Finally, it is clear that the Secretary of State's view that Gist 2 would cause real and serious damage to the national security of the United Kingdom does have "no proper basis" and that there are "cogent reasons" for rejecting it. The logic would appear to be that publication by the court would contravene a dogmatic and extreme interpretation of a vague unwritten policy which does not bind the court and is inconsistently applied. This, it is said, would be inherently damaging. Given the points outlined at §10.4 above, it is submitted that the three courts below were right to reject the challenge to Gist 2. See the Court of Appeal majority judgment: Gist 2 "safely indicates" "the general nature" of the contents of Folder 7 in "a non-identifying, generic and non-specific way" (§61 **[HB/19.2/319]**); it would not "breach or depart from the NCND policy because disclosure of the information in Gist 2 would not in fact "confirm" or "deny" anything sufficiently specific to engage the NCND policy or the interests it is intended to protect" (§63 **[HB/19.2/319]**); and §§65-66:

> *It goes without saying that each case must turn on its own facts. There is a spectrum of specificity running from general and non-damaging disclosures which will not compromise operations, investigations or sources (eg the Operation Kenova Interim Report and Gist 2) and more specific disclosure which may be capable of doing this directly or indirectly, by facilitating deductions or through the "mosaic effect" (eg Gist 1 and the contents of Folder 7). In this case the questions which occupy the gist have been in play and are not new. We think that the coroner was justified in the decision she took with*

the support of the owner of the material, the PSNI.

We also think it would be a retrograde step in the legacy sphere if gists were not to be used to deal with sensitive material after appropriate checks and balances. Otherwise, disclosure will continue to be fraught and arguably impossible in cases of this nature with the consequence that families will not obtain the answers they desire as to how their loved ones died.

13.10 Whether Gist 2 is most aptly described as a gist or a summary or by some other term is an arid, semantic debate which is immaterial to a determination of whether it represents an appropriate means of mitigating the effects of Folder 7's non-disclosure and/or maximising transparency about the grounds for the PII claim and these proceedings.

14. Ground 3: Approach of the Chief Constable (issue (c))

14.1 Pts 3-4 above acknowledge that the Chief Constable has a duty to claim PII as and when it arises in connection with police material which is disclosable in legal proceedings and an ancillary and ongoing duty to assist the court mitigate the effects of such claims and maximise transparency through the use of summaries and gists.

14.2 Pts 5-6 above address the Chief Constable's responsibilities in connection with covert and national security policing and his competence to assess related risks and aspects of the public interest. Pt 9 above deals with the baseless and irrelevant claim that he changed his position and pt 10 explains the respective roles of the Chief Constable and Secretary of State in connection with the PII exercise relating to Folder 7 and Gists 1-2. In particular, §10.4 above analyses the extent to which each of them provided an "assessment" of the impact of releasing Gist 2. As the information owner and person responsible for police operations of the relevant kind, the related PII claim and the underlying damage assessment and sensitive schedules, the Chief Constable's views were entitled to be given weight and respect.

14.3 Following on from this, it is submitted that the Secretary of State's references to his "primacy" are either (1) a largely irrelevant statement about the government's overall political responsibility for national security policy and (insofar as this is approved by Parliament) legislation, or (2) a misrepresentation of his "limited role" in connection with the PII exercise relating to Folder 7. He certainly was not the "primary decision maker" and did not provide a "national security assessment" in relation to Gist 2 in any

meaningful sense. The decisions the Secretary of State took were, first, to support the Chief Constable's PII claims in relation to Folder 7 and Gist 1 and, secondly, to argue that they extended to and precluded the release of Gist 2.

14.4 Beyond a misconceived and fruitless allegation about an unexplained change of position, the Secretary of State's basis for saying that the Chief Constable erred in law in coming to a different view on the acceptability of Gist 2 is unclear. If it is suggested that he failed to comply with his duty to claim PII in respect of Gist 2, this makes no sense because he inevitably had to form a view as to the application of the doctrine. Furthermore, this is not a legally enforceable duty and a failure to identify or make an available PII claim cannot be categorised as an error of law. If it is suggested that it was inherently unlawful for the Chief Constable (who is independent of government) to disagree with the Secretary of State on the consequences of releasing PSNI information, the public law basis for this startling proposition has not been identified.

14.5 In respect of the coroner, the Secretary of State argues that she was unduly influenced by the Chief Constable's proposal of Gist 2 and has denied that this was the case. However, the coroner was not seeking to deny that she was "influenced" by the Chief Constable's position in the sense that she treated it as a material factor. Rather, her second open ruling dated 11 April 2024 explained at §19 that the Chief Constable's stance on Gist 2 was not decisive and she had formed her own view, i.e. she had come to her own decision and not abdicated responsibility for doing so **[HB/19.11/407]**. Consistently with this, the coroner said, "I have decided to amend the first gist to reflect the wording proposed by the Chief Constable in Gist 2" (§10 **[HB/19.11/406]**) and her ruling on viability stated that she had been "content to agree the proposed gist" (§18 **[HB/19.10/400]**).

14.6 As the coroner made clear in §19 of her second open ruling, her decision in respect of Gist 1 was made in the face of opposition from both the Chief Constable and the Secretary of State **[HB/19.11/407]**. Gist 2 adapted that gist, which she had already determined could safely be disclosed. Therefore, the issue that the coroner was contending with at that point was not the risk of harm to national security, having already reached a conclusion on that matter. Instead, she was concerned with the question whether Gist 2 constituted meaningful disclosure such that it could supersede

Gist 1. She was satisfied that Gist 2 conveyed "the minimal permissible information required to be disclosed" to do justice in the proceedings (§16 **[HB/19.11/407]**).

14.7 Turning to the second judgment of Humphreys J, the Secretary of State incorrectly submits that the judge "concluded that the coroner had not taken into account the view of the Chief Constable" (case of the appellant, §89). Rather, he rejected the submission that the coroner had erred by taking into account an immaterial consideration, "namely the view of the Chief Constable on NCND" (§19 **[HB/19.6/384]**). The coroner's reasons and analysis are contained in her second closed ruling and can only be addressed in confidential submissions and/or a private and ex parte hearing.

15. Ground 4. Relevance of Legacy Act (issue (f))

15.1 The Legacy Act, s.44 **[HB/20.10/796]** came into force, inserted new ss.16A-16C into the Coroners Act (Northern Ireland) 1959 and thereby terminated all ongoing Troubles-related inquests on 1 May 2024. The Secretary of State contends that this meant it was unlawful for the coroner to order disclosure of Gist 2 in the run up to that cut-off date because doing so would be pointless.

15.2 The Chief Constable opposes this opportunistic and unprincipled submission and submits that the decision to release Gist 2 was lawful and consistent with the statutory framework then in force, including the Human Rights Act 1998, s.6 and the positive obligations conferred under article 2 of the ECHR.

15.3 On a literal and purposive construction, the Coroners Act (Northern Ireland) 1959, s.16A(2) was intended to apply "on and after" (and not before) 1 May 2024 (*Re McCord's Application for Judicial Review* [2024] NIKB 29 **[HB/20.79/3902]**, §§16-17 (Simpson J)). Indeed, the coroner had a power to progress the inquest in accordance with the obligation imposed on her both by the Coroners (Practice and Procedure) Rules 1963, r.3 and article 2, although this was "tempered by the finite nature of resources" (see §11.1 above).

15.4 Regardless of the point at which completion of the inquest before 1 May 2024 became impossible, the coroner was seized of the inquest and exercising her discretion as to its continued progress. In *Re McCord's Application for Judicial Review* **[HB/20.79/3898],**

Simpson J correctly recognised that until 1 May 2024, the coroners in the Loughall and McCord inquests had a discretion (as opposed to a duty) to decide whether or not to continue to progress them.[24] As part of this, she delivered her ruling on viability of the inquest orally on 30 April 2024 and in writing the next day **[HB/19.10/398]**. This was entirely in accordance with the statutory framework.

15.5 So far as concerns article 2, which was and remains engaged in connection with the investigation into the death of Liam Thompson, this imposes a continuing duty to investigate that binds the state "throughout the period in which the authorities can reasonably be expected to take measures with an aim to elucidate the circumstances of death and establish responsibility for it" (*Re McCaughey's Application for Judicial Review* [2011] UKSC 20, [2012] 1 AC 725 **[HB/20.78/3868]**, §47 (Lord Phillips PSC). Consistently with this, *Lewis v HM Coroner for Mid & North Division of the County of Shropshire & Anor* [2009] EWHC 661 (Admin) **[HB/20.41/1934]** held "the process of the inquest, considered as a whole, secures the discharge of the Member State's investigative obligation, i.e. by reference to all the matters ventilated and explored in evidence and the verdict of the jury" (§46) (Sir Thayne Forbes).

15.6 In this context, the release of Gist 2 would be an additional and significant step towards fulfilment of the state's ongoing article 2 obligations and serve a legitimate and important purpose as recognised by the coroner in her ruling on viability. Family participation is also an important feature of compliance with article 2 and this interest would be served by the release of information about the death of their loved one which, while limited, would still be meaningful. Furthermore, even if the new Independent Commission for Reconciliation and Information Recovery were capable of complying with article 2, there is no prospect of it investigating the murder of Liam Thompson (31 years ago) in the near future and there is no good reason to delay giving his family any available information about the circumstances.

15.7 It is notable that the Secretary of State first introduced this argument as a ground by way of amendment on 15 April 2024 **[HB/19.32/626]**. Prior to that point, his position

[24] See the analysis of Simpson J in *Re McCord's Application for Judicial Review* [2024] NIKB 29 at §§27-33 **[HB/20.79/3906]**.

had been that the PII exercise (which imported an obligation on the coroner to consider gists and the requirements of open justice) and the determination of the Gist 1 judicial review could continue without reference to the impending cut-off date. It was entirely reasonable for the coroner to proceed as she did and achieve as much as she could in the wider public interest. Bearing in mind the expenditure of public resources on the inquest process prior to 1 May 2024 and the impact of the Folder 7 PII claim on its overall viability, the next of kin and the wider public also had a legitimate interest in knowing as much as possible about the reasons for that claim and the general nature of the withheld information. In this regard, see pt 4 above on the importance of maximum transparency in and about judicial proceedings and *Binyam Mohamed CA* **[HB/20.57/2711]** (Lord Neuberger MR):

> *It has long been the case that the court has responsibilities wider than its duties to the parties obvious examples include a duty to protect witnesses (eg from bullying cross-examination or from self-incrimination), a duty to ensure the criminal law is enforced (eg sending papers to the Director of Public Prosecutions, or indeed to professional disciplinary bodies in some cases), a power to hand down judgment if in the public interest even where parties have settled and do not want the judgment published (as in Prudential Assurance Co Ltd v McBains Cooper [2000] 1 WLR 2000), and indeed a duty to declare, and where appropriate to develop, the law. It therefore seems to me to be quite unrealistic to pretend that, under the common law as it has developed, the court has had no general public duties.*

15.8 As Humphreys J correctly pointed out in his second judgment **[HB/19.6/384]**:[25]

> *23. In light of the decision of the Supreme Court in Re Dalton's Application [2023] UKSC 36 and my own decision in Re Bradley's Application [2024] NIKB 12, this is an inquest which is subject to the article 2 ECHR investigative obligation. The UK is obliged to investigate the circumstances concerning the death of Mr Thompson in an article 2 compliant manner. That duty persists both before and after the statutory guillotine date of 1 May 2024, and the duties of disclosure and the consideration of any PII applications must be seen in that context.*
>
> *24. Even where a determination is made that an inquest will not complete before 1 May 2024, there may still be an ability to achieve some of the goals of the inquest process, to find out how an individual died, or to allay rumour and suspicion, through the disclosure and evidence gathering processes. It could scarcely be regarded as irrational to disclose the contents of a gist to PIPs, in circumstances where the gist has otherwise been ruled to be lawful.*

[25] [2024] NIKB 32 per Humphreys J at §§23-24 **[HB/19.6/384]**

15.9 The majority of the Court of Appeal was similarly unattracted to the argument that the release of Gist 2 was "disclosure for disclosure's sake and therefore impermissible", §57 **[HB/19.2/318]**:

> *The fact that the inquest will not complete before 1 May is not a reason to effectively block the coroner's lawful ruling reached after a lengthy process in circumstances where there have been major delays in this inquest, the potentially reliable material was provided at a late stage, and the coroner is cognisant of her duties under article 2, not least to be open and transparent and involve the next of kin in the decision making process.*

16. Ground 5. Procedural fairness (issue (d))

16.1 It is notable that the Secretary of State did not make or seek to make any representations to the coroner on either gist until his first intervention which came after she had decided to issue Gist 1 (see letter dated Friday 8 March 2024 **[HB/19.42/708]**). This followed on from the fact that the Secretary of State was not represented at the inquest hearings dealing with the Chief Constable's PII claims relating to Folders 1-7. There were no further hearings before the coroner after the issue of the applications for judicial review on 11 and 12 March 2024 and all subsequent argument effectively became subsumed within those proceedings (SFI/11-13 **[HB/5/111]**).

16.2 The Secretary of State's submission that his participation in the PII process was vital must be read against this background and the fact that he never sought to participate (case of appellant, §105). Indeed, following the Chief Constable's proposal of Gist 2 prior to the first substantive judicial review hearing on 22 March 2022, the Secretary of State chose to challenge it in the High Court, rather than before the coroner. At that hearing, his counsel objected to Gist 2 and applied for permission to challenge it and for this to be dealt with once the coroner had provided a reasoned ruling (SFI/14 **[HB/5/112]**, second judgment of Humphreys J dated 25 April 2024 (§3-4 **[HB/19.6/380]**). Furthermore, the Secretary of State's letter to the Chief Constable dated 26 March 2024 said, "The question of the legality of the revised gist proposed by you and agreed by the Coroner has been stayed and, subject to a further determination by the Coroner, I will apply for the stay to be lifted and that issue determined" **[HB/19.34/662]**.

16.3 It is not surprising that the Secretary of State opted to proceed in this way given that

Gist 2 had a narrower scope and content and said less than Gist 1, his objections to Gist 1 were already known and were rejected by the High Court on 25 March 2024 and he did not have any additional complaints to make about Gist 2. The coroner's open ruling on Gist 2 dated 11 April 2024 made clear that she had not decided to adopt it on 22 March 2024 and had simply given a provisional indication that she was minded to do so (§3 **[HB/19.11/405]** and see her ruling dated 30 April 2024, §18 **[HB/19.10/400]**). By then, she was "fully aware" of the Secretary of State's objections because she had been "dealing with those issues in several hearings over the course of the preceding weeks" (§3).

16.4 Although the Secretary of State did not seek to engage with the coroner in the three weeks between 22 March 2024 and her decision on Gist 2 dated 11 April 2024, he did write to admonish the Chief Constable on 26 March 2024 **[HB/19.34/662]**. Furthermore, the Secretary of State's amended grounds dated 15 April 2024 - targeting Gist 2 - did not include a procedural fairness challenge **[HB/19.32/626]** and this complaint only emerged by way of re-amendment on 23 April 2024 **[HB/19.37/680]**, two days before the second substantive hearing before Humphreys J. He then found, at §27 **[HB/19.6/385]**:

> *There was nothing to prevent the NIO or SoSNI from making legal submissions or, indeed, adducing further evidence on the disclosure issues, whether touching on NCND or any other aspect of the coroner's ruling. The time to do this was after she had provisionally indicated on 22 March that she was minded to accept the Chief Constable's proposed gist. It is not open to a party in this position to wait until the last moment and then complain about some procedural unfairness.*

16.5 The majority of the Court of Appeal correctly: recognised the unusual circumstances and the fact that the proposal, adoption of and challenge to Gist 2 all occurred within the context of ongoing judicial review proceedings; and found that the Secretary of State was fully sighted on the content of Gist 2 and able to make his objections clear such that there was no procedural unfairness or prejudice. See §§53-55 **[HB/19.2/317]**:

> *We next turn to the procedural unfairness claims. In this regard we have established during this appeal that the NIO were sighted throughout on the gist issues and could have made any additional submissions to the coroner. In addition, the SoSNI through the judicial review knew of the content of the impugned gist and so was clearly sighted on it. We acknowledge that the procedure was complicated by the intervening judicial review and some rather*

unorthodox approaches between the parties which made it cumbersome. However, ultimately, we do not think that any departure from usual coronial processes has caused unfairness or prejudice.

The reality is that all parties were working at speed given the fact that the Northern Ireland Legacy (Troubles and Reconciliation) Act 2023 ("the 2023 Act") provided for inquests to be closed after 1 May 2024. The reality is also that the highly relevant material we are concerned with was only provided by the PSNI at a very late stage of this inquest process.

Whilst it may have been better for all parties to attend before the coroner and make their views known on the second gist, that luxury was overtaken by a judicial review in which all interested parties were represented and able to make their point. If there is any procedural unfairness by virtue of the forum in which the debate has ensued, the deficit has clearly been remedied. The SoSNI's objection to the second gist being disclosed was clear at all stages.

17. Ground 6. Adequacy of reasons (issue (b))

17.1 The essential principles are summarised in *De Smith's Judicial Review* (9th ed, 2023), §§9-136 to 9-138 **[HB/20.108/5549]**: the courts have not attempted to define a uniform standard or threshold for the adequacy of reasons, and on occasion, have expressed concern that decision makers should be granted "a certain latitude in how they express themselves"; the reasons given by a decision maker must be intelligible and must adequately meet the substance of the arguments advanced; and the precise standard required depends on the particular circumstances and context.

17.2 *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409 **[HB/20.31/1568]** considered three appeals against judicial decisions brought on grounds of inadequate reasons. The Court of Appeal held that it was not necessary for judges to identify and explain every factor which weighed with them, "But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained" (§19 (Lord Phillips MR (giving the judgment of the court)). Furthermore, "the prospect of expensive appellate proceedings on the ground of lack of reasons" was not attractive and arrival at "a rational judgment" is of primary importance (§24).

17.3 In addition to the points highlighted in pt 11 above, the following contextual matters should be borne in mind: the coroner's reasons were set out in "open" and "closed" rulings and she was necessarily unable to deal openly with the detail of either gist; her open and closed rulings on Gist 1 respectively dated 8 and 11 March 2024

[HB/19.12/409] addressed PSNI submissions made on foot of its amended sensitive schedule and the supporting ministerial certificates, rather than any assessment specifically addressing its text (see §10.4 above); the same was true of her open and closed rulings on Gist 2 dated 11 April 2024 **[HB/19.11/404]** and, importantly, the latter were given before service of the confidential affidavits addressing that gist (see §10.4(2) above) and after Humphreys J had rejected a challenge to the lawfulness of Gist 1 (which went further than Gist 2).[26]

17.4 The Secretary of State's submissions on this issue proceed on the false premise that the coroner was faced with a detailed ministerial "national security assessment" explaining the risks presented by Gist 2. She was not and her reasons must be evaluated accordingly and in the light of the fact that the PSNI - the information owner and the body advancing the PII claim - had proposed the relevant terms and assessed them as suitable for public release.

17.5 In his second judgment, Humphreys J concluded that the coroner's reasons were "proper and adequate" (§18 **[HB/19.6/383]**) and found:

> 13. *The coroner was also alive to the importance to be accorded to ministerial assertions in relation to national security, which ought rarely to be departed from, and the need for cogent reasons for any departure in a particular case. She was also fully sighted on the different aspects of harm relied upon by the Minister.*
>
> *14. The coroner acknowledged and accepted that a risk to national security did arise but did not accept that the risk was at the level asserted in the certificate, and found that such risk could be mitigated by the use of a partial gist. In doing so, she had regard to both the specific circumstances of this individual case and also the wider picture in respect of the importance of the use of agents in the acquisition of intelligence and the protection of national security.*

17.6 Similarly, the majority of the Court of Appeal held that it would be "wrong to apply too exacting a standard" where "the overall meaning is clear and cogent as to how she reached the decision she did" (§56 **[HB/19.2/318]**).

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[26] The challenge to Gist 1 included an attack on the adequacy of the coroner's reasons (first judgment dated 25 March 2024, §36 **[HB/19.9/396]**).

CONCLUSION

18. Judgment

18.1 If, contrary to the above, the Court decides to allow the appeal on any ground, it is submitted that it can and should make its own determination on the application of PII to Gist 2 (given that this is a question of law) and include the text of Gist 2 in its judgment in any event for the following reasons:

(1) **Open justice principle**. The Court is in a position to determine the question of law as to the application of PII to Gist 2 in the negative and it would assist the public to know what this case was about and the nature of the issue pursued by the Secretary of State on national security grounds at considerable public expense.

(2) **Impossibility of remittal**. The enforced closure of the inquest on 1 May 2024 pursuant to the Legacy Act means that (unusually) the matter cannot be remitted to the coroner for redetermination. In this regard, the Court of Appeal stayed the release of Gist 2 pending the outcome of this appeal in the light of the Secretary of State agreeing and confirming his "unequivocal position that… In the event that permission to appeal is granted and the appeal is allowed the question of disclosure would be a matter for the Supreme Court in considering relief" (order dated 1 May 2024, Annex, §5 **[HB/19.1/301]**; Court of Appeal majority, §5 **[HB/19.2/304])**.

19. Reasons

(1) The Chief Constable's assessment of damage to the public interest was entitled to special respect and weight given his responsibilities as the relevant information owner in connection with Folder 7 and the person responsible for the operational matters referred to therein and the related PII claim.

(2) The majority of the Court of Appeal applied the correct approach as an appellate court. In particular, it carefully reviewed all of the underlying confidential material and the gists in order to determine whether the decision of Humphreys J was wrong.

(3) The majority of the Court of Appeal was right to find that Humphreys J had in turn applied the correct approach by reviewing the decisions of the coroner on ordinary public law principles.

(4) All three courts were entitled to prefer the view of the Chief Constable, who had proposed Gist 2, and were right to find that there was no proper basis for, and there were cogent reasons for rejecting, the Secretary of State's view that its release would damage the public interest and, in the alternative, they were right to find that the public interest balance and open justice principle favoured disclosure.

(5) The majority of the Court of Appeal and Humphreys J were right to find that the release of Gist 2 was not precluded by the Legacy Act and that disclosure would further the public interest and the state's compliance with article 2 of the ECHR.

(6) The majority of the Court of Appeal and Humphreys J were right to find that the coroner had acted in a procedurally fair manner and, in the alternative, that the judicial review proceedings had cured any unfairness.

(7) The majority of the Court of Appeal and Humphreys J were right to find that the coroner had provided adequate reasons for her decision.

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30 APRIL 2025

(Cross-references to Hearing Bundle added 19 May 2025)
(See note at §1.1 above re evidence of Chief Constable and related changes made 27 May 2025)