

## **INQUEST INTO THE DEATH OF SEAN BENTON**

### **Applications to admit 'bad character' evidence: Procedure**

- 1) There will be two phases of review: In Phase 1 Counsel to the Inquest (CTI) will review the disciplinary/personal/police records of [*those individuals alleged to have assaulted the deceased*] for:
  1. complaints (whether or not adjudicated upon) related to assault or physical or verbal bullying / harassment of trainees or those of lower rank;
  2. disciplinary offences found proven related to assault or physical or verbal bullying / harassment of trainees or those of lower rank;
  3. serious or sustained (multiple) offences of dishonesty;
  4. offences resulting in a prison or custodial sentence; or
  5. disciplinary discharge from the Army.
  
- 2) Background checks will also be made by Counsel to the Inquest of "Phase 2 witnesses" (see list appended)<sup>1</sup> for any history of:
  1. serious or sustained (multiple) offences of dishonesty;
  2. offences resulting in a prison or custodial sentence; or
  3. disciplinary discharge from the Army.
  
- 3) The information arising from those checks will be provided to HH Peter Rook QC by Counsel to the Inquest. HH Peter Rook QC will decide upon its relevance and onward disclosure to the IPs.
  
- 4) If such potentially relevant matters are disclosed this should not be taken as leave to introduce the evidence. It must still be determined by Judge Rook whether it is proper for an individual witness' bad character to be raised during examination.

#### *Approach*

- 5) In deciding whether to grant leave to admit bad character evidence HH Peter Rook QC will adopt an approach drawing upon the principles underpinning s.100 Criminal Justice Act 2003 and applying them to the scope of this inquest.
  
- 6) No application is required where the witness is an interested person and the matter goes to an allegation that this witness directly assaulted, or harassed or verbally or physically bullied the deceased or another trainee.

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<sup>1</sup> Phase 2 group: those making allegations against Phase 1 witnesses that are denied and persons called to give evidence in support of a Phase 1 witness.

- 7) Applications should otherwise always be made if the issue of bad character goes to credibility and/or is collateral to an issue to be determined in the inquest.
- 8) If there is any doubt about whether the matter falls within this ruling, so as to require a written application, this should be raised with Counsel to the Inquest for the judge's determination.

*Procedure*

- 9) The procedure to be followed is that:
  1. Any application to rely on bad character must be made in writing (*email will suffice*) a minimum of 14 days in advance of the date of which the witness is listed to give evidence (and sooner if practicable). It is to be served on all IPs when filed with CTI.
  2. Any response from any other IP must be received within 4 days – and no later than 10 days before the witness is listed. To be served on all IPs when filed with CTI
  3. A ruling will be given by no later than 4 days before the witness is called.

**HH Peter Rook QC**

Dec 2017