



## **BLOODY SUNDAY – SUMMARY OF DECISIONS NOT TO PROSECUTE**

### **Introduction:**

The Public Prosecution Service (PPS) recognises the significant level of public interest in the events of Bloody Sunday on 30 January 1972 and in the decisions as to prosecution that have been taken in relation to those individuals who have been reported by the Police Service of Northern Ireland (PSNI).

However, the PPS considers that, in the particular circumstances of this case and in the interests of transparency and the maintenance of public confidence, it is important that the PPS provides a public explanation of the reasons for the decisions not to prosecute a range of individuals reported for offences connected with the events of Bloody Sunday. Whilst more detailed reasons relating to individual cases have been provided directly to the families concerned, this document makes publicly available a summary of no prosecution decisions that have been taken and the reasons for them.

### **Files submitted by the PSNI:**

In November 2016 the PSNI submitted initial files to the Public Prosecution Service (PPS) in respect of its investigation into the events of Bloody Sunday. Further files were submitted to the PPS in 2017.

Ultimately a total of twenty accused were reported to the PPS for decisions as to prosecution in relation to allegations of criminality on Bloody Sunday. Eighteen of the accused were former soldiers of the Parachute Regiment. The remaining two accused were alleged to have been members of the Official Irish Republican Army (OIRA).

In respect of the eighteen soldiers reported, the PSNI investigation related to the circumstances in which civilians were shot and either killed or wounded. The primary offences which arose for consideration were murder, attempted murder and wounding. Consideration was also given to whether each suspect was liable on the basis of principal or secondary liability. These concepts are explained further below.

In respect of the two OIRA members, the PSNI investigation was in relation to the circumstances in which soldiers were shot at (but not injured). The primary offence which arose for consideration was attempted murder.

### **The Test for Prosecution:**

All decisions by the PPS are taken strictly in accordance with the Test for Prosecution. The Test for Prosecution involves two stages:

#### **1. The Evidential Test:**

The Evidential Test is the first stage and is met when the evidence which can be presented in court is sufficient to provide a reasonable prospect of a conviction.

Only evidence which is available and admissible can be taken into account. There are technical legal rules concerning whether or not particular types of evidence are admissible in court. For example, a court may refuse to admit evidence where to do so would have an adverse effect on the fairness of proceedings. If evidence is inadmissible then the evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.

The PPS must also undertake a considered assessment of the credibility and reliability of all available evidence. Where there are substantial concerns in relation to the credibility or reliability of evidence, the Evidential Test may not be capable of being met.

The evidence available must be sufficient to reach the high standard in a criminal trial, namely beyond reasonable doubt.

#### **2. The Public Interest Test:**

If the Evidential Test is met (and only if it is met) then consideration must be given to the Public Interest Test. The Public Interest Test is met when the public interest considerations in favour of prosecution outweigh those against prosecution.

In applying the Test for Prosecution the evidence and information submitted by the PSNI must be analysed and evaluated in a critical manner. It is the duty of the Prosecutor to ensure that all decisions are independent, fair, impartial and taken with integrity.

The decisions not to prosecute were taken on the basis that the Evidential Test in each case was not met. In these circumstances the Public Interest Test did not fall to be applied.

### **Over-arching legal issues:**

As work on the file progressed, it became clear that a number of over-arching legal issues arose in the case and that these over-arching issues impacted upon many of the decisions as to prosecution that required to be taken. As such, an explanation of these over-arching issues is likely to assist in understanding the decisions in the case.

#### **Relevance of the Bloody Sunday Report to decisions as to prosecution:**

The Bloody Sunday Inquiry, chaired by Lord Saville, was set up under the Tribunals of Inquiry (Evidence) Act 1921 and, as Lord Saville mentioned in his opening, an Inquiry is quite different to a trial. The purpose of an Inquiry is to seek out the truth and it is for an Inquiry to decide what material (i.e. evidence) it should consider. During the course of the Inquiry a requirement for a ruling arose as to the standard of proof that the Inquiry should apply. This ruling is detailed in Volume X of the Report, Appendix 2 at A2.41. The crux of the ruling is at paragraph 18 which reads as follows:

*“As we have said earlier, since we are an Inquiry and not a Court (criminal or civil) we cannot give a verdict or pass a judgment on the question whether an individual was guilty of a specific crime or legally recognized serious wrongdoing. For the same reason the terminology and requirements of the criminal or civil law are largely inapplicable. Thus it seems to us that we can and should reach conclusions **without being bound by rules designed for court cases, such as who has the burden of proof and the strict rules of evidence.**”* [Emphasis added.]

Unlike an Inquiry, the prosecution are bound by rules designed for court cases, specifically the rules for criminal proceedings. The rules of evidence in a criminal case are amongst the strictest rules applicable in any form of proceedings. This was not an issue for the Inquiry as it was able to decide what material to consider. This is one of the main reasons why the Bloody Sunday Report is **not itself evidence that can be adduced in criminal proceedings**. The role of a jury or judge in any criminal trial is to reach an *independent* verdict based solely upon the evidence which is placed before it and the findings of a public inquiry are not evidence that is admissible in criminal proceedings. It would not therefore be permissible for the prosecution to seek to support its case by adducing evidence that, for example, the findings of the Bloody Sunday Inquiry were that a particular soldier fired the shot that wounded a particular victim and that the shot was unjustified. Rather the prosecution is required to prove its case afresh by adducing admissible evidence in a criminal court as to what occurred.

Another distinction between a public inquiry and a criminal trial is that the burden of proof rests with the prosecution and the standard of proof is beyond reasonable doubt. On a number of occasions the Inquiry made findings that certain matters were *probable*. A finding that something was *probable*, or even *highly probable*, would be an insufficient basis for conviction in a criminal trial. A Court can only convict a defendant if it is sure of his guilt.

The fact that prosecutions are not being brought in certain cases where the Inquiry identified a soldier who fired unjustified shots that resulted in a casualty on Bloody Sunday does not therefore mean that either new evidence has become available, or that the assessment of the evidence by the PPS differs from that of the Inquiry. Due to the differences between a public inquiry and criminal proceedings described above, and the evidential issues outlined below, the PPS cannot rely (for the purposes of a prosecution) upon significant material that was available to the Bloody Sunday Inquiry when it made its findings. Furthermore, when applying the Test for Prosecution the PPS must consider the burden and standard of proof that applies in a criminal trial.

*The admissibility of the soldiers' own accounts:*

The soldiers who discharged their weapons on Bloody Sunday provided a number of accounts in various circumstances in 1972 and thereafter. These included accounts provided:

- (i) To the Royal Military Police (RMP) in the days following Bloody Sunday;
- (ii) To the Army Tribunal Team as part of a “cross-checking” process conducted following the announcement of the Widgery Inquiry;
- (iii) By way of witness statement to the Treasury Solicitor’s Department for the purpose of the Widgery Inquiry;
- (iv) By way of sworn oral evidence at the Widgery inquiry;
- (v) By way of witness statement to the Bloody Sunday Inquiry; and
- (vi) By way of sworn oral evidence at the Bloody Sunday Inquiry.

There are issues in relation to the admissibility of each of these categories of statement having regard to the particular circumstances in which they were provided.

The PPS has had to consider the admissibility in criminal proceedings of a statement *as against the soldier who made that statement* (as opposed to a different soldier whose conduct may be addressed within the statement). In other words, the PPS has had to look at whether anything a soldier (Soldier 1) has said in his statements (such as where he was when he fired or who he fired at) could be used against that soldier (Soldier 1 himself) in a criminal trial.

The rules of evidence that apply to criminal proceedings are generally designed to strike a balance between the interests of victims and the broader public on the one hand and, on the other, minimum standards of fairness to which a defendant facing criminal charges is entitled. For example, a defendant can apply to exclude evidence upon the basis that its admission would, having regard to all the circumstances including the circumstances in which the evidence was obtained, have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. The law provides guidance as to the circumstances in which the admission of evidence will be found to be inconsistent with a defendant's right to a fair trial and therefore should be excluded. This is an issue which has received very careful consideration in this case.

In summary, the relevant circumstances in relation to each category of statement referred to above are that:

- (i) The statements made to the RMP were provided under compulsion arising from a military protocol. No caution was administered warning the soldiers that they were not required to say anything or that what they did say could subsequently be used against them; and they were not advised of their right to legal representation.
- (ii) The "cross-checking" statements were provided under compulsion arising from military orders, without the benefit of a caution and without the benefit of access to legal representation. Furthermore, the soldiers had been provided with an assurance by senior Army officers that the statements would not be used against them in any subsequent proceedings.
- (iii) The Widgery evidence (both the written statement and the oral evidence) was given in circumstances similar to those described at (ii) above.
- (iv) The evidence provided to the Bloody Sunday Inquiry was provided subject to an undertaking by the Attorney General to all witnesses to the Inquiry that the evidence they provided to the Inquiry would not be used against them in any criminal proceedings. This was intended to assist the Inquiry in its search for the truth by removing the ability of any witness to rely upon the privilege not to incriminate oneself as a reason for not answering questions or providing documents to the Inquiry.

The circumstances in which the various statements described above were made by the soldiers presented the prosecution with formidable legal difficulties in terms of relying upon them. Compelled statements will almost invariably be excluded in criminal proceedings and the absence of legal advice prior to questioning will also, by itself, generally result in exclusion. The combination of factors that exists in this case in relation to each category of statement led the prosecution to the clear conclusion that there was no reasonable prospect of any of them being admissible against the soldiers who made them.

The statements provided by the soldiers clearly comprised a crucial body of evidence upon which the Bloody Sunday Inquiry relied in order to make findings as to what had occurred. They were the central plank of evidence by which the Inquiry identified those soldiers who had fired and were, or may have been, responsible for particular casualties. They also played an important role in terms of assessing whether shots were, or may have been, justified. The Inquiry was able to carefully examine the accounts provided by the soldiers, assess their truthfulness in the context of all of the other available evidence, and draw inferences in relation to the soldiers' states of mind when they fired. For example, the Inquiry was able to draw adverse inferences in support of findings that firing was unjustified when it concluded that the accounts given by soldiers were untruthful.

For the reasons outlined above, it was concluded that this highly significant body of evidence was not available to the prosecution for the purpose of any criminal proceedings. All other potential sources of evidence were carefully examined in order to determine whether they were capable of being adduced in order to prove the identity of the soldiers who were responsible for the casualties. Whilst the evidence of civilian witnesses was of assistance in describing the nature of the general activity in particular areas, it did not prove the identity of the particular soldier responsible for any of the shots fired.

*The admissibility of the account of one soldier as against a different soldier:*

A further source of evidence that was the subject of very careful consideration by the prosecution team in this case was evidence that came from other soldiers, often those who are themselves accused of having fired unlawful shots on Bloody Sunday. In other words, although Soldier 1's account of his own actions cannot be used against him (Soldier 1), could the prosecution seek to use Soldier 1's account of Soldier 2's actions against Soldier 2?

These soldiers would not be giving oral evidence as prosecution witnesses and the prosecution would have to rely on a written record of their previous accounts. Such evidence not given orally at trial is known as hearsay evidence. In many cases consideration was given to making an application to adduce the hearsay evidence of other soldiers in order to prove what the suspect soldier was doing at the relevant time. In a number of cases no such evidence existed and the only evidence capable of proving that a suspect soldier fired from a particular location was the previous (inadmissible) account from that same soldier.

In other cases suspect soldiers did describe co-suspect soldiers firing. However, the Courts will take great care before allowing the prosecution to adduce such hearsay evidence of a co-accused, particularly where the prosecution places significant reliance upon it in order to establish its case. A particular difficulty in the decisions under consideration was that the soldiers' accounts have often been demonstrated to be unreliable in material respects. Furthermore, the accounts provided were in many cases supportive of a case of self-defence. In each case the particular facts and circumstances were carefully considered in order to determine whether there was a reasonable prospect of an application to admit such evidence being successful, having regard to the relevant legal principles that the Court would apply.

In a small number of cases there was relevant evidence potentially available from soldiers who were not suspects. However, the general position was that these soldiers were not able to identify a particular suspect soldier as having fired his weapon.

### Self-defence:

A defendant is entitled to be acquitted if self-defence is raised and the prosecution fail to disprove it to the criminal standard of proof, i.e. beyond a reasonable doubt. It is clear that, if the prosecution were successful in proving the discharge of a rifle by a particular soldier on Bloody Sunday, the issue of self-defence would arise.

Self-defence is made out if:

- (i) The defendant *may* have genuinely believed that it was necessary to use force to defend himself or another from an attack or imminent attack; and
- (ii) The amount of force used by the defendant was reasonable in the circumstances, including the dangers, as he believed them to be.

The focus on the *genuine belief* of the defendant means that the defence can be available in circumstances where, in fact, the victim was **not** posing any threat to anybody.

### Principal and Secondary liability:

The PPS considered whether the Test for Prosecution was met in the context of both principal liability (i.e. whether it was possible to prove that a particular accused shot a particular casualty) and also secondary liability (i.e. if it was not possible to prove that a particular accused shot a particular casualty, was there any evidential basis for concluding that they were criminally liable as a secondary party to the shooting of a particular casualty – was there evidence of the intentional encouragement or assistance of a principal party). One form of secondary liability is sometimes referred to as “joint enterprise”.

The Bloody Sunday Inquiry sought to establish which soldiers were responsible for shooting which casualties. In the context of criminal law this would be regarded as principal liability. In a small number of cases, consideration was given by the Inquiry as to whether a soldier may have fired on the orders of another soldier. This is a situation where, under the criminal law, secondary liability could arise on the part of the soldier who gave the order.

An important aspect of secondary liability is that it is not necessary to prove a pre-arranged plan or formal agreement between those involved. Where people come together without agreement, often spontaneously, to commit an offence together, the giving of intentional support by words or actions, can be sufficient to attract secondary liability.

### The Decisions:

The Bloody Sunday Inquiry divided the events of the day into five “sectors.” For continuity and ease of reference the PPS has adopted the same approach and considered the case on the basis of these same five sectors. As the Bloody Sunday Inquiry noted, there was some overlap in time between the various sectors with some events potentially occurring simultaneously.

#### Sector 1:

Sector 1 concerned shots fired by soldiers of Machine Gun Platoon who were present in a derelict building on William Street. This shooting occurred before the other soldiers had moved into the Bogside.

Two civilians (Damien Donaghey and John Johnston) were injured by gunfire in the waste ground opposite the derelict building on William Street and the totality of the evidence suggested that soldiers of Machine Gun Platoon were responsible for these shots.

The two soldiers reported by the PSNI for this incident were **Soldier A** and **Soldier B**. At various stages Soldier A and Soldier B gave written and oral accounts of their actions (e.g. to the Royal Military Police in 1972, to the Bloody Sunday Inquiry, etc.) but, as explained above, these accounts would not be admissible in any criminal proceedings and must be disregarded by the prosecution in the application of the Test for Prosecution. Soldier A and Soldier B's own accounts could not be used to prove that they were present or fired their weapons on Bloody Sunday. In addition, any discrepancies or inconsistencies that appear in those statements could not be used against them.

In relation to this incident there was some other evidence available to prove that Soldier A and Soldier B fired at this location, in the form of witness statements provided by other soldiers from Machine Gun Platoon who were present. On this basis there was a reasonable prospect of proving that Soldier A and Soldier B fired the shots that, between them, injured Damien Donaghey and John Johnston.

There was evidence available that could prove that Damien Donaghey and John Johnston were not posing any threat to the soldiers (or anyone else) when they were shot and injured. However, the evidence available, including the evidence from the other soldiers of Machine Gun Platoon who refer to Soldier A and Soldier B firing, provided support for a defence case that there was an imminent threat of the deployment of a nail bomb. In these circumstances the prosecution would have to prove to the criminal standard on the available evidence that the soldiers did not fire in the belief that the person they shot at posed a lethal threat.

After careful consideration the PPS concluded that on the available evidence there was no reasonable prospect of proving that Soldier A and Soldier B were not acting in self-defence. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier A and Soldier B and a decision was taken not to prosecute either soldier.

### Sector 2:

Sector 2 concerned events that occurred in the area of the car park at the front of the Rossville Flats. Army vehicles containing members of Mortar Platoon moved into the Bogside and soldiers disembarked. A number of shots were subsequently fired by soldiers in this area, resulting in civilian casualties.

Jackie Duddy was shot and killed. Margaret Deery, Michael Bridge and Michael Bradley were shot and injured. Patrick McDaid, Patrick Brolly and Pius McCarron suffered injuries as a result of the gunfire (e.g. being struck by dislodged masonry).

The soldiers reported by the PSNI for this incident were **Soldier N**, **Soldier O**, **Soldier Q**, **Soldier R**, **Soldier S** and **Soldier V**. Soldier N has recently died and the Test for Prosecution cannot be applied to him. The Bloody Sunday Inquiry found that Patrick Brolly's injury was probably the result of firing by a soldier (**Soldier T**) who was already deceased at the time of the Inquiry.

The Report of the Bloody Sunday Inquiry reached a number of conclusions in respect of which soldiers may have been responsible for the shots that struck the civilian casualties in this sector. As explained above, the findings of the Inquiry are not admissible in criminal proceedings. However the Inquiry, even having had regard to all of the material that was available to it, was unable to be sure as to which soldier was responsible for the various casualties in this sector. In addition, the Inquiry

relied to a substantial degree on the soldiers' own accounts in reaching its conclusions as to what each soldier did. As explained above, the soldiers' own accounts cannot be used against them by the prosecution in any way, and must be disregarded when applying the Test for Prosecution.

The Bloody Sunday Inquiry concluded that **Soldier Q** probably shot Michael Bradley and **Soldier V** probably shot Margaret Deery.

In respect of both Soldier Q and Soldier V, once their own accounts were disregarded, there was no evidence available to prove that they fired their weapons on Bloody Sunday. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier Q and Soldier V and a decision was taken not to prosecute either soldier.

The Bloody Sunday Inquiry concluded that **Soldier R** probably shot Jackie Duddy. It also concluded that a shot he fired may have indirectly injured Patrick McDaid and/or Pius McCarron.

In respect of Soldier R, once his own accounts were disregarded, there was no evidence available to prove that he fired his weapon on Bloody Sunday other than an account given by one other soldier. The evidence of this other soldier was carefully considered, but his account of Soldier R's firing does not reliably correlate with any casualty, he has expressed doubt as to whether it was in fact Soldier R that he saw and issues of credibility arise as a result of oral evidence that he gave to the Bloody Sunday Inquiry. It is far from clear whether the soldier did in fact see Soldier R fire. In those circumstances, the PPS concluded that there was insufficient evidence to prove that Soldier R fired his weapon on Bloody Sunday. In these circumstances the Test for Prosecution was not met and a decision was taken not to prosecute Soldier R.

The Bloody Sunday Inquiry concluded that none of the shots fired by **Soldier O** hit anyone, but some of his shots may have indirectly injured Patrick McDaid and/or Pius McCarron. The Inquiry found it possible, but unlikely, that **Soldier S** fired the bullet that resulted in an injury to Patrick Brolly. As mentioned above, the Inquiry found it was probably Soldier T (deceased) who had fired the bullet injuring Patrick Brolly. The Inquiry could not rule out the possibility that Soldier S might have been responsible for the shots that indirectly injured Patrick McDaid and/or Pius McCarron.

In respect of **Soldier O** and **Soldier S**, once their own accounts were disregarded, there was some evidence available (in the form of statements from other accused soldiers) to potentially prove that they fired, subject to an application to adduce those statements as hearsay evidence. In addition, Soldier O has taken part in a number of media interviews over the years and consideration was given as to whether those accounts could be adduced as evidence against him. With regard to the accounts of other accused soldiers referring to the conduct of Soldier O and Soldier S, the general assessment was that, having regard to their importance to the prosecution case, issues relating to their apparent reliability, and the difficulties for the Court in testing and assessing their reliability, there was no reasonable prospect of an application to adduce them being successful. In addition, the inconsistencies between those accounts and the lack of correlation with the wider body of evidence meant that, even if they were admitted, they could not present a clear or coherent narrative capable of providing the basis for a prosecution case. The position was the same in respect of Soldier O's media accounts which, even if they could be attributed to him, did not provide any reliable narrative of his actions. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier O and Soldier S and a decision has been taken not to prosecute them.

There was no evidential basis upon which a case of secondary liability could be presented in criminal proceedings in relation to the suspects considered in this sector (i.e. there was no basis for suggesting that any soldier could be said to have encouraged or assisted another soldier in their



firing). The only possible exception to this was the allegation that Soldier O directed Soldier T to fire up at a person (or persons) alleged to be throwing acid bombs down from the Rossville Flats. It was possible that this firing caused an injury to Patrick Brolly (who was not the target and was not involved in deploying acid bombs). However, the sole and decisive evidence in relation to this case would again have been hearsay evidence from other accused soldiers and it was concluded that there was no reasonable prospect of it being admitted. A further difficulty was that the evidence as to what Soldier O said, even if admitted, was incapable of proving that Soldier O intended Soldier T to commit a crime as opposed to lawfully defend himself or others. In these circumstances the Test for Prosecution was not met and a decision was taken not to prosecute Soldier O for any offence relating to this incident.

### Sector 3:

Sector 3 relates to events in the area of a rubble barricade that ran across Rossville Street. Soldiers from Mortar Platoon, Anti-Tank Platoon and Composite Platoon were reported in connection with these events.

Michael Kelly, Hugh Gilmour, William Nash, Michael McDaid, John Young and Kevin McElhinney were shot and killed in Sector 3, and Alexander Nash was shot and injured. Later on, following conclusion of the firing in the other sectors, a number of soldiers fired at a window of Block 1 of the Rossville Flats that faced out onto Rossville Street. This firing has also been considered in the context of Sector 3, although none of the bullets struck any casualty.

The soldiers reported in respect of the deceased and injured were **Soldier F, Soldier J, Soldier K, Soldier M, Soldier P, Soldier U** and **Soldier 039**. Other reported soldiers may have been present in the vicinity (e.g. Soldier H), but there was no information suggesting any involvement in this incident.

The Bloody Sunday Inquiry was sure that **Soldier U** shot and killed Hugh Gilmour. In respect of Soldier U, once his own accounts were disregarded, there was no evidence available to prove that he fired his weapon on Bloody Sunday. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier U and a decision was taken not to prosecute him.

The Bloody Sunday Inquiry was sure that it was **Soldier F** shot and killed Michael Kelly. In respect of Soldier F, once his own accounts were disregarded, there was some evidence that fell to be considered that might show he fired at the rubble barricade. A forensic examination in 1972 of a bullet recovered from the body of Michael Kelly linked that bullet to a particular rifle, with the serial number A.32515. In the context of criminal proceedings there are some potential difficulties in respect of the forensic evidence, but it was concluded that the evidence provided a reasonable prospect of proving that Michael Kelly was killed by a bullet that was fired from the rifle bearing the serial number A.32515.

There was, however, a further difficulty in this case which could not be overcome. The contemporaneous documents, whilst giving the rifle an exhibit number, do not link it to any particular soldier. The only source of evidence that it was Soldier F who had fired this weapon on Bloody Sunday was contained in one of his own inadmissible accounts. There was therefore no reasonable prospect of proving in criminal proceedings that it was Soldier F who discharged the shot from rifle A.32515.

There were two further potential sources of evidence in respect of Soldier F firing at the rubble barricade, albeit these could not have linked him specifically to the killing of Michael Kelly. One

soldier witness provided a statement in which he places Soldier F amongst a group of soldiers who were firing in a location that would appear to be Rossville Street. However, this evidence was insufficient to prove that Soldier F was one of those actually firing. This soldier also later heard Soldier F admitting to having fired on Bloody Sunday, but this admission did not detail where or when he fired and therefore could not be tied to the rubble barricade. One other soldier refers to Soldier F firing in this location. However, in his first statement he specifically stated that he was *unable* to identify which soldiers fired at this time. There are also a number of further significant reliability and credibility issues with this witness. The PPS concluded that the available evidence did not provide a reasonable prospect of proving that Soldier F fired at this location. As such, a decision was taken not to prosecute Soldier F for any offence in relation to the events at the rubble barricade.

The Bloody Sunday Inquiry was sure that **Soldier P** shot at least one of William Nash, John Young and Michael McDaid, although **Soldier J** may have been responsible for one of these casualties and the Inquiry could not eliminate the possibility that Soldier E (deceased) was responsible for another. The Inquiry also found that it was possible that Soldier P or Soldier J shot and wounded Alexander Nash, but there was insufficient evidence to make a finding against either soldier in that respect.

In respect of **Soldier J**, once his own inadmissible accounts were disregarded, there was no evidence that he fired at the rubble barricade. One soldier witness provided a statement in which he places Soldier J amongst a group of soldiers who were firing in a location that would appear to be Rossville Street. However, the witness is unable to identify who within the group was actually firing. This soldier also later heard Soldier J admitting to having fired on Bloody Sunday, but this admission did not detail where or when he fired and therefore could not be tied to the rubble barricade.

The prosecution concluded that the available evidence did not provide a reasonable prospect of proving that Soldier J fired at the rubble barricade. In these circumstances a decision was taken not to prosecute Soldier J.

In respect of **Soldier P**, once his own accounts were disregarded, there was some evidence of him firing his weapon in the area of Rossville Street. This evidence came from another soldier who has provided a statement to the PSNI. However, the totality of the evidence available suggests that this soldier's account of Soldier P firing at a person was fabricated and in fact related to an incident when Soldier P fired over the heads of a crowd of civilians to frighten them. As such there was no reliable evidence available to prove that Soldier P fired at the rubble barricade and no reasonable prospect of conviction. In these circumstances a decision was taken not to prosecute Soldier P.

The Bloody Sunday Inquiry was sure that either Soldier L (deceased) or **Soldier M** shot and killed Kevin McElhinney. The Inquiry found that **Soldier K** fired at around the same time as Soldier L and Soldier M, but it was likely that he did not hit Kevin McElhinney (or anyone else). The Inquiry found that the three soldiers who fired probably did so after being given an order to that effect by Soldier 002 (deceased) and/or **Soldier 039**.

In respect of **Soldier K**, once his own accounts were disregarded, there was no evidence available to prove that he fired his weapon on Bloody Sunday. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier K and a decision was taken not to prosecute him.

In respect of **Soldier M**, once his own accounts were disregarded, there was some evidence that fell to be considered as regards his involvement in the firing that resulted in Kevin McElhinney's death. This evidence came from other soldiers who were involved in the same incident and would require an application by the prosecution to adduce it as hearsay evidence. This application would have

faced considerable difficulties having regard to the importance of the evidence to the prosecution case, the difficulties that the Court would face in testing and assessing the evidence, and the fact that the source of the evidence was other soldiers suspected in connection with the same incident. However, even if the hearsay evidence in respect of this particular case was admitted, it would have then supported a defence case that Soldier M fired in circumstances where he had formed a genuine (albeit mistaken) belief that he had identified a gunman. In these circumstances there was no reasonable prospect of disproving a case of self-defence and the Test for Prosecution was not met. As such, a decision was taken not to prosecute Soldier M.

In respect of **Soldier 039**, the allegation would be that he encouraged or assisted other soldiers to fire and is therefore liable as a secondary party. However, the evidence as to whether he (as opposed to a different soldier) in fact issued any order was contradictory and raised a doubt as to whether he had done so. Disregarding his own inadmissible accounts, the sole evidence against him came from inconsistent accounts provided by one of his co-accused in relation to the circumstances in which Soldier 039 had pointed out to other soldiers what he perceived to be two gunmen. Having regard to the importance of this evidence to the prosecution case, the fact that it was sourced from a single co-accused and contained inconsistencies, and the difficulties that the Court would face in testing and assessing the evidence, it was concluded that there was no reasonable prospect of its admission. A further difficulty was that the evidence was not consistent solely with an intention on the part of Soldier 039 to encourage the other soldiers to fire, as opposed to ensuring that they monitored a potential threat. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier 039 and a decision was taken not to prosecute him.

In respect of the later firing in Sector 3, The Bloody Sunday Inquiry concluded that **Soldier C, Soldier D, Soldier F**, Soldier G (deceased) and Soldier L (deceased) all fired at a window in Block 1 of the Rossville Flats, where a photographer had sought to take pictures out of the window. However, it was considered that there was no admissible evidence capable of identifying either Soldier C or Soldier D as being amongst those who fired. There was evidence which could be adduced to prove that Soldier F was one of those who fired. However, whilst the evidence was capable of establishing that there was no *actual* threat, there was a body of evidence that provided support for a defence case that the soldiers who fired *believed* that their target was a gunman. Having regard to the available evidence (which, for the purposes of a potential prosecution, did not include previous untruthful accounts of Soldier F from which an adverse inference might be drawn), it was concluded that there was no reasonable prospect of disproving self-defence to the criminal standard. In these circumstances a decision was taken not to prosecute the three soldiers reported in connection with this incident.

#### Sector 4:

Sector 4 concerned events in Glenfada Park North and Abbey Park. Members of Anti-Tank Platoon entered Glenfada Park North and shortly afterwards James Wray and William McKinney were shot and killed. Joseph Friel, Michael Quinn, Joe Mahon and Patrick O'Donnell were shot and injured. Shortly afterwards Gerard McKinney and Gerald Donaghey were shot and killed in the area of Abbey Park (which adjoins Glenfada Park North). In respect of Daniel Gillespie, the Bloody Sunday Inquiry referred to a slight head wound that he received and the possibility that it resulted from Army gunfire in Glenfada Park North, but found that this possibility remained very much in doubt.

The soldiers reported for this incident were **Soldier F** and **Soldier H**. Two other soldiers alleged to have been involved in these shootings, namely Soldier G and Soldier E, are deceased and the Test for Prosecution cannot be applied to them.

The Bloody Sunday Inquiry concluded that these four soldiers were responsible between them for the casualties in Glenfada Park North.

In respect of Soldier H, once his own accounts were disregarded, there was no admissible evidence available to prove that he fired his weapon on Bloody Sunday in the location of Glenfada Park North or Abbey Park. As such, the PPS concluded that the Test for Prosecution was not met in respect of Soldier H and a decision was taken not to prosecute him.

Due to the uncertainty in respect of exactly when and how Daniel Gillespie was injured, it was not possible to prosecute any offence in respect of his injuries.

In respect of the shootings in Abbey Park, the Bloody Sunday Inquiry had no doubt that Soldier G (deceased) shot and killed Gerard McKinney and Gerald Donaghey. The evidence available to the prosecution was capable of providing a reasonable prospect of proving that the soldier who shot and killed the two casualties in that location was one of the deceased soldiers, namely Soldier G. The PPS considered whether there was sufficient evidence to prosecute either Soldier F or Soldier H as a secondary party in relation to those casualties. However, the link between the conduct of these soldiers and the actions of Soldier G was too remote to allow criminal charges to be brought. Furthermore, there was no admissible evidence as to exactly what they were doing at the relevant time. It was therefore concluded that the Test for Prosecution was not met and a decision was taken not to prosecute them in connection with these deaths.

#### Sector 5:

Sector 5 concerned events to the rear of the Rossville Flats. A kneeling soldier was alleged to have fired from the corner of Glenfada Park North into this location. Bernard McGuigan and Patrick Doherty were shot and killed and Daniel McGowan and Patrick Campbell were shot and injured.

The soldier reported in respect of this incident was **Soldier F**. Other reported soldiers may have been present in the vicinity (e.g. Soldier H) but there was no information suggesting any involvement in this incident.

The Bloody Sunday Inquiry found that Soldier F was responsible for killing both Bernard McGuigan and Patrick Doherty and that it was highly probable that he was responsible for the injuries sustained by Daniel McGowan and Patrick Campbell.

Once Soldier F's own accounts were disregarded, there was one potential source of evidence available to prove that he fired his weapon from the corner of Glenfada Park North. That source of evidence was Soldier G (deceased) who had shot and killed civilians in Abbey Park. In some (but not all) accounts given by Soldier G in 1972 he refers to Soldier F firing at this location. Careful consideration was given to whether this evidence could be adduced in support of a prosecution case to prove that Soldier F fired in this location. Having regard to the importance that this evidence would hold (it would be sole and decisive evidence), the serious reliability issues in relation to this soldier's evidence (he had shot and killed persons in Abbey Park and failed to mention this in his own accounts) and the difficulties a court would face in testing and assessing this evidence, the PPS concluded that there was no reasonable prospect of a court admitting this evidence for use against Soldier F.

In these circumstances the PPS concluded that the Test for Prosecution was not met and a decision was taken not to prosecute Soldier F in respect of any sector 5 casualty.

Official IRA:

Two alleged members of the OIRA were reported to the PPS in respect of shots allegedly fired at soldiers on Bloody Sunday. There is no suggestion that these shots hit any soldier or caused any injury, but the offences of attempted murder fell to be considered as they were aimed at soldiers.

The first person reported was alleged to be a person identified at the Bloody Sunday Inquiry as OIRA1. The Bloody Sunday Inquiry concluded that OIRA1 fired a shot that hit a drainpipe on the Eastern side of a Presbyterian church some minutes before 16:00. This was just above the heads of members of Mortar Platoon who were on the roof of a boiler house adjacent to the church at the time.

In this case there were relevant admissions made to the Bloody Sunday Inquiry but these were covered by the Attorney General's undertaking and had to be disregarded when applying the Test for Prosecution. Such admissible evidence as existed was insufficient to prove that the person reported to the PPS was one and the same person as OIRA1. In these circumstances the Test for Prosecution was not met and a decision was taken not to prosecute the reported individual.

The second person reported was alleged to have fired at (but missed) an unidentified soldier after all civilian casualties had been shot. Again there were relevant admissions to the Bloody Sunday Inquiry which are inadmissible in criminal proceedings. There was identification evidence from a witness in relation to the suspect's possession of a weapon, although not of him having fired it. That evidence had significant flaws and the witness did not wish to cooperate with the PSNI investigation. In these circumstances the Test for Prosecution was not met and a decision was taken not to prosecute the reported individual.

**Public Prosecution Service**

**14 March 2019**