

STATEMENT BY ATTORNEY GENERAIS OFFICE ON CALL FOR REOPENING OF CASES INVOLVING DECISIONS NOT TO PROSECUTE SOLDIERS

We wouldn't agree with the interpretation that what is set out in this correspondence amounts to allowing the army to lobby the AG or DPP NI on whether or not a prosecution should take place. The Attorney General and DPP would have applied the same test for prosecution as today – is there sufficient evidence to afford a reasonable prospect of conviction and does the public interest require prosecution. It has always been the case that the DPP and AG can seek information relevant to their decision on public interest.

What was being set out in this correspondence is that it was open to the army to draw to the attention of the AG and/or DPP any information they held which was relevant to their assessment of the public interest and which they might otherwise be unaware. What is important is that the final decision on prosecution would have been that of the DPP (or the AG in a case that required the AG's consent) taken independently of Government, the army or anyone else. The view of the army or Government ministers on the public interest is never determinative - the AG and DPP are only interested in information which they can then assess.

The integrity of the role of the AG and DPP NI in dealing with these types of cases has been set out in the recently published Report by Sir Desmond de Silva QC into the circumstances surrounding the death of Patrick Finucane. See:

105. I have also considered in detail the response of Government Ministers and the RUC to the proposed prosecution of Brian Nelson. In Volume II of this Report I have released an extensive set of Cabinet-level correspondence relating to this issue.

106. The Director of Public Prosecutions for Northern Ireland (DPP(NI)) and the Attorney General, Sir Patrick Mayhew, deserve significant credit for withstanding considerable political pressure designed to ensure that Brian Nelson was not prosecuted. That pressure arose during the course of the Shawcross exercise that was conducted in relation to Brian Nelson's case, under the established convention whereby Government Ministers can draw to the attention of the Attorney General any public interest considerations which may arise in relation to possible prosecution proceedings. The Secretary of State for Defence, the Secretary of State for Northern Ireland and senior Government officials all argued strongly that the prosecution would not be in the public interest. It is clear that, had their views prevailed, an agent of the State who had actively promoted and facilitated a series of terrorist attacks would have escaped justice.

The prosecution of soldiers and those accused of terrorism was especially sensitive at that time and it is inevitable and unsurprising that great care was taken by both the DPP NI and the AG. The office of DPP NI was relatively new and it was the early days of direct rule.