

# Judicial Communications Office

7 October 2011

## JUDGE FINDS SHOOTING BY UNDERCOVER ARMY UNIT NOT JUSTIFIED

### Summary of Judgment

Mr Justice Treacy, sitting in the High Court, found that the shooting of Aidan McKeever by an undercover army unit in 1992 was not justified. He consequently approved the award of £75,000 damages which had been agreed between the parties.

The Court heard that Aidan McKeever was the driver of a getaway car for members of a Provisional IRA group who, earlier on the night of 16 February 1992, had attacked Coalisland RUC Station using an anti-aircraft gun. The police and army had prior warning of the attack and sustained no injuries. A 12 man special operations unit of the army had been deployed around the car park of Clonoe Chapel in Coalisland because of the intelligence received. Shortly after the attack on the police station the armed lorry and its PIRA occupants drove into the car park. The soldiers began firing at the lorry and then at several cars which the army unit had observed entering the car park several hours prior to the attack. No warning was given before the soldiers opened fire. Four members of the PIRA team were killed. Mr McKeever, who was sitting in one of the parked cars, was seriously wounded. He was later charged and pleaded guilty to assisting offenders and was sentenced to three years imprisonment, suspended for three years.

Mr Justice Treacy said that, as the soldiers had not denied shooting Mr McKeever, **the main issue was whether or not the trespass to his person had been justified as either reasonable force used in self-defence or the defence of others or reasonable force in preventing a crime or attempting to apprehend a person engaged in serious terrorist crime.** The law states that once an action of trespass to the person is admitted or proved, the onus is on the defendant (in this case the Ministry of Defence) to justify the trespass if he can and to show he acted with lawful excuse. The judge said the Ministry of Defence would therefore have to prove that:

- The force used by the soldiers was reasonably necessary in the circumstances of the case; and

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- The soldier(s) who shot Mr McKeever was/were justified, on the balance of probabilities, in doing so on the basis of what they believed were the relevant facts at the time of the shooting.

The judge said that four soldiers admitted firing shots at Mr McKeever but it was not possible to determine which bullets from which soldiers actually struck him. Only one of the soldiers, Soldier A, was called by the Ministry of Defence to give evidence in Court although all four were initially available. After his evidence was given the remaining soldier witnesses, who had been prepared to give evidence the week before, were no longer prepared to do so despite the special measures that had been secured to protect their anonymity. No reason was given to the court for this decision.

Mr Justice Treacy said that it was therefore open to the Court to draw an adverse inference from the failure or refusal of witnesses to testify in circumstances in which they might be expected to give relevant and important evidence. He noted that the soldier witnesses were aware that part of the case being made by Mr McKeever was that this military operation was a “shoot to kill” operation and not, as the Ministry of Defence claimed, an arrest operation. The judge said that no explanation had been given for their “dramatic” U-turn in refusing to give evidence, nor did the Ministry of Defence take any steps to compel them to do so. He therefore inferred from these circumstances that the soldiers’ evidence is likely to have been unhelpful to the Ministry of Defence.

Mr Justice Treacy stated that the Ministry of Justice had failed to call evidence in the proceedings to satisfy the Court that the shooting of Mr McKeever was justified:

“It has failed to discharge the onus placed upon it that the soldier(s) who fired the shots which caused [Mr McKeever’s] injuries subjectively believed that he/they were justified in so doing.”

The judge was critical of the account given by Soldier A which he said he found “utterly implausible”. Soldier A claimed that Mr McKeever got on his knees at the front of his car, presented his head and shoulders above the bonnet and adopted a firing stance. The judge said that Soldier A tried to justify this by referring to the fact that he didn’t know that Mr McKeever was unarmed. He noted, however, that Mr McKeever knew that he was unarmed and it would have been insane for an unarmed man, whether wounded or not, to have presented himself in the way described by Soldier A. He added

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that for Mr McKeever to have behaved in the way alleged by Soldier A was “contrary to reason and the instinct for self-preservation”.

Mr Justice Treacy concluded that the shooting had not been justified and did not amend the damages already agreed between Mr McKeever and the Ministry of Defence.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

**ENDS**

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