



News Release

Review confirms no prosecution decision against Soldier 'B'

The PPS today (Tuesday March 8, 2016) has confirmed that, following review of all of the available evidence, a decision has been taken not to prosecute a soldier in relation to the death of a teenage boy in 1972.

At approximately 4.15am on 31 July 1972, fifteen-year-old Daniel Hegarty was shot and killed by a member of an army patrol on duty in the Creggan area of Londonderry at the commencement of Operation Motorman. His cousin Christopher Hegarty, aged 16, was also injured by the same soldier.

Decisions not to prosecute were previously taken in 1973 and again in 2008 following a review of the case by the PSNI Historical Enquiries Team. The file was subsequently referred back to the Director of Public Prosecutions by the Coroner following the conclusion of an inquest in December 2011.

Explaining the outcome of the review, Assistant Director of Central Casework Michael Agnew said: "We have given careful consideration to all of the available evidence and information, including the findings of the jury at the inquest.

"We have received further expert evidence, both from the expert who had been instructed by the Coroner and also a second independent expert. The conclusions of both experts are such that they are not able to state that the ballistics evidence is inconsistent with the account provided by Soldier B of the circumstances in which he fired.

"We have applied the test for prosecution afresh in light of the evidence currently available. The standard of proof that the prosecution must reach in a criminal trial is the high one of beyond reasonable doubt. Our assessment remains that there is no reasonable prospect of proving to the criminal standard that Soldier B did not act in self-defence having formed a mistaken but honest belief that he was under imminent attack. In these circumstances there is no reasonable prospect of a conviction and Test for Prosecution is not met."

Mr Agnew added: "It is clear that in this tragic case there was no objective justification for the shots fired by Soldier B that morning. Neither Daniel nor his

cousins posed any threat to Soldier B or his colleagues. However, in a criminal trial the court will be required to assess the conduct of Soldier B in the context of the circumstances as he believed, or may have believed, them to be.”

Mr Agnew confirmed that arrangements had been made to keep the family informed of progress in relation to the case and the Director of Public Prosecutions, Barra McGrory QC, has met with them to explain the outcome of the review.

He added: “I understand how disappointing this decision will be for the families involved, particularly in light of the findings returned by the Inquest Jury. We have sought to provide them with detailed reasons for our decision and to assure them that the decision was taken only after a most careful consideration of all of the available evidence.”

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What is a review?

The PPS Code for Prosecutors allows for a review of a prosecution decision, for example, where new evidence or information becomes available or a specific request is made by a person, such as a Coroner or a victim.

A review involves applying the Test for Prosecution in a case where it is deemed there is new or additional evidence.

Where there is no new evidence, a review involves a re-examination of the original detail of the case by a prosecutor who was not involved in the original decision.

What is the Test for Prosecution?

- In every case considered, the PPS takes a decision by applying what is known as the Test for Prosecution. The Test for Prosecution has two elements. It involves an assessment as to whether the available evidence provides a reasonable prospect of conviction - and, if it does, whether prosecution is in the public interest.
- For further information please call PPS Communications on **02890897187** or out of hours officer on **07990 031568**. Email: ppspressoffice@ppsni.gov.uk