

*that whoever prepared the device would be likely to ensure that no traces which might contaminate a person carrying the device would be left on it. “*

- (g) The Commission considers it to be arguable that the fact referred to in the judgement was unsupported by specific evidence in trial - the nearest the evidence came to supporting this conclusion was the evidence of Dr Murray at Q80 quoted above. Further, Dr Murray had given evidence that it would be difficult to avoid contamination of the outside of the jar and had speculated that the best way to eliminate contamination would have been the use of solvent (which was not however supported by the evidence).
- (h) The Commission observes that the question whether the outside of the jar was contaminated could have been established by the NIFSL by the appropriate forensic tests but that those tests were not carried out. It may be argued therefore that the judge adopted speculation to establish a matter which could have been but was not established by evidence.
- (i) The Commission finally notes that it is arguable that in adopting the speculation he did, the trial judge failed to give credit to Mr Walsh for his good character. Mr Walsh's case was that there was no contamination of his right hand and pocket because he had not been carrying the bomb (in contradiction of the soldiers' evidence). It is arguable that in adopting the assumption that the absence of contamination was attributable to the care taken by Mr Walsh and/or others to avoid contamination, the trial judge adopted an assumption which Mr Walsh's good character tended to rebut. If that conclusion were adopted by the Court of Appeal, this could be said to amount to a contrary indication, to rebut the assumption made in **Rules and Sheals** referred to above that the judge could be assumed to have had regard to Mr Walsh's good character.

## **11.6 Non Disclosure**

### ***11.6.1 “Coaching” of Army Witnesses***

- (a) Mr Walsh's solicitors refer in their submissions to the fact that the soldiers were given pre-trial coaching on their evidence as evidenced in

the new statement of Cpl, now Sergeant, Blacklock. It is submitted as follows:

- That evidence of coaching tends to rebut evidence that inconsistencies of the paratroopers was due to their nervousness at trial.
- That failure to disclose the coaching was a material matter given that the judge adversely commented on the demeanour of Mr Walsh - who had not had coaching of any kind.

(b) The Commission has concluded as follows:

- There is no evidence that the army witnesses received coaching beyond guidance on court etiquette including viewing a video. (Conversely, the Commission is in no position to judge the extent of coaching provided to Mr Walsh). The Commission does not consider that failure to disclose such “coaching” as took place is material to the safety of Mr Walsh's conviction.
- By the time of the trial, Mr Boyce was no longer in the same company as the other three soldiers. He appears not to have shared the pre-trial preparation of the other three and may not have watched the video. The Commission does not consider that the information available to it affects its analysis of the reliability of his evidence - as set out at paragraph 11.3 above.

#### *11.6.2. The NIFSL Forms Submitted by the Scenes of Crimes Officers*

- (a) Forensic exhibits at the scene were submitted to NIFSL by Mr B McAlinden (a civilian scenes of crimes officer) who attended the scene and collected the exhibits from ATO Duffy who had disabled the bomb. Swabs and other forensic exhibits from Mr Walsh's person were submitted by DC Maitland who attended Mr Walsh at the Castlereagh holding centre but did not attend the scene.
- (b) The Commission disclosed to Mr Walsh's representatives the forms NIFSL 3 which were submitted by the two SOCOs to NIFSL together with the respective exhibits.
- (c) The form submitted by McAlinden states as follows:  
*“Walsh was stopped and searched on the Suffolk Road at approx. 1.40 p.m. He was searched and a suspect device found in his pocket. “The form submitted by Mr Maitland states:*