**What goes on in Belfast High Court?**

Mr Flynn alleges that on 12th March 1992 a person now known by the cypher Informant 1 tried to murder him by aiming a gun at him which failed to discharge. The plaintiff also alleges that Informant 1 then attacked him physically before running off. It is the plaintiff’s case that Informant 1 was a covert human intelligence source for the PSNI and also an employee of the police. Mr Flynn claims against the defendant both compensatory damages for the personal injuries suffered by him together with exemplary damages.

He also alleges that on 6 May 1997 Informant 1 or persons acting on his behalf placed an improvised explosive device under his car. The device failed to explode but again the plaintiff claims for personal injuries loss and damage together with exemplary damages against the Chief Constable.

On 3 March 2008 the plaintiff issued a writ against the Chief Constable of the Police Service of Northern Ireland. The Statement of Claim was not served until 24 November 2011. A defence denying liability was served on 17 January 2012. The pleadings are deemed to be closed at the expiration of 21 days after service of the reply see Order 18, Rule 20. The plaintiff’s reply was served on 19 January 2012 so the pleadings were deemed to be closed on 9 February 2012. Pursuant to Order 24, Rule 2(1) the defendant was required to serve a list of documents by 23 February 2012. The defendant failed to do so. This failure, as Stephens J. observed, occurred approximately half a decade ago. The failure continues. At present the PSNI have told the Court that it might be possible to serve the documents in two years time

Interim applications, before a case is heard in the High Court are dealt with by Masters. These are in the nature of Deputy High Court Judges. They earn about £100,000 a year. By Order of Master Bell dated 2 March 2012 the defendant was ordered to serve a list of documents within 12 weeks from the service of the Order. The defendant failed to comply with that order. On 1 March 2013 Master McCorry made an Unless Order that unless the defendant files a list of documents within 6 weeks of the date of service of the order the defendant’s defence be struck out. On 4 March 2013 that order was set aside on consent with the application for an Unless Order being adjourned until 14 May 2013.

On 21 June 2013 another Unless Order was made by Master McCorry that is unless the defendant served a list of documents within 21 days of the service of the order the defendant’s defence shall be struck out. The defendant failed to comply with that order. Time for compliance with that order was extended on 25 September 2013, on 9 October 2013, on 25 October 2013, on 20 November 2013, on 27 November 2013, on 13 December 2013 and on 7 January 2014. The defendant did not serve a list of documents. The defendant not only failed to comply with the Unless Order within the original timescale set by the Master but also within any agreed extended timescale.

So, what is an “Unless Order”?

Rs CJ Order 24 r.19 - Dis covery and ins pection of documents

*Failure to comply with requirement for discovery, etc.*

19. – (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make dis covery of documents or to produce any documents for the purpose of ins pection or any other purpose or to s upply copies thereof fails to comply with any provision of that rule or with that order, as the cas e may be, then, without prejudice, in the case of a failure to comply with any s uch provision, to rules

3(2) and 12(1), the Court may make s uch order as it thinks jus t including, in particular, an order that the action be dis mis sed or, as the case may be, an order, that the defence be s truck out and judgment be entered accordingly.

(2) If any party against whom an order for dis covery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he s hall be liable to committal.

(3) Service on a party's solicitor of an order for dis covery or production of documents made agains t that party s hall be s ufficient to found an application for committal of the party dis obeying the order, but the party may s how in ans wer to the application that he had no notice or knowledge of the order.

(4) A s olicitor on whom s uch an order made against his client is s erved and who fails without reas onable excus e to give notice thereof to his client s hall be liable to committal.

The reader can see that the remedy can be draconian, including imprisonment. But for one reason or another two unless orders were not complied with and nine deferments of time limits were granted.

Stephens J. in his judgment of 21st July 2017 said:

*[15] I consider that there has been a failure over many years by the defendant to provide discovery and to comply with court orders.*

The performance of the PSNI in June and July 2017 can only be described as abysmal. ACC Hamilton swore an affidavit on 29th June 2017 which the court considered to be deficient.

He swore another affidavit on 20th July 2017, which was again criticized by the court.

Stephens J was minded to strike out the PSNI’s defence save that the Plaintiff agreed to an extension till 1st October 2017.

So , in summary. Mr Flynn alleged attacks on him in 1992 and 1997 , of which the earlier allegation was the subject of the Ballast Inquiry by PONI . That inquiry reported in January 1997. Mr Flynn started proceedings in March 2008. The PSNI has admitted that the person described by the cypher, Informant 1, was at all material times a CHIS providing information to it. It further admitted misfeasance in public office, including each of the individual particulars of the misfeasance alleged by the plaintiff. The PSNI also accepted its liability to pay both compensatory and exemplary damages to the plaintiff.

The remaining issues are still not resoved, despite many judicial threats , which were not carried out.

So, what hope for all those other cases which have yet to get off the ground?

If I were the Chief Constable, I would fail to comply with the latest order, be held liable for the final headings of tort and pay out damages. That way the secret files remain intact , at least for the time being.

If you are a plaintiff, or you are contemplating litigation, the PSNI will seek to delay your case for many years and , unfortunately the High Court appears incapable of dealing with such obfuscation.