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IN THE CORONERS COURT IN NORTHERN IRELAND

BEFORE HIS HONOUR JUDGE McGURGAN

IN THE MATTER OF AN INQUEST TOUCHING UPON THE DEATH OF KEVIN McGUIGAN

RULING FOLLOWING A PROCESS HEARING ON THE ISSUE OF PII

Mr Philip Henry KC and Ms Siobhan McCrory BL for the Coroner
Mr Desmond Hutton KC and Ms Laura McMahon KC for the Next of Kin
Mr Oliver Sanders KC and Mr John Rafferty BL for the Police Service for Northern Ireland
Mr Niall Hunt KC and Ms Rachel McCormick BL – Mr Mark McDowell (a properly interested person)
Dr Tony McGleenan KC and Mr David Reid BL for the Secretary of State for Northern Ireland

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HIS HONOUR JUDGE McGURGAN

Introduction

[1] I have been asked to make a preliminary ruling in respect of a claim made by the Police Service of Northern Ireland (PSNI) for Public Interest Immunity (PII) over certain potentially relevant materials in the inquest into the death of Kevin McGuigan - what became known as the "PII process issue". It could equally have been called the "procedural issue".

[2] The PSNI requests that I deal with its claim for PII over certain materials, initially at least, without the PSNI obtaining a Ministerial Certificate from the Secretary of State for Northern Ireland (SoSNI) as evidence in support of its submission that disclosure of those materials would damage the public interest. Counsel for the PSNI who appeared for this portion of the proceedings, Mr Sanders KC, submitted that the Chief Constable can claim PII in his own right, and indeed has a duty to do so if he concludes it would harm the public interest to disclose certain information, and there is no legal requirement on him to obtain a Ministerial

Certificate when doing so. This was referred to by others during the hearing before me as "self-certification".

[3] The next of kin (NoK) took issue with this approach. They pointed out that it is a departure from the norm in proceedings of this kind in this jurisdiction where the claim for PII touches upon matters of national security. The NoK warn that they will take issue with the weight I should attach to any self-certification in due course if there is no Ministerial Certificate in support of the PSNI's various PII claims.

[4] The SoSNI has joined the inquest as a Properly Interested Person (PIP) to deal with the PII process issue and, like the NoK, he takes issue with the approach suggested by the PSNI. He does so because some of the materials I am being asked not to disclose touch upon national security issues.

[5] The SoSNI is providing a certificate in support of the Security Services' PII claim, which is being made separately from the PSNI's. There will therefore be a Ministerial Certificate, but on the approach suggested by the PSNI, it will not cover the PSNI's materials. The SoSNI's concern is about the absence of a certificate in respect of those PSNI materials. Therefore, the SoSNI's position aligns with that of the NoK in some respects.

[6] Having carefully considered the various and helpful submissions provided on behalf of the PIPs, I have identified the following key issues that I must address in order to provide this ruling:

(i) Is a Ministerial Certificate required in PII claims which touch upon national security?

(ii) Can a judge or coroner compel a party or PIP to obtain a Ministerial Certificate in support of its claim for PII?

(iii) If not, what options are open to the Court?

[7] It was suggested by Dr McGleenan KC, who appeared with Mr Reid on behalf of the SoSNI, that it is unfortunate that I am being asked to rule on this issue at all. I agree. It is a matter that was capable of being dealt with through dialogue between the two public authorities in question, and ought to have been.

[8] However, I have been presented with the issue and asked to deliver a ruling on the contentious issues between the PIPs, which I shall do, insofar as it is within my gift to do so.

[9] I will start by explaining how this issue arose in the course of these proceedings.

How this issue arose

[10] The Chief Constable (CC) first wrote to the (then) SoSNI, Chris Heaton-Harris, about this issue on 7 February 2024. That correspondence did not specifically refer to these proceedings. It was concerned with a number of urgent legacy inquests which were approaching the statutory cut-off point, namely 1 May 2024. In that initial correspondence he explained why he was raising the point. The initial letter and the series of letters exchanged thereafter were disclosed to the PIPs in this inquest. The Chief Constable said:

> "A significant number of long-running and important Inquests will be prematurely terminated by these provisions, but there are also a significant number which the Coroners Service for Northern Ireland is rightly endeavouring to bring to a proper conclusion before the cut-off date. PSNI owes a duty to the Coroners Service, the families of the deceased and the wider public to do all it can to assist in this process and I am determined that it should fulfil that duty.
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> To this end, my Legal Services Branch and Legacy Support Unit (LSU), the Crown Solicitor's Office and counsel are all working closely together to try and target resources and deliver the necessary casework as efficiently and effectively as possible. In order to support this work and secure an element of external perspective and assurance, I have also commissioned independent leading counsel to engage with stakeholders, review our systems and identify possible improvements.
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> One question arising out of this review is whether the current practice of seeking a public interest immunity (PII) certificate from an NIO minister in support of PII claims made in connection with PSNI materials serves any real purpose and is necessary and appropriate."

[11] He then set out a helpful summary of the six procedural steps involved in claiming PII at that time, followed by his case for the changes he proposed:

> "In this regard, the sequence of events is currently as follows:
>
> (1) LSU searches for and collates potentially relevant materials in the possession of PSNI and the relevant Coroner's team considers these and identifies that which is prima facie disclosable;

(2) LSU subject matter experts conduct a pre-disclosure sensitivity review of the disclosable materials in order to identify any information whose release might cause real harm or serious damage to the public interest;

(3) counsel advises on whether PII attaches to any such information;

(4) I as Chief Constable decide whether to make a PII claim;

(5) if I do, the matter is referred to NIO so that the PII claim can be supported by a ministerial certificate; and

(6) the relevant Coroner decides whether or not to uphold the PII claim.

Stage (5) above produces delay for all concerned, suspicion and resentment on the part of families and logistical and resource issues for PSNI and NIO and, crucially, the basis for it is unclear:

(1) The doctrine of PII is a part of the substantive law of evidence and of public law, it is not a privilege, it does not belong to and is not overseen by any particular person or body, it does not matter who invokes it and it is for the independent judiciary to decide whether and when it applies.

(2) All Chief Constables are constitutionally independent of government and Chief Constables in England and Wales routinely make PII claims in civil proceedings and inquests without involving ministers. Furthermore, the government's approach to PII - announced in 1996 following the Scott Inquiry Report and the House of Lords' decision in ex parte Wiley - expressly does not apply to the police.

(3) It does not appear that ministerial vetting or endorsement of PSNI PII claims adds value, serves any particular practical purpose or provides any great reassurance. As I understand it, ministers have never refused to support a PII claim proposed by PSNI, they rarely, if ever, propose any additions or subtractions and, even if they did, the final decision rests with the judiciary. Furthermore, there is no ministerial oversight or review of

stages (1)-(4) above and PSNI decisions not to claim PII are not referred to or checked by NIO.

(4) While responsibility for legislation and policy on counter-terrorism and national security rests with central government, the RUC had and PSNI still has counter-terrorism, national security and intelligence functions. As a result, it is generally better placed than NIO officials and ministers to assess and speak to, e.g. the importance and protection of operational policing capabilities, methods and techniques, the recruitment and retention of police informants etc. Indeed, the reality is that most of our PII claims fall into well-established categories and engage policing experience, expertise and equities which are familiar to courts handling legacy cases. Furthermore, PSNI can and will seek input from and/or the formal involvement of government as necessary in more specialist situations, e.g. in connection with the disclosure of potentially sensitive information about a security, intelligence or defence matter falling within the remit of MI5, Ml6, GCHQ or a specialist military unit.

Given the above, I am minded to discontinue the current practice of routinely seeking a ministerial certificate in support of all PSNI PII claims on the grounds that this is unnecessary and inappropriate. This is only a provisional view pending consultation with my immediate predecessors and more definitive advice from counsel, but the matter is pressing because this practice is delaying a number of legacy inquests which must be completed within the next three months.

Accordingly, I think the most sensible and expeditious way forward is to write now, notify you of my concerns and request that you let me know urgently if you disagree or think the current practice is beneficial or mandatory in some way. Please also let me know if you see any material difference between inquests and ordinary civil proceedings in this regard; I do not."

[12] A series of letters were then sent back and forth between the Chief Constable's and the SoSNI's respective offices, which I will not set out in detail here. The SoSNI initially asked for some time to consider and there were some complaints about a failure to properly engage with the dialogue, but ultimately the SoSNI did not agree with the Chief Constable's suggestion for a change in the procedure normally adopted.

[13] In the run up to the December 2024 PII process hearing the NIO made a proposal. It suggested the two public authorities could maintain the approach which was traditionally adopted in this jurisdiction until after the Supreme Court has delivered its decision in the *Thompson* appeal (the appeal of the Court of Appeal's decision, [2024] NICA 39). The *Thompson* inquest involved a dispute over a coroner's ruling to release a gist, with which the PSNI took issue. This resulted in an initial judicial review, and a subsequent amended gist being created as a result. There was a further judicial review of the coroner's ruling to release the amended gist with the agreement of the PSNI, but with which SoSNI took issue. The two judicial reviews before Mr Justice Humphreys and the appeal before the Court of Appeal were both heard on an expedited basis, upholding the decision of the coroner. I understand the Supreme Court appeal is listed on 11 and 12 June 2025.

[14] The NoK became aware of the PSNI's intention to depart from the normal procedure in September 2024, as we approached an earlier listing of the PII hearing (which was adjourned to 21-23 October 2024 at the request of the PSNI, which did not believe it would be ready for the PII hearing on 16-18 September 2024). The NoK wrote to the PSNI asking it to clarify its position and once that was done, the NoK provided me with a written position paper dated 17 October 2024 setting out their concerns.

[15] The SoSNI arranged for representation to attend a review hearing on 18th October 2024, and a further review on 7 November 2024 at which the PII process issue was discussed. At a further review hearing on 26 November 2024, I made him a PIP to the inquest, for this issue only and without objection from any quarter, so that he could contribute fully to the PII debate.

[16] The PSNI and SoSNI both provided helpful written submissions and arranged for senior counsel to attend before me for the process hearing on 9 December 2024.

[17] In due course I will provide a summary of their respective submissions. I will not address every point that was raised, but I confirm they were all considered.

[18] However, I would first like to summarise some of the uncontroversial characteristics of PII.

PII

[19] PII is a common law process that has developed over time. It was previously referred to as being a "Crown privilege". However, that description is no longer endorsed. Rather, PII is a common law exclusionary principle of evidence. It permits, in certain circumstances, material which is relevant to one or more of the issues in proceedings to be excluded from those proceedings ie neither disclosed/discovered to all the parties (or the PIPs in an inquest), nor will it be adduced in evidence. Such an exclusion is a departure from the norm. It is a significant but potentially permissible departure from the strong presumption in favour of open justice.

[20] The underlying basis of any claim for PII is protection of the public interest. The public interest can arise in many different areas. In these proceedings the focus is on national security, which is obviously a public interest issue. However, there are other public interest facets which can arise on a case-by-case basis, including but not limited to the wellbeing of the economy and/or maintaining international relations.

[21] The law on PII has changed over time. As stated above, previously it was seen as a privilege, but that characterisation is no longer seen as correct. It was also previously possible to claim PII over "classes" of documents, but again that is no longer seen as good law.

[22] Some of the key judgments which chart the development include:

(i) *Duncan v Cammell Laird & Co Ltd (The Thetis) (Discovery)* [1942] AC 624 – this judgment referred to "Crown Privilege";

(ii) *Conway v Rimmer* [1968] AC 910 (HL) – the House of Lords partially overruled its decision in *Duncan*, stating that it was for the courts to determine whether a claim for PII should be upheld;

(iii) *R v Lewes Justices, ex p Home Secretary* [1973] AC 388 – the House of Lords disapproved references to "Crown privilege" and that the final decision rests with the court; it also referred to claiming PII as a duty;

(iv) *D v National Society for the Protection of Children* [1978] AC 171 – the House of Lords said that PII could be claimed by any litigant, not just central government;

(v) *R v Chief Constable of the West Midlands Police, ex parte Wiley [1995] 1 AC 274* ("*Wiley*") – the House of Lords set out the three questions the court should address when determining a PII claim;

(vi) *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) – this was a judicial review of a Coroner's decision on a PII claim in the Litvinenko inquest. The High Court in England and Wales helpfully set out eight principles governing the law in this area. This passage has been repeatedly endorsed by the coroners, High Court and Court of Appeal in Northern Ireland.

[23] In this jurisdiction we also have the following helpful decisions:

(i) *In the Matter of an Inquest into the Deaths of McNally, Doris and Ryan* [2022] NICoroner 4 (open judgment);

(ii) *In the Matter of an Application by the Chief Constable of the PSNI for Judicial Review (Thompson Inquest)* [2024] NIKB 18 and *Chief Constable of the Police Service of*

Northern Ireland and Secretary of State for Northern Ireland's Applications and In the matter of an Inquest into the death of Liam Paul Thompson (No. 2) [2024] NIKB 32 and the related appeal, [2024] NICA 39.

[24] Although not a decision by a court, the PSNI drew my attention to the existence of a report from Sir Richard Scott, 'Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions', 15 February 1996, which was commissioned because of the Matrix Churchill affair.

[25] After the Scott Report, a statement was made by the Attorney General on 18 December 1996 [Hansard HC Deb, Vol 287 Cols 949-950] setting out Her Majesty's Government's position on PII. It stated, in terms, that the *Wiley* approach should be followed. The Attorney General's helpful paper was annexed to the PSNI submissions placed before me.

[26] While I do not intend to set out a comprehensive summary of the legal principles in PII, the following were uncontroversial between the PIPs:

(a) PII can be claimed by any litigant, although normally it will be a public authority (not limited to limbs of central Government), and it can even be raised as an issue by the court of its own motion;

(b) If contentious, it is for the court to determine whether any claim for PII should be upheld;

(c) The correct approach in such an exercise is for the court to ask itself the three questions posed in *Wiley*:

    (i) Is the material disclosable?

    (ii) If so, would disclosure cause serious harm or real damage to the public interest?

    (iii) If so, the court undertakes a balancing exercise between the competing interests, namely the public interest in disclosure (open administration of justice) on the one hand, and the public interest in non-disclosure on the other hand (known as "the *Wiley* balancing exercise").

(d) When addressing the second and third questions set out above, especially in a case which touches upon national security issues, the guidance provided in *Secretary of State for Foreign and Commonwealth Affairs v Assistant Deputy Coroner for Inner North London,* and adopted in this jurisdiction, should be followed. It is normally for the participant making the PII claim to provide evidence that disclosure will harm the public interest, which is often done through the provision of a Ministerial Certificate. A significant amount of weight attaches to any Ministerial Certificate provided, although the view set out in any such

certificate is not of itself determinative of the claim. If there is evidence that disclosure would cause a real and significant risk of damage to national security, the PII claim ought normally to be upheld. A court is required to provide cogent or solid reasons for disclosing material contrary to the view of a Minister. The relevant paragraphs of the judgment are set out below:

> "53. First, it is axiomatic, as the authorities relied upon by the PIPs demonstrate, and as the Coroner set out in his open judgment, 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.
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> 54. Second, as I have said, the issues which we have had to resolve only concerned national security. The context of the balancing exercise was that of national security as against the proper administration of justice. Had the issues been such as have been touched upon by the PIPs in their submissions, different considerations might well have applied.
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> 55. Third, when the Secretary of State claims that disclosure would have the real risk of damaging national security, the authorities make it clear that there must be evidence to support his assertion. If there is not, the claim fails at the first hurdle. In this case there was unarguably such evidence. The Coroner did not suggest otherwise.
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> 56. Fourth, if there is such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be an end to the matter. There could be no disclosure. If the claimed damage to national security is not "plain and substantial enough to render it inappropriate to carry out the balancing exercise," then it must be carried out. That was the case here.
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> 57. Fifth, when carrying out the balancing exercise, the Secretary of State's view regarding the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it. If there are, those reasons must be set out. There were no such reasons, let alone cogent or solid ones, here. The Coroner did not seek to advance any. The balancing exercise had therefore to be carried out on

> the basis that the Secretary of State's view of the nature and extent of damage to national security was correct.
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> 58. Sixth, the Secretary of State knew more about national security than the Coroner. The Coroner knew more about the proper administration of justice than the Secretary of State.
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> 59. Seventh, a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure. As I have emphasised, the decision was for the Coroner, not the Secretary of State.
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> 60. Eighth, in rejecting the Certificate the Coroner must be taken to have concluded that the damage to national security as assessed by the Secretary of State was outweighed by the damage to the administration of justice by upholding the Certificate.
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> 61. Ninth, it was incumbent on the Coroner to explain how he arrived at his decision, particularly given that he ordered disclosure in the knowledge that by doing so there was a real and significant risk to national security."

[27] Finally for this section of my ruling, I should observe that the Justice and Security Act 2013 introduced a statutory procedure which permits, in certain circumstances, sensitive materials to be relied upon in Closed Material Procedure hearings when those materials would otherwise likely have been wholly excluded from proceedings pursuant to a successful PII claim. However, the 2013 Act does not apply to inquests, so it is not available to me in these proceedings.

Chief Constable's position

[28] Mr Sanders KC accepted that the PII claim in this inquest involved consideration of national security issues, but he submitted that a Ministerial Certificate was not a pre-requisite for a successful PII claim, including those which touch upon national security.

[29] I was taken through some of the correspondence which sets out the PSNI's position and the Chief Constable's reasons for departing from the previous procedure.

[30] Those reasons can be summarised as follows:

(i) the previous practice of obtaining a Ministerial Certificate in all cases had no basis in law;

(ii) it served no useful purpose;

(iii) it was inconsistent with the Chief Constable's independence from Government;

(iv) it was inconsistent with the approach taken by Chief Constables in other parts of the UK, who did not obtain Ministerial Certificates in respect of all PII claims;

(v) it was inconsistent with the Government's 1996 statement on how PII should be approached;

(vi) it generated logistical difficulties and further delay;

(vii) it also created suspicion and resentment in the minds of victims and their families.

[31] Mr Sanders KC submitted that the Chief Constable was particularly well placed, given the extensive role the PSNI plays in national security and policing in general in this jurisdiction, to provide evidence on how disclosure of sensitive materials will impact on the public interest. He cited, as an example, the expertise and experience that police in this jurisdiction have in dealing with agents who provide information about subversive activity.

[32] Mr Sanders KC was asked to explain the format in which the Chief Constable would present the public interest evidence to me in due course, in the absence of a Ministerial Certificate. I did not receive an answer.

[33] I asked Mr Sanders KC what the new process would involve in terms of liaison between the NIO and PSNI. He explained, in terms, that the new process had not yet been designed. He sought to attribute responsibility to the NIO for the lack of progress, submitting that it had failed to engage meaningfully in the correspondence between the two offices since the Chief Constable's initial letter on 7 February 2024. I am not going to comment on whether one or the other or both organisations are responsible for this. For my purposes, I was being asked to place my trust in a process which had not yet been developed, albeit Mr Sanders KC did explain that the PSNI materials for this case had already been viewed by the Security Services.

Secretary of State for Northern Ireland's position

[34] The crux of the SoSNI's submission is that the PSNI's claim for PII in this case involves consideration of national security issues, in respect of which the PSNI did not have primacy in Northern Ireland, and therefore the court ought to have a Certificate from the relevant Minister, who in this case is the SoSNI.

[35] Dr McGleenan KC reminded me that primacy for national security switched to the Security Services in October 2007 and, while the PSNI has an important role to

play in protecting national security, ultimate responsibility rested with the Security Services.

[36] He referred me to the Supreme Court's decisions in *R(Begum) v Special Immigration Appeals Commission* [2021] UKSC 7 and *Pham v SoS for the Home Department* [2015] UKSC 19 and Lord Sumption's statement that "the court must of course have regard to the fact that the Home Secretary is the statutory decision-maker and to the executive's special institutional competence in the area of national security."

[37] He also explained that it was important for a consistent approach to be taken on national security-based submissions to this court, bearing in mind that the Minister was already providing a certificate in respect of the Security Services' materials.

[38] I was referred to several documents which purported to set out agreements between the PSNI, and others, on how national security and PII would be dealt with. The SoSNI described these documents as "foundational", whereas the PSNI said they were irrelevant. It was submitted to me that the Chief Constable was reneging on an earlier agreement and breaching a protocol. While I do not need to rule on this issue, it appeared to me that may in fact be correct. However, I don't need to rule on this issue because it was accepted that those documents, which were all inter-agency, were not binding on me. Further, while they may help to explain why obtaining a Ministerial Certificate in cases which touch upon national security is generally a good idea, and provide examples of when one should be requested, they do not explain why one is essential in all cases and must therefore be obtained.

[39] The SoSNI also referred me to a Crown Prosecution Service document. I did not find it particularly helpful in dealing with the current queries, but in fairness to his submissions, Dr McGleenan KC had not attempted to rely on it with any force.

[40] The SoSNI's written submission had asked that I compel the Chief Constable to obtain a Ministerial Certificate. However, it was sensibly accepted by Dr McGleenan KC in submissions that it did not appear my statutory powers (namely section 8 and section 17 of the Coroners Act (Northern Ireland) 1959), would permit me to do so.

[41] Dr McGleenan KC also acknowledged that he was highlighting what his client identified as a problem without providing me with the solution.

NoK position

[42] The NoK submitted that the approach being suggested by the PSNI was a departure from the norm, it was creating further delay (and there had already been considerable delay), that the PSNI could address policing interests but was not in a position to address the wider public interests, and the NoK would be inviting the court to attach less weight to any claims made to exclude PSNI materials in due course if

there was no Ministerial Certificate setting out in evidence that it was not in the public interest to disclose those materials.

The Court's ruling

[43] I have carefully considered all the submissions made and I conclude that there is no strict requirement for the PSNI to obtain a Ministerial Certificate in support of its PII claim, even though the claim in this case touches upon national security issues.

[44] I have not been referred to any authority or statutory provision which states that it is strictly necessary for the PSNI to obtain such a Ministerial Certificate to support all such claims. To that extent the PSNI's submissions are correct.

[45] The practice of obtaining a Ministerial Certificate in PII applications touching upon national security in Northern Ireland is just that, a practice. It seems to have developed because it is the custom in this jurisdiction for all PII claims to be contested by at least one other party/PIP.

[46] There are several authorities which talk about the weight to be attached to Ministerial Certificates if one is relied upon, but that is not the same as stating that one is a pre-requisite, and I do not read into those authorities such a requirement.

[47] Further, not every organisation applying for PII will have easy access to a Minister to obtain a Ministerial Certificate in support of their application.

[48] The PSNI is also right to say that simply because something has been done a certain way for a sustained period is not, of itself, a reason to continue with it. The fact that it is established practice is not the same as saying that the law necessarily requires it to be done that way, or that it is necessary to do it that way as a matter of common law principle.

[49] However, that is not the end of the matter. The development of an established practice is often because there are good reasons for it, as there are in this type of situation.

[50] I am in no doubt that I would prefer to have a Ministerial Certificate in this inquest. Counsel and I have reviewed the PSNI materials. It is clear that any decision on disclosure will require consideration of the public interest, including national security.

[51] In this case, when being asked to depart from the strong presumption in favour of open justice, I would like as much relevant information and evidence as possible to assist me.

[52] It was suggested by PSNI counsel that I could wait until the PII is heard and then decide on reviewing the material during the course of the hearing, whether a

Ministerial Certificate was appropriate, and that I ought not to decide the matter in the abstract at this stage. However, counsel and I have reviewed a lot of sensitive material already in this inquest and I am already in a position to know that I would prefer a Certificate.

[53] During the hearing on 9 December 2024 I asked all of the PIPs to address me on whether I had the statutory authority to compel the PSNI to obtain a Ministerial Certificate in support of its PII claim. On careful reflection, none believed that I did. As indicated earlier, I think that is the position.

[54] However, Mr Sanders KC did say that any request by a coroner would be meaningfully considered by the Chief Constable. This reflects the position the PSNI set out in earlier correspondence to the SoSNI, dated 23 May 2024, which said:

> "(1) The former practice may have been of longstanding, but it did not have any common law basis. Furthermore, any judicial expectation that it would be followed appears to have been based on past experience rather than principle and, in any event, judges will always be free to request the input of ministers if and when they consider this necessary. …"

[55] Through this ruling I ask the PSNI to obtain a Ministerial Certificate.

[56] I have no doubt that Mr Sanders KC's submission about the PSNI's collective experience and expertise on judging what is and is not in the interests of national security in a Northern Ireland context is correct. Indeed, I value the PSNI's input on such issues. However, any Ministerial Certificate would be informed by the views expressed by the PSNI to the NIO/SoSNI. This application touches upon important national security issues and I would prefer to have the Minister's evidence on this and why he says it is in the public interest not to disclose certain materials in the possession of the PSNI, along with any public interest issues which do not concern national security which the PSNI may not be in a position to comment upon.

[57] The PSNI suggested that the involvement of the SoSNI and NIO was essentially to check on the recommendations made by the PSNI. As I said during the December hearing, I think their involvement amounts to more than that. They are not just checking the PSNI's homework. They are in possession of national security information and have a role to play in providing evidence on what is and is not in the interests of national security.

[58] I do not anticipate that any reliance by the PSNI on a Ministerial Certificate would undermine the Chief Constable's independence. If such a situation were to arise, it would have to be dealt with accordingly. I also realise that the PSNI's submission was not so much that a Certificate would undermine the Chief Constable's

independence, rather that he could provide his own evidence about what was in the public interest because he is independent.

[59] Counsel for the PSNI suggested that certificates are not routinely obtained by Chief Constables in other parts of the UK. I was not provided with any evidence about how often such an approach is taken or in what circumstances, including what is done in situations where issues touching upon national security are in play. I accept that Chief Constables in other parts of the UK may not request Ministerial Certificates in every PII claim, but in the absence of more detail, this submission did not assist me. The courts in those cases will determine the applications according to the particulars of each claim. Even if more detailed information about what other Chief Constables do was made available, and was informative, it would not of itself be determinative of any issue in this case.

[60] I do not place any weight on the PSNI's concerns about delay. There has been delay in this inquest already and going forward it will be for those involved to ensure that all PII matters are addressed in a timely manner. In other cases, it will be necessary to ensure that protocols are put into place to minimise any delay caused by the public authorities liaising with one another, and that those protocols are adhered to.

[61] The same too can be said of the concerns raised about logistics. Mr Hutton KC made an insightful comment during his oral submissions. He said that it ought not be easy to depart from the presumption in favour of open justice. If a public authority is going to attempt to persuade a court not to disclose material which is relevant to the issues in hand, this ought to require careful attention. I agree. The checks and balances should be rigorous.

[62] The PSNI submitted that the involvement of the Westminster Government in PII claims causes suspicion and resentment by some victims and their families. I was not provided with any direct evidence of this, but I can appreciate that it may well be true in some other cases. However, it is not in this inquest, as the NoK would prefer the PSNI to obtain a Ministerial Certificate if it is going to seek to withhold relevant information from them. Further, while victims and their families' views are a matter to which courts ought to pay careful attention, PII proceedings involve consideration of the public interest, which stretches beyond any one individual or group of individuals.

[63] I was addressed on the existence of an opinion from Paul Maguire QC, as he was then, as Senior Crown counsel. The PSNI had mentioned his opinion in it's correspondence to the SoSNI, rather than in it's written submissions to me, and it was stated that privilege was not waived. There was a dispute about what the opinion addressed. The SoSNI said it was about another issue. I was not provided with a copy and therefore cannot attach any weight to it.

[64] The SoSNI made reference to other cases in which the NIO had identified errors in the PSNI's PII work and the PSNI stated that in the majority of cases no changes were made by the SoSNI to it's PII proposals. I do not think the submissions of either PIP on these issues materially assisted me when preparing this judgment.

[65] The SoSNI criticised the decision of the Chief Constable of the PSNI to depart from the long-standing protocols and agreements. The SoSNI criticised the PSNI for having made no reference to these documents at all in any of his representations. They were referred to and relied upon for the first time in the SoSNI's written submissions produced shortly before the PII process hearing, on 6 December 2024. The PSNI in turn criticised the SoSNI for producing these documents late in the day and failing to rely on them in the correspondence flowing between their respective offices since 7 February 2024. Again, neither submission materially assisted me with this judgment.

[66] The SoSNI addressed the significance of the devolution of justice in Northern Ireland. The significance of this submission is simply to explain that there are excepted matters which remain with the government at Westminster, including national security.

Conclusion

[67] In conclusion, it is unfortunate that I, as an independent judicial officer, have been asked to rule on an issue which ought really to have been resolved between the two office holders in question, without the need for any judicial input. With high office comes responsibility, and that responsibility is ultimately to the public on whose behalf the office holders serve.

[68] As stated above, I do not think it is essential, in the sense of it being a procedural pre-requisite, that a Ministerial Certificate is provided as part of the PSNI's PII claim. However, in the circumstances of this case I would prefer one. It is particularly significant that the determination of the PSNI's PII claim will involve consideration of national security, for which the PSNI does not have final responsibility, albeit it has a very important role to play. The expertise, experience and devotion of those who serve in the PSNI, and in doing so potentially place themselves in harm's way for the benefit of others, should not be underestimated. Likewise, the authorities are clear that a significant weight should be attached to the view of a Minister, albeit his or her view is not determinative. Ministers as public representatives are well placed to judge what is in the public interest. A Minister will be provided with a carefully composed brief to inform the decision-making process, based on the experience and expertise of those serving in their department or office, which can be further informed by other agencies when appropriate. That input will assist the court in making the appropriate decision. It is also possible that the PII claims in this inquest may touch upon other aspects of the public interest which stretch beyond the expertise of the PSNI, upon which a Minister can comment.

[69] I will hear the properly interested persons on the issue of timetabling shortly, but before I do, I will conclude this ruling by encouraging the two public authorities to promptly engage with one another in a constructive manner with a view to resolving the differences between them. I am hopeful that they will. This ruling is not to be viewed as a victory of one side over another. It sets out my view on the law in this area and it should be used as a platform on which to start, or continue, through cooperation, to address some of the issues which have been brought to the fore in this inquest. That will benefit the court, the NoK in this case, and the general public in future cases.