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IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK, DAVID McCAFFERTY AND MARGARET GARGAN ('THE SPRINGHILL INQUEST')

RULING (NUMBER 1)
ON THE MINISTRY OF DEFENCE REQUEST FOR DOCUMENTATION TO BE SOUGHT BY THE CORONER

Martin O'Rourke KC, Ronan Daly and Michael McCartan (instructed by the Legacy Inquest Unit) for the coroner
Peter Coll KC and Ben Thompson (instructed by the Crown Solicitor's Office) for the Police Service of Northern Ireland
Joseph Aiken KC, Marie Claire McDermott and Andrew McKibbin (instructed by the Crown Solicitor's Office) for the Ministry of Defence
Fiona Doherty KC and Malachy McGowan (instructed by Ó Muirigh Solicitors) for the next of kin of John Dougal
Des Fahy KC and Seamus McIlroy (instructed by Ó Muirigh Solicitors) for the next of kin of Patrick Butler
Monye Anyadike-Danes KC and Stephen Toal (instructed KRW Law) for the next of kin of Fr Noel Fitzpatrick
Michael Mansfield KC and David Heraghty (instructed by Ó Muirigh Solicitors) for the next of kin of David McCafferty
Karen Quinlivan KC and Stuart McTaggart (instructed by Ó Muirigh Solicitors) for the next of kin of Margaret Gargan

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SCOFFIELD J (sitting as a coroner)

Introduction

[1] This is an inquest into five deaths, which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. The five deceased are John Dougal, Patrick Butler, Father Noel Fitzpatrick, David McCafferty and Margaret Gargan. The first module of the inquest hearing, in which it is intended to hear from a variety of civilian eyewitnesses, has recently commenced.

[2] Following disclosure in recent weeks of further statements from civilian witnesses which have been provided to the coroner's investigator, a properly interested person (PIP), the Ministry of Defence (MOD), has requested that I obtain additional documentation from the police which may contain potentially relevant material in relation to some of those who will or may give evidence in due course. The Police Service of Northern Ireland (PSNI) is neutral in respect of this application; but it is opposed by the other PIPs who are participating in the inquest, namely the next of kin (NOK) of each of the deceased.

[3] Detailed written submissions have been provided on behalf of both the MOD and the NOK; and I heard oral argument on the matter in the course of the inquest hearing on 21 February 2023. I am grateful to all counsel for their written and oral submissions.

The MOD request

[4] The request which forms the subject matter of this ruling was initially set out in correspondence from the Crown Solicitor's Office (CSO) on behalf of the MOD to the Legacy Inquest Unit (LIU) of 1 February 2023. The request was said to be based on the content of a witness statement from Person A which had recently been disclosed to the MOD – although in his oral submissions Mr Aiken KC accepted that, whilst this statement was the catalyst for the making of the request (PIPs having been directed to raise any disclosure issues which arose from statements disclosed to them as soon as possible) a request for material of the type sought was always going to be in prospect on a variety of bases. In any event, the correspondence asked that I obtain the criminal record (if any) of, and "all material held by PSNI, including intelligence material" on, Person A and nine other named individuals. (In respect of one of those individuals, a further category of information was sought arising out of his giving of evidence to the Ballymurphy Inquest.)

The competing narratives in the inquest

[5] In the course of his opening, senior counsel to the inquest, Mr O'Rourke KC, made the following observations:

> "Most of the civilian witnesses claim that at the time of these fatalities, the shooting in Springhill/Westrock was coming from Corry's Yard [where soldiers were stationed]. There is, however, some evidence to the effect that there was at least one gunman firing shots at Corry's Yard. There is also evidence that Corry's Yard was also subjected to gunfire from others although whether this was before, during or sometime after the incidents is a matter the court may have to determine in due course."

[6] He further observed that, "The clear implication of the civilian statements is that each of the five deaths were caused as a result of gunfire discharged by the army from Corry's Yard." Having summarised the evidence in deposition form given to the original inquest into these deaths in 1973 by the ciphered soldiers who were stationed at Corry's Yard, several of whom describe firing at gunmen or seeing other soldiers do so, Mr O'Rourke added that:

> "The narrative of the military is of the legitimate and justified use of force at a time of heightened tension and in response to specific threats.
>
> The contrary narrative to that of the military is that the Springhill deaths resulted from the illegitimate, unjustified and indiscriminate use of force by the army on civilians."

[7] In due course, I will be invited, having considered the evidence, to conclude in relation to each incident and each death, insofar as it is possible to do so, where the truth lies.

[8] Many of the civilian accounts of the events of that evening stated there was no shooting at soldiers from the area in which the deceased fell. Indeed, evidence to that effect has already been led before me in the form of statements read into the record pursuant to rule 17 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ("the 1963 Rules").

[9] On the other hand, the MOD submissions make reference to the witness statements taken from the seven ciphered soldiers by the Royal Military Police Special Investigations Branch the day following the deaths. In broad terms, the soldiers make the case that there was a prolonged gun attack during the evening of 9 July 1972 by a number of armed civilians on the soldiers who were based in Corry's Wood Yard and that they returned fire. It was suggested that this account is corroborated by the relevant army radio logs. A feature of the early army accounts was that there was a sounding of car horns on Westrock Drive, followed by the deployment of armed men from vehicles who began firing at soldiers. Mr Aiken took me to the depositions of Soldier A and Soldier E in this regard. In particular, Soldier E describes seeing two civilian vehicles (a light blue Austin and a yellow Triumph Herald) which each contained four men, which parked between 60 and 47 Westrock Drive and blasted their horns, and from which eight armed men deployed.

[10] Mr Aiken also referred to some civilian eyewitness accounts which, in his submission, supported the contention that relevant witnesses or participants in events (such as Person C) were in or near one or other of these cars; and, perhaps more importantly, supported the narrative that civilians were firing upon the army position in the course of the evening before at least some of the deaths which are the subject of this inquest. He made particular reference to the account given by "Eye

Witness 1" in one version of the booklet entitled 'The Springhill Massacre' produced by the Springhill Massacre Committee on behalf of the local community in the wake of the deaths ("the Springhill Massacre booklet"), which pointed to gunmen being in the area of Westrock Drive and both members of the Official IRA and Provisional IRA being in attendance. By reference to certain evidence relating to the fatal injury suffered by John Dougal, and other evidence as to his position at the time of death, Mr Aiken raised the prospect of his having been shot by someone in a lower position shooting upward at Corry's Yard, which would have to be considered in the course of the inquest.

[11] Clearly, whether the army position at Corry's Yard was fired upon by civilians at or before the time when the deceased were shot is a central issue in contention in these proceedings. This is captured, inter alia, by paras 4 and 7 of the document setting out the scope of the inquest in the following terms:

> "4. In consideration of how the deceased came by their deaths, the coroner will examine in evidence whether the deaths were caused by gunshots and, if so, the source and the circumstances in which the gunshots were discharged. This will include an examination of the circumstances pertaining in Springhill at or about the time of the deaths, including any military operation at that time with reference in particular to the following matters:
>
> (i) Whether the deceased were killed by military gunfire or gunfire from Republican and/or Loyalist paramilitaries.
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> …
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> 7. The inquest will also examine, insofar as is necessary to address the above matters, the extent, if any, of public disorder and/or paramilitary activity in the vicinity of each of the deaths."

The basis of the MOD request

[12] The initial request for this further information to be sought purported, as noted above, to be grounded in the contents of Person A's disclosed statement. Generally, it was submitted that "the nature of the IRA attack on the army at Corrys' Wood Yard on 9 July 1972, and who was involved in that attack, are clearly matters within the scope of the inquest". In respect of named individuals, the correspondence contained the following explanation:

"[Person A], in one of his exhibited accounts, places himself at the occupied cars at or about 47/60 Westrock Drive. This is the location where, for example, RMP Soldier E describes 8 armed occupants exiting the two cars following a simultaneous blast of car horns, plus two further armed men running in the same location.

[Person A] places [Person B], now deceased, with him.

[Person A] places [Person C] as the driver of one of the two cars. [Person C] is said to have been shot.

[Person A] places [Person D], deceased, at the scene. The Irish News described [Person D] as a member of the youth wing of the IRA. In "Children of the Troubles" (2019) [Person D] is described as having "joined the Fianna and then the IRA".

[Person A] places [Person E] at the scene in the company of [Person D]. [Person E] says he was also shot.

In one of the exhibits to [Person A]'s statement [Person F] is recorded as confirming he was manning the communications centre in Whiterock.

In the exhibit to [Person A]'s statement [Person F] says [Person G] was manning the IRA communications centre with him. [Person G] was killed a few weeks later on 3 August 1972. He was acknowledged to be a member of the IRA. He was shot during another gun battle with the army.

In the exhibit to [Person A]'s statement [Person H] and [Person I], both acknowledged members of the IRA, are described as at the scene and armed.

In the exhibit to [Person A]'s statement [Person J] is described as subsequently "spraying" Corry's woodyard from a Lewis gun. [Person J] is an acknowledged member of the IRA who was subsequently killed by the army in 1973. [Link to the An Phoblacht website]"

[13] Consideration of this justification for the request identifies a variety of bases on which it is said the requested documentation should be pursued: (i) proximity to "the two cars"; (ii) a suggestion of involvement in an unlawful organisation; and (iii)

an eyewitness account of the individual having been in the relevant area at the time relevant to this inquest and having been armed at that time.

[14] The NOK have observed that some of the MOD submissions proceed on the basis that matters which are contested and yet to be proved are matters of established fact (for instance, that there *was* an IRA attack on the army at Corry's Wood Yard on 9 July 1972). That may be so; but for the purposes of this application, it suffices that that is the case being made by some or all of the soldiers, into which I must therefore inquire. It is also relevant that, as the MOD submissions highlighted, there is some potential support for (at least elements of) this narrative from a number of civilian witnesses also.

The scope of the MOD request

[15] In para 14 of the MOD's written submissions, the information sought is described in the following way:

> "a. Information held by the police that bears on the potential involvement, or involvement, of individuals (associated with the subject events) with unlawful associations/proscribed organisations is potentially relevant to a central issue in the inquest. If material suggests that person A was or is a member of, or associated with, an unlawful association/proscribed organisation, then the Coroner may consider it more likely that person A was more than just a mere eye witness on 9 July 1972 and may have been one of those engaged in shooting at the army.
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> b. In addition, given the issue over the nature and extent of violence used, any similar fact information held by the police that bears on the propensity of individuals (associated with the subject events) to engage in acts of violence, whether as part of an unlawful association or otherwise, is also potentially relevant to a central issue in the inquest. If material suggests that person B had come to the attention of police for other violent activity, then the Coroner may consider it more likely that person B was more than just a mere eye witness and may have been engaged in shooting at the army.
>
> c. Further, given there is an issue as to the nature and extent of violence used against the soldiers, information held by the police that bears on the

> credibility of individuals (associated with the subject events) speaking about the subject events is also clearly potentially relevant to a central issue in the inquest; that is determining, from the evidence read and heard, what actually took place."

[16] To this, Mr Aiken also added a further category in oral submissions, namely material relating to the individual's specific actions on 9 July 1972 (albeit he considered that such material was likely to be caught by category a. in any event).

[17] At one point in the MOD submissions it is suggested that establishing the backgrounds of those who were "present on the streets around Corry's Woodyard on the night of 9 July 1972" is what is in issue. Elsewhere in those submissions, reference is made to "the identities and backgrounds of the individuals who were involved in attacking soldiers at Corry's Wood Yard".

[18] At another point in the MOD's written submissions, reference is made to material which may be held by police relating to individuals who were present and which "may relate to the months and days leading up to 9 July 1972, or the day itself". Whilst making no concession whatever as to the principle of the application, Ms Quinlivan KC (who made the case on behalf of the NOK in respect of this issue) noted in submissions that a request which was so confined would be "more defensible".

[19] It was also submitted on behalf of the MOD that it was "difficult to delineate a specific timeframe to which material bearing on the above issue should be limited" and I was invited to seek the disclosure of such material to me on a basis which involved no time limit.

Summary of the NOK's position

[20] The NOK did not accept that I was obliged to seek the disclosure of other material held by police (which, in their view, was in reality likely to be intelligence material). Indeed, they submitted that I should not seek such information on the following bases:

(1) It was said that this type of exercise is not routinely undertaken in inquests.

(2) It was submitted that the exercise would be entirely disproportionate to the potential probative value of the material which might be provided and, indeed, that the material sought would neither be relevant nor probative.

(3) A further objection was that the MOD application was "all-encompassing and entirely unlimited by reference to time, jurisdiction or type of material held".

(4) Additionally, it was said that the MOD request was not adequately formulated or grounded in the evidence, particularly not from the statement of Person A.

(5) Further, any material obtained would be "untested and untestable" and would inevitably therefore fail the 'control stage' such as to be rendered inadmissible in the inquest. In those circumstances, it would be a waste of time to even seek sight of the material.

[21] The NOK further submitted that, if such material was sought and obtained in respect of civilians, as a matter of fairness similar such material (including complaints and the contents of any civil proceedings against soldiers) would have to be obtained in respect of military witnesses. This representation was couched in Ms Quinlivan's pithy submission that, "What is sauce for the goose is sauce for the gander".

Authorities in this field

[22] There seem to be few, if any, decisions of the higher courts dealing directly with the precise issue which is before me. I was, however, referred to a range of decisions dealing with the general principles applicable to the discovery exercises which will be conducted by a coroner investigating a death in this jurisdiction.

[23] *O'Brien v Chief Constable of South Wales Police* [2005] UKHL 26, although not a coroner's case, is an important authority in this field and is often taken as a starting point for discussion of issues of this type. It sets out the now well-known two-stage process for dealing with issues of discovery in the course of an inquest. In the first instance, a coroner should gather material which is relevant or potentially relevant. Where material is relevant or potentially relevant, it should be disclosed (suitably redacted if necessary) to the PIPs. At a further stage often referred to as the 'control stage', with the benefit of submissions if necessary, the coroner should determine whether potentially relevant material is in fact relevant and capable of properly being deployed in the course of the inquest proceedings.

[24] In *Re Gribben's Application* [2017] NICA 16, the Court of Appeal observed that "the concept of potential relevance imports a broad ambit to the obligation of disclosure". This observation was made bearing in mind what had previously been said in *Re Jordan's Application* [2014] NICA 76, at para [22] and [43]. In *Gribben* the court also cited with approval the definition of relevance contained in *The Commissioner of Valuation for Northern Ireland v Debenhams plc* [2014] NICA 49 at para [13]. Evidence is relevant in a proceeding if it is "evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of the fact in issue in the proceedings". In that authority, the court had also observed that the modern approach is less concerned with degrees of probative value taken in the abstract than with the possible disadvantages of admitting or excluding

particular items and evidence. The modern tendency is towards admitting evidence and assessing its weight, rather than excluding it.

[25] Both the MOD and NOK also drew my attention to the first instance decision of Stephens J in *Re Jordan's Application* [2014] NIQB 11, particularly at para [190], which also addressed the two-stage approach to disclosure in coronial proceedings. The NOK relied upon this passage in support of their contention that, where it was possible to determine that the result of the control stage was inevitable (*viz* inevitable exclusion), potentially relevant material need not be sought. The MOD relied upon this passage in support of its contention that one ought not to elide the two stages unless, exceptionally, which was not accepted to be the case here, it was inevitable that later exclusion would follow.

[26] The MOD also drew my attention to the lengthy discussion of the disclosure obligations in coronial proceedings set out by Stephens J at paras [67] to [76] of that judgment and, in particular, to his reference to a coroner's duty to ensure that the relevant facts are fully, fairly and fearlessly investigated, especially where there was evidence of foul play. Quoting from *R v Coroner for North Humberside and Scunthorpe, ex parte Jamieson* [1995] QB 1, "He fails in his duty if his investigation is superficial, slipshod or perfunctory."

[27] I also found of assistance the recent decision of the Presiding Coroner, Humphreys J, in his ruling on the admission of similar fact evidence in 'the Coagh Inquest': see [2022] NICoroner 10.

Previous rulings on similar issues

[28] Although, as I have noted above, no court decisions were drawn to my attention which were directly on point, other coroners or inquiries have dealt with similar issues previously. I found their decisions illuminating, where detailed reasons were given.

The Bloody Sunday Inquiry

[29] My attention was drawn to the ruling of the Bloody Sunday Inquiry (BSI) on a similar issue, details of which may be found at Volume X of the Report of the Bloody Sunday Inquiry, Appendix 2, section A2.17. In the course of that inquiry, the Inquiry Tribunal was asked to obtain intelligence information from various security agencies relating to the actions of civilians who were involved in the events of Bloody Sunday and of witnesses. Both the MOD and NOK in this inquest relied upon the BSI ruling in different respects. I accept that that ruling bears close consideration as there is some similarity between the subject matter of that inquiry and these inquest proceedings and between the application made to that inquiry and the present application which I am considering.

[30] The BSI Tribunal divided the material in question into two categories, namely (i) material that might be *directly relevant* to the subject matter of the inquiry, and (ii) material that might go to the credibility of witnesses – although it was recognised that these two categories could well overlap. The Tribunal's key conclusion is set out at para 2 of the ruling:

> "In essence the Tribunal considered that directly relevant material should be produced to the Inquiry, but that there was no need to produce material relating exclusively to the credibility of witnesses i.e. material that did not contain matters of direct relevance. In the nature of things, the material held by the agencies that could be of interest to this Inquiry is likely to be related to membership of or association with paramilitary organisations operating in Northern Ireland and the plans and activities of those organisations."

[31] As to directly relevant material, the Tribunal identified three sub-categories of such material, as follows:

(a) The first sub-category was material that would add to the knowledge and understanding of the events in question, in other words information that threw any light either on the plans made by any paramilitary organisation for that day or on the actual events of that day.

(b) The second sub-category was material which might identify persons who were not presently witnesses to the inquiry but who might reasonably be supposed to be likely to have, or to be able to provide, information about the planning of paramilitary organisations for the event or about the actual events of the day.

(c) The third sub-category of material was material in relation to already identified witnesses which contained information which tended to show, or which permitted one reasonably to suppose, that those witnesses had or were able to provide information about the planning of paramilitary organisations for the event or about the actual events of the day.

[32] The Tribunal had previously ordered the production of the first category of material. It declined to order the general production of the second category of material, recognising that the trawl of information held by the relevant agencies would make this a virtually impossible task, but invited such disclosure to be made where it arose from a search conducted in respect of a specific individual. It saw no overwhelming difficulties in the agencies searching for and providing the third category of information, since that request would be limited to identifiable witnesses.

[33] The Tribunal also considered another possible sub-category of directly relevant material, that is to say material which related to credibility by virtue of it

either adding to or contradicting what the witness to whom it related had already told the inquiry. It was not considered that this material would in fact form a separate sub-category because information which added to or contradicted other testimony would in any event fall in one of the other sub-categories which had already been dealt with.

[34] In the course of its ruling, the Tribunal addressed a submission that the mere fact of membership of a proscribed organisation or paramilitary group would undermine the credibility of individuals giving evidence since their evidence "is in the nature of things likely to be slanted against the British Army". The Tribunal rejected that submission in the following terms:

> "The first difficulty with this submission is that it assumes that the material in possession of the agencies establishes to at least a reasonable degree of probability that the individual was a member of or associated with a paramilitary organisation or involved in its activities. We do not accept that this assumption is necessarily well founded. In the nature of things, as Counsel for the agencies put it, the material is generally at best only suggestive of membership of or involvement with the paramilitaries.
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> If the material is only suggestive rather than probative of membership or involvement, then it is difficult to see how without more it could fairly be deployed in the context of credibility to any useful effect. It is true, as Mr Elias QC said on behalf of some of the soldiers, that the material would not be deployed for the purpose of proving membership of or association with paramilitary organisations or their activities but rather to discredit the witness. However unless the material was probative of such involvement it could in our view hardly discredit a witness who denied the allegation, since the Tribunal would be left in doubt whether the individuals were involved in the activities that it is suggested would discredit that individual. The only way of resolving that doubt would be to embark on a satellite inquiry into the validity of the material i.e. an inquiry into the truth or falsity of information that at best only goes to credibility. We do not accept that this is an appropriate course for the Inquiry to take."

[35] I do not accept the NOK submission that their approach in respect of this application is supported by the approach taken by the BSI Tribunal. That may be so in respect of the material which would go to credibility only; but it is not the case in

respect of material which goes to matters of direct relevance or propensity. That said, the Tribunal did highlight a number of issues – particularly in respect of evidence going to credibility only – which might prove difficult to deal with at the control stage.

The Healey inquest

[36] In addition, I am also aware of a recent ruling (given on 9 January 2023) in a similar vein by Coroner Dougan in the inquest into the death of Desmond Healey. There are some common features between that inquest and the present inquest proceedings. Mr Healey was shot on Lenadoon Avenue in West Belfast on 9 August 1971 whilst present at a riot. The question of whether petrol bombs were used against the army during the riot is a contentious issue in that inquest; and it is within the scope of the inquest to investigate whether the deceased or any other person threw petrol bombs. A number of former soldiers described having come under attack from petrol bombs, whereas a large number of civilian witness statements say that no petrol bombs were thrown at the soldiers.

[37] The MOD asked the coroner to direct the PSNI to undertake searches for potentially relevant information in relation to a number of named individuals who admitted that they were present at the riot, or who were said by others to have been present at it. In that inquest, the next of kin opposed further intelligence searches being undertaken over and above any which had already been completed by the PSNI. A number of the witnesses concerned had admitted membership of a proscribed organisation or had admitted taking part in the riot. Some others were reported to have been members of the IRA. Some others, however, did not fall into either of these categories but were described being present at the riot or in the vicinity of those who were rioting.

[38] The MOD sought intelligence material in respect of these persons on the basis that it would or may be potentially relevant to the level of violence used against the army on the occasion when the deceased was shot and/or to the credibility of civilian witnesses. There is an obvious comparison therefore to be drawn with the present application. In a thorough and thoughtful ruling, the coroner began by reminding herself that the threshold of potential relevance which applies at the earlier disclosure stage is lower than that which applies when deciding what use, if any, may be made of the disclosure during the inquest hearing, such that the material gathered through the disclosure process will normally be more extensive than that it used in evidence.

[39] In the event, the coroner requested the criminal records of anyone who said they participated in the riot, or in respect of whom it *could* be suggested that they *may* have done so, either by the content of their own statement or by another witness placing them in the riot. In a later part of her ruling she included in this category a person whose statement placed himself "in and around the area of the rioting at the time of the rioting"; and others who placed themselves in or around the rioters "in a

manner which could allow it to be suggested they were involved in the rioting, even though they do not say they were rioting themselves". She did not extend that enquiry in a blanket fashion to all civilian witnesses in the inquest. However, the requests she did make for criminal records were to be made to assist her with the issue of direct relevance she identified, namely whether any of the individuals had been participating in rioting at around the time when Mr Healey was shot.

[40] She continued:

> "The argument in respect of obtaining criminal records to review for potential relevance on credibility *per se* is not as strong in the circumstances of this case. I do not think the content of a criminal record is likely to assist me in determining whether the witness's account as credible or otherwise on the issue of whether petrol bombs were used on 9 August 1971."

[41] Where criminal records were being obtained on the issue of direct relevance, however, consideration would also be given to disclosure of entries on the records which spoke to credibility.

[42] As to other sensitive material which the MOD wished to be searched for, the coroner made the following observations:

> "Sensitive material is not normally in the form of a finding, like a conviction. It is not a requirement that material be in the form of a finding before it can be determined potentially relevant and the disclosure of such information, normally intelligence, is not uncommon in inquests. However, there is generally greater difficulty in testing such information. It can give rise to satellite disputes. It can also be difficult to assess what weight, if any, ought to be attached to it in the event that the Court permits it to be deployed at hearing and/or included in the evidence. However, they are principally issues for submission at the control stage.
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> If it is possible to arrive in advance at a conclusion that information will inevitably be excluded at the control stage, there is no utility in obtaining it at the earlier disclosure stage. The NOK invite me to reach that conclusion in respect of the MOD and M23 requests for other information in this inquest. However, that is a difficult predictive conclusion to reach before knowing what the product of the searches is, if anything, as it has not yet been obtained."

[43] This point was reiterated further in a later passage of her ruling:

> "The NOK submitted that I should be careful to consider the nature of the material being sought under this limb and that it would be untested and untestable. However, that is an issue for submission at the control stage unless I can conclude that material, which I do not yet have, will inevitably be excluded. I am unable to reach that conclusion in respect of information speaking to petrol bombs."

[44] The coroner therefore directed PSNI searches to be made in respect of other incidents where those present at the riot had used or been associated with petrol bombs. Even though she recognised that such information may be untested, she considered that this could be potentially relevant to the likelihood of petrol bombs being used at Lenadoon on the subject date. The inquiries were to be limited to seeking information concerning the use of, or association with, petrol bombs by those who admitted participating in the riot or admitted being present at it and upon which there was some basis that it could be suggested by another that they participated even if they did not say so themselves. The searches so directed would be limited in time, covering only material relating to the period from 1 January 1968 until 31 December 1979.

[45] As to the question of directing further searches of such material in relation to credibility issues only, Coroner Dougan said this:

> "I am also not persuaded by the request to search for other information speaking to the credibility of civilian witnesses, either generally or in the context of affiliations with proscribed organisations. The scope of such enquiries would be broader. They would take longer. There would be much greater scope for satellite issues and disputes to arise. Most importantly, I do not think any materials generated by the search would help to inform my findings. This is in stark contrast to the significance of the petrol bomb issue."

The Ballymurphy Inquest

[46] My attention was also drawn to the approach of the now Lady Chief Justice, sitting as a coroner in the inquests collectively known as 'the Ballymurphy Inquest'. In the course of evidence relating to "Incident 1" in that inquest a civilian witness revealed the name of two gunmen whom he said were present in the field at the time when two of the deceased (Father Mullan and Frank Quinn) were shot. Material, including intelligence material, about those two individuals was obtained from the

PSNI and considered by the coroner, with a summary of potentially relevant material being provided to PIPs in that inquest. Evidence so obtained, to the effect that the two men had known IRA associations, was taken into account by Keegan J as corroborating the oral evidence which had been given in relation to them (see paras [73] and [482] of the findings in the Ballymurphy Inquest in relation to Incident 1).

[47] In the same inquest, but in a different context, the coroner was asked by the next of kin to obtain information which may be held by the PSNI in respect of two civilian witnesses (Witness X and Witness C3). These were referred to as 'bad character' applications and sought, inter alia, material calling into question the witnesses' credibility as a witness to the proceedings, material touching on any allegiance or perceived allegiance on the part of the witness to loyalist organisations, and material suggesting that the witness served in or was directly or indirectly connected with British armed forces. The basis for the application was concern as to the manner and timing in which the witness came forward and asserted doubt as to significant aspects of their evidence when compared with other evidence in the proceedings. The coroner asked for a criminal record check to be conducted in relation to C3.

[48] I did not find reference to this inquest to be of particular assistance since there does not appear to be a written ruling dealing with the issues discussed above; or, at least, none has been provided to me. I simply take from the above summary that the type of information sought by the MOD can, in certain circumstances, be obtained and deployed; and that a coroner should be more ready to seek criminal record checks than direct an intelligence trawl in relation to a witness about whom there may be concerns.

Ruling on the additional inquiries sought

The principle of seeking further material

[49] There is some force in the NOK's submission that the material exhibited to Person A's statement was not new material but had previously been provided to PIPs along with earlier disclosure. In addition, a number of the individuals identified in the MOD request were not identified in Person A's statements, nor those portions of the exhibited material to which he referred. In short, a number of the requests might be said to have been 'dressed up' as arising from Person A's evidence whereas, in fact, they arise from other material which might have prompted the request to have been made at an earlier stage. Nonetheless, the issue raised by this application is one that was always going to have to be grappled with in the course of these proceedings. It is a shame that it was not raised for determination at an earlier stage. However, given the modular approach to the inquest which has been adopted, I am satisfied that the issue – if further information from the police is to be sought – can be addressed with less disruption to the inquest hearings than would have been the case if the inquest hearing had been planned to commence at this stage and simply run until its conclusion.

[50] It is clear that the use (or absence of use) of armed force against the soldiers stationed in Corry's Yard is one of the main contentious issues in this inquest and is relevant to any claim of justification for the use of lethal force on the part of the army. Whether any of the deceased may have been struck by a bullet fired by civilians *at* the army, rather than by a round fired by a soldier, is also a live issue in the inquest. Relatedly, the extent of operations on the ground on the part of the Provisional or Official IRA sounds on these issues. (I note that the Springhill Massacre booklet includes the claim that "most of the IRA units went to engage the British" in Lenadoon, such that "consequently, there were few IRA activists in other areas, including Springhill".)

[51] This issue can, of course, be explored with witnesses in oral evidence. However, I consider there to be force in the submission made on behalf of the MOD that there may be a reticence, for a variety of reasons, on the part of witnesses to identify themselves or others as being involved in unlawful activity or in proscribed organisations in the course of their evidence.

[52] A further feature of this inquest highlighted by Mr O'Rourke in his opening was the relative lack of contemporaneous records or documentation, which has arisen for a variety of reasons. There is some such information available in the form of army logs; but little contemporaneous documentation which might shed light on what, if anything, paramilitary organisations were thought to be doing in the Springhill/Westrock area at the relevant time.

[53] Information about military witnesses' conduct, extraneous to the events of 9 July 1972, may be relevant and is likely to be disclosable to some degree in the course of these proceedings. For instance, details of other lethal force incidents in which soldiers have been involved is regularly provided. A range of other information about the soldiers conduct and any disciplinary issues (or indeed criminal offending) may be apparent from their personnel files, which are regularly disclosed in proceedings such as these. Again, argument will frequently be necessary about the actual relevance, if any, of these matters at the control or deployment stage. Much will depend upon the similarity of the circumstances of any other misconduct to the circumstances of the incident giving rise to the deaths within the scope of the inquest.

[54] As the Court of Appeal noted in *Gribben* at para 50(vi), "Evidence that the person had behaved in a particular way in the past may, if true, be probative of the manner in which he engaged in the subject incident."

[55] Bearing these factors in mind, I have been persuaded that it is appropriate to seek some further information in relation to particular categories of individuals (discussed below) which may be of direct relevance to the contention that weapons were fired at the army personnel stationed in Corry's Yard at or before the time of the deaths which are the subject of this inquest. It is possible (and I put it no higher than that) that there may be intelligence material which is highly relevant to this

aspect of my inquiry and which, if undisclosed to the coroner's office, may undermine the thoroughness of the inquest process or result in an approach which is unduly one-sided. The key reason behind my decision to seek some further material from the PSNI in this regard is the risk that the failure to make such inquiries might result in complete ignorance of important information which is relevant to the central issues described at para [50] above.

[56] Intelligence material is obviously of a different character to a conviction determined by a court, with a variety of procedural protections for the defendant, to the criminal standard of proof. It may be from a source who or which is unidentified or unidentifiable, where the material has not been tested. In the NOK submission "it is nothing more than an unsubstantiated allegation" and "it cannot be tested in any way". The fulcrum of the NOK submissions is that such material will *inevitably* be excluded from deployment or use at the inquest at the control stage.

[57] I cannot accept the NOK submission in the sweeping absolutist terms in which it is made. As Coroner Dougan outlined in her ruling in the *Healey* inquest, these are essentially issues to be addressed at the later control stage. They cannot be determined in the abstract. In the event that public interest immunity (PII) applications are made for such material and upheld, the material will not be deployed. It may well, however, be possible for such material to be gisted and for any witness to whom it speaks to be given an opportunity to respond (subject to their exercise of the privilege against self-incrimination, where relevant). The non-admission of such evidence in any way cannot simply be assumed at this point.

[58] I accept Ms Quinlivan's point that the type of material sought in this case is different from that sought in the *Jordan* and *Gribben* cases; but I also accept Mr Aiken's counter-point that this is simply a product of the different circumstances and different contentions which arise in these proceedings, such that that objection should not be determinative of the issue before me.

[59] I agree with the approach taken by the BSI Tribunal that it cannot be the case that even directly relevant material should not be sought from the PSNI. To adopt that approach would be a derogation of the coroner's duty to conduct a thorough inquiry, including by at least making some investigation of material of this nature which may be held and then considering it further. The BSI Tribunal considered many of the same arguments which have been raised before me but was not persuaded (see para 39 of its ruling) that any of those matters led to the conclusion that no request should be made to the relevant agencies to produce any material of direct relevance. The weight of any such material could not be assessed in the abstract and would have to be addressed at a later stage in light of all of the material put before the inquiry. The Tribunal envisaged that upon review by its counsel, as frequently happens in the course of inquests where counsel on behalf of the coroner are instructed, matters of minor or peripheral relevance would be excluded from disclosure, as could matters on which there was already abundant evidence (see para 42 of the ruling). The central point however was that none of these issues could be

addressed in the abstract (as the NOK invite me to do in the submissions in this application).

[60] In oral submissions, Mr Aiken made clear the MOD was not seeking material which related purely to the issue of credibility or to ground a collateral attack on credibility, albeit that his client did not abandon the contention that such material might be disclosable on that basis only. Rather, they were seeking only material which would assist in fact-finding as to who was present, who was armed, who was shooting and what they were shooting at. In my view, he was correct to make this concession. In common with the approach taken by the BSI Tribunal and the coroner in the Healey inquest, I would not have been minded to seek material which goes exclusively to the credibility of witnesses. In so far as the written submissions on the part of the MOD have maintained that credibility on its own would be a sufficient reason to seek the production of the material, I reject that submission.

[61] I do not accept that it necessarily follows that, simply because I will direct the police to provide some information (should it exist) relevant to the MOD's request, the same approach will necessarily be appropriate in respect of military witnesses. As I observed in the course of exchanges during the hearing of this application, there is an obvious distinction to be drawn between soldiers on the ground, whom we know were openly armed, and civilians who (on the soldiers' case) were operating covertly in plain clothes and likely under the auspices of a proscribed organisation. This is not, however, an issue which needs to be determined at this stage. I will hear further argument on it in due course, if necessary. As set out below, I do intend to seek criminal records in respect of military personnel who were on the ground in Springhill/Westrock during the period of the contentious events in the same manner as I have done for civilian witnesses.

[62] I accept Ms Quinlivan's submission that the obligation to obtain potentially relevant material is tempered by an obligation on the part of the coroner not to act in a disproportionate manner. This flows, at least in part, from the balance to be struck between the obligation to conduct a full investigation and the obligation (contained in rule 3 of the 1963 Rules) to make inquiries "without delay" and hold an inquest as soon as is practicable. In cases where article 2 ECHR is engaged, there is also an obligation to progress an inquest with reasonable expedition. The striking of this balance is evident, in particular, in the approach taken by the BSI Tribunal to the issue of searching for intelligence material. It was also encapsulated by Coroner Dougan in her observation in the *Healey* ruling that:

> "There is a duty on a Coroner to obtain material that is potentially relevant to the inquest. This can include material which speaks to the credibility of witnesses. However, I do not believe that duty extends to making every conceivable enquiry for potential disclosure."

[63] Bearing this in mind, I intend to delineate the persons in respect of whom such further information should be sought, and the information which should be the subject of further searches, in the manner discussed below.

The 'trigger' for requesting a search for further material in respect of an individual

[64] The issue I have found most difficult in determining this application is the question of what the 'trigger' should be for requesting additional documentation. If the exercise is to be anything other than a mere fishing expedition, there must be some catalyst for requiring further, potentially laborious, searches to be undertaken.

[65] In considering this issue, I have sought to focus on the fact in issue to which the putative further disclosure may be (potentially) relevant. This must be the contention that civilians were armed and firing at the military personnel in Corry's Yard. That is the key issue to which the further searches should be directed. However, whether an individual was or was not a member of a proscribed organisation is, in my view, likely to speak to the probability of their having access to a weapon and/or firing it at military personnel. I say this for three reasons. Firstly, membership of a proscribed organisation is at least suggestive of a willingness to act illegally in pursuit of a political viewpoint. Secondly, such organisations are likely to have had more ready access to weaponry than other civilians and to have deployed them (if at all) for use by their members. Thirdly, in the particular circumstances of this inquest, there is a suggestion (contained in the Foreword to the Springhill Massacre booklet) that the events in question followed an express statement from the headquarters of the Provisional IRA to the effect that "all IRA units have been instructed to resume offensive action". Accordingly, the searches should also be directed towards information suggesting membership or participation in the activities of a proscribed organisation at a time relevant to the inquest proceedings.

[66] Accordingly, I propose to ask the PSNI to disclose such other information as it may hold in respect of civilian eyewitnesses (in the sense described at para [77] below) or other civilians (including those who are deceased) who were physically present at the events in Springhill/Westrock on the evening of 9 July 1972, who fall within the following categories:

(a) A person who has admitted involvement in a proscribed organisation or its activities, or to whom another witness or an apparently reliable open source (such as a public claim or assumption of membership by or on behalf of the proscribed organisation itself) ascribes such involvement;

(b) A person who has admitted being in possession of a weapon that night or whom another witness describes as having been in possession of a weapon;

(c) A person whom there is evidence to suggest was an occupant of a car in which there were armed civilians in the area, or who was in the immediately

proximate vicinity of such a car at the time when firing by the army occurred; and

(d) A person whom there is evidence to suggest was at or about (*viz* in the immediately proximate vicinity of) a specifically identified location from where there is evidence that an armed civilian was firing at soldiers in Corry's Yard at or about the time of that person's presence there.

[67] In respect of the first two categories, an objection might be made that any additional information which might be obtained may add little, if anything, to the evidence already in the open about this issue. However, that can be considered at the control stage, with the benefit of whatever further information (if any) there may be about what the individual may have been doing.

[68] Mere inconsistency in an individual's account (or between different accounts given by them) would not, in my view, provide a proper basis for seeking intelligence information in relation to them. Nor would mere presence in the general area of Springhill or Westrock on the night in question.

[69] In light of the contents of this ruling, the coroner's team of counsel will seek (in the first instance) to identify which witnesses fall within the categories set out above. My provisional view in respect of those individuals whose names were put forward in the MOD's correspondence of 1 February 2023 is that information should be sought in respect of each of the individuals named, as falling within one or more of those categories. I emphasise that this is not to suggest that I have made any finding, or even taken any provisional view, as to their actions on 9 July 1972 or at any other time. It merely reflects that they are within a category of person in respect of whom it seems proper to make further inquiries, in some cases simply on the basis of where some evidence may place them on that night in conjunction with the soldiers' accounts of where shooting may have come from (albeit those accounts are disputed and might not prove to be well-founded in the light of all of the evidence). All of that remains to be considered further in much greater detail in the remainder of these proceedings.

[70] I am conscious of the NOK's concern that the present application may represent a "Trojan horse" such that, in the event that it is successful to any degree, the MOD will follow it up with wide-ranging request for further information be sought in respect of a wide range of additional witnesses. Mr Aiken has been upfront that it is likely that further such requests will be made; but at the same time he made clear that he and his team would be discriminating in terms of those who would be the subject of any such request, focusing carefully on establishing a proper basis in the evidence for any such request. I take that assurance at face value.

The parameters of any further search

[71] As to the parameters of the request for information the police should seek to find, assimilate and disclose when they are undertaking a search in respect of an individual falling within one of the categories identified in para [66] above, I intend to limit this both in terms of subject matter and timeframe. As to subject matter, the potentially relevant information which police should seek to find and disclose is as follows (drawing on the analysis helpfully provided in the BSI ruling discussed above):

(i) Information relating specifically to the events in Springhill/Westrock on 9 July 1972, including any plans or activities of the individual or a proscribed organisation in which they may have been involved on that day. (It is to be hoped that the vast majority, if not all, of any such information will already have been disclosed to my office in the PSNI's sensitive material as a result of its obligations under section 8 of the Coroners Act (Northern Ireland) 1959, although Mr Coll KC was reluctant to give any guarantee that this would prove to be so).

(ii) Information within such researches which identifies other persons who are not presently identified as witnesses in this inquest but who might reasonably be supposed to be likely to have, or be able to provide, information about any planning of proscribed organisations for activity in the Springhill/Westrock area 9 July 1972 or about the actual events of the day.

(iii) Information suggesting that the individual was involved in the commission of firearms offences; terrorism or terrorist-related offences; or offences of violence against police or security forces.

(iv) Information suggesting that the individual was a member of a proscribed organisation.

[72] As to temporal limitation:

(a) the information in categories (i) and (ii) should be disclosed whenever it arose; but

(b) the information in categories (iii) and (iv) should be disclosed, whenever it arose, only insofar as it relates to the individual's actions or activities in the period between 1970 and 1974 inclusive. (This takes in the turbulent period of the Troubles which included internment, the Ballymurphy shootings, Bloody Sunday and of course, centrally, the subject matter of this inquest).

[73] I accept the broad thrust of the NOK submission that the relevance of any involvement in proscribed organisations some time *after* the events of 9 July 1972 is greatly reduced: firstly, because it relates to a period after the events this inquest is examining and, secondly, because it is a known feature of highly contentious events such as those I am considering that individuals can be radicalised by what has

happened or by their or their community's perception of what has happened. A proper focus, therefore, should be on information suggesting that relevant persons were a member of such an organisation before or at the time of the shootings in question, or only a short time afterwards. The suggestion that membership of such an organisation a longer time after the events of 9 July 1972 is relevant to credibility raises the concerns referred to by the BSI Tribunal and referred to at para [34] above, as well as those referred to by Coroner Dougan in the passage cited at para [45] above.

[74] If the PSNI has any doubt about the relevance of the material, it should be produced for consideration by myself.

Criminal record checks

[75] In a piece of prior correspondence to my office, of 31 January 2023, the CSO on behalf of the MOD had requested that I should obtain from the PSNI the criminal records of "all eyewitness civilian witnesses". It was submitted that, if those criminal records contained convictions for violent, terrorist or dishonesty related offences, then those matters would be relevant to the substantive issues arising in the inquest, as well as the credibility of the witnesses. That correspondence flagged that "it is likely to be the case that there are identifiable individuals about whom the Coroner ought to seek additional potentially relevant documentation from PSNI", foreshadowing the main application with which this ruling deals.

[76] The NOK accepted that I may direct that criminal records be obtained where this was relevant to an issue in the inquest. They did not object to my obtaining criminal records, if they exist, "for the deceased, injured or witnesses, including those who would be called to give evidence if they were available, for the purposes of assessing the potential relevance". It was noted that this concession should not be taken to mean that criminal records would be admissible as evidence: that is a matter for the control stage and will depend on a range of factors. In principle however it was accepted that criminal records "are potentially relevant documents, are disclosable and are potentially deployable".

[77] In light of the approach adopted by the NOK in relation to this issue, and on a pragmatic basis to move matters forward quickly so as to minimise disruption to the evidence planned to be heard in this first module, I directed that a request should be made of the police to disclose to my office the criminal records of all civilian eyewitnesses (that is to say, witnesses to the events in contention on the ground on the night of 9 July 1972 but excluding, for instance, those who came on the scene afterwards such as ambulance drivers who did not offer any evidence relevant to the actual shootings). I emphasised that this ought not to be taken as setting any precedent for future cases; and that I had adopted this approach in the interests of expedition, bearing in mind the (relative) speed with which such requests could be complied with on the part of the police. I also bore in mind that where an individual has been convicted, any such conviction will have arisen after due process. Further, I

indicated that, where I consider any of the contents of a criminal record to be potentially relevant and so liable to disclosure, before making any further disclosure to the PIPs the relevant individual would be informed and given an opportunity to make representations. I am conscious of the 'chill factor' which the obtaining and potential disclosure of a witness's criminal record may have on their cooperation with a coroner's inquiry; so I emphasise again that the expansive approach I have adopted to this request should not be taken as viewed as a standard in any way.

[78] In terms of guiding principles which will govern my approach to the ascertainment of potential relevance of the contents of such criminal records, I do not intend to disclose convictions which might be thought to be collaterally relevant to the issue of credibility only (for instance, theft convictions or benefits fraud convictions). I also do not consider that convictions for offences of violence are likely to be even potentially relevant unless they were proximate in time to the events under consideration in these proceedings, more than low-level assaults and politically motivated and/or committed in circumstances related to the activities of a proscribed organisation. In respect of some convictions, this might require some further inquiries to be made. Offences will obviously be much more relevant where they disclose involvement in a paramilitary organisation or some kind of terrorist offending; and the closer they are in time to the events with which these proceedings are concerned. In light of the conclusive nature of a finding by a criminal court, however, I would intend to disclose relevant convictions, as described above, which arose further after the event than I am requiring to be addressed in intelligence searches.

[79] In the interests of fairness and balance, I will direct the police to disclose the criminal records of any soldiers on the ground in Springhill/Westrock on the evening of 9 July 1972 in order that any entries can be assessed for potential relevance. As indicated above, I make no ruling on the NOK's request for wider searches on military witnesses to be conducted at this time and will hear further, specific argument on that if it is pursued. Such witnesses will be called in a later module of the inquest and determination of this issue is less pressing than it is in respect of civilian witnesses to be called in the first module.

Conclusion

[80] As did the BSI Tribunal in the case of its inquiry, I recognise that the outcome of this ruling is likely to give rise to some delay and also that, for a variety of reasons, it may lead to disclosure of material which in the end may not be capable of fairly being taken into account. However, it seems to me that, as it did to that Tribunal, the duty to explore relevant avenues and lines of enquiry which may assist in determining what happened in respect of the deaths which are the subject of these proceedings must lead me to start on the process of discovering whether the PSNI has any directly relevant material of the nature discussed above. The modular approach which has been adopted in relation to this inquest will hopefully reduce any delay or disruption to which the outcome of this ruling may give rise; as, I hope,

will the limitations which I have considered it appropriate to impose on the further searches.

[81] The outcome of this ruling can be kept under review as the evidence develops and subject to any unforeseen developments which might arise (including as a result of the searches which the PSNI will now be directed to undertake).

Postscript

[82] The names of those in respect of whom additional searches were sought have been anonymised in the version of this ruling which has been published for wider dissemination than merely the PIPs in the inquest who received the original version of the ruling. The reasons for this are set out in Ruling No 3 in this inquest (see [2024] NICoroner 3, at paras [26]-[34], and particularly at para [32]).