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*Judgment: approved by the court for handing down  
(subject to editorial corrections) \**

*Delivered: 14/06/2024*

**IN THE MATTER OF THE CORONERS ACT (NORTHERN IRELAND) 1959**

**IN THE MATTER OF AN INQUEST INTO THE DEATH OF  
THOMAS FRIEL**

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**HHJ REEL**

***Introduction***

[1] Mr Thomas Friel (“the Deceased”) was born on 9<sup>th</sup> April 1952 and died on 22<sup>nd</sup> May 1973, aged 21. He had been admitted to Altnagelvin Hospital at 1:45 am on 18<sup>th</sup> May 1973, at which time he was deeply unconscious, with fixed dilated pupils, which were unreactive to light. He was taken to the Intensive Care Unit, surgery was carried out, he was returned to the Intensive Care Unit, but his condition deteriorated and he died at 6:10 pm. The cause of death, as stated by Dr Carson, the deputy state pathologist in 1973, was:

- 1(a) bruising, necrosis and oedema of brain  
associated with

fracture of skull

due to

(b) a blow on the left side of the head

[2] The events leading up to the deceased receiving the blow to the left side of his head was the subject of inquiry in this inquest. Those events commenced with a routine patrol being conducted by the 3<sup>rd</sup> Royal Anglian Regiment, around midnight on the 17<sup>th</sup>/18<sup>th</sup> of May 1973. During that patrol, there was an initially innocuous encounter between the soldiers and a drunk man, that developed over the next few hours into a confrontation between local youths, throwing stones, bottles and other projectiles at the soldiers, and baton rounds being fired by the soldiers in the direction of the youths. It was in the context of that exchange that the Deceased tragically lost his life.

### *History of Proceedings and Evidence*

[3] An inquest inquiring into this death was first held on 6<sup>th</sup> March 1974 (“the March 1974 inquest”), returning an open verdict. On 16<sup>th</sup> December 2013 the Attorney General for Northern Ireland directed that an inquest be held into this death. An inquest was then held between 1<sup>st</sup> and 18<sup>th</sup> November 2021 (“the November 2021 inquest”). The findings delivered on foot of the November 2021 inquest were quashed by the High Court on 6<sup>th</sup> November 2023, which directed that a fresh inquest be heard by a different coroner. The inquest proceeded before me, a County Court Judge sitting as coroner, and was heard without a jury, a procedure provided for by s.18 of the Coroner’s Act (Northern Ireland) 1959.

[4] This inquest heard evidence between 11<sup>th</sup> and 13<sup>th</sup> March 2024. The witnesses to the inquest had previously given evidence to the November 2021 inquest. Given the time that had elapsed since the events that were the subject of the inquest, many witnesses had died. Some witnesses had testified in the November 2021 inquest that they no longer recalled the events in question, or indeed, the statements that they made during the investigation of the death that had followed at the time. This allowed for consideration of which witnesses might usefully be called to give evidence, and in respect of those that did give evidence, it allowed for their questioning to be focused on issues that they could usefully address.

[5] By virtue of those considerations, much of the evidence in this inquest, from witnesses who had died or were no longer available, consisted of statements and documents prepared in the early 1970s that were admitted in evidence by way of rule 17 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, which provides:

“(1) A document may be admitted in evidence at an inquest if the coroner considers that the attendance as a

witness by the maker of the document is unnecessary and the document is produced from a source considered reliable by the coroner.

(2) If such a document is admitted in evidence at an inquest the inquest may, at the discretion of the coroner, be adjourned to enable the maker of the document to give oral evidence if the coroner or any properly interested person reasonably so desires.

(3) Such a document shall be marked by the coroner in accordance with these rules with the additional words “received pursuant to Rule 17.”

[6] In respect of those witnesses that did give evidence, the inquest had available to it transcripts of the evidence that they gave at the November 2021 inquest. The decision was taken not to call witnesses again, where their evidence in the November 2021 inquest had not been the subject of significant challenge, or where they were now no longer available. Those witnesses were ruled unnecessary and the transcripts of their evidence at the November 2021 inquest were admitted in evidence pursuant to r.17. In advance of the commencement of the Inquest I held a series of Preliminary Hearings (PHs) during which I invited counsel for the Properly Interested Persons to liaise with my counsel to see if agreement could be reached as to which witnesses should be re-called to give oral evidence and which witnesses’ evidence could be received in documentary format. I am pleased to say that counsel came to an agreement about which witnesses should be called to give oral evidence. When this was presented and explained to me, I was happy to endorse the proposal. I did, however, make clear that counsel could ask me to recall any other witnesses they thought would be helpful to give oral evidence before the conclusion of the evidence.

[7] In relation to those witnesses who did give evidence before me, they were afforded the opportunity to confirm the accuracy of their evidence given to the November 2021 inquest. Their statements were received pursuant to common law. In many instances they had testified in November 2021 that they could not recall the events in question or indeed the circumstances in which they made their contemporaneous statements. There was little evidential value to be obtained by repeating such questioning. It followed that questioning before this inquest was limited to issues that arose from the evidence given previously or in respect of matters where additional questioning appeared appropriate. The questioning of witnesses took up two days of court time, nevertheless I was satisfied that it produced as complete an evidential picture as was possible at this remove.

[8] Much of the evidence considered in this inquest was adduced pursuant to r.17 or common law. A schedule of that material is appended to these findings. Much of that material, although considered, will not be referred to within these findings, which focus on the evidence that bears on the issues within Scope.

[9] One matter that does bear comment is that of delay. The events that gave rise to this inquest occurred in 1973, over 50 years ago. That materially affected the quality and quantity of the evidence available to the inquest. Many potential witnesses had died. Of those available, most stated that they could not recollect what had happened. The effect of delay and its capacity to interfere with justice, both in terms of denying its prompt delivery and in terms of its effect on the quality of evidence that can be obtained, which is of course the basic material from whence findings can be derived, is well recognised and has been commented in many decisions, see for example Patrick Pearse Jordan [2016] NI Coroner 1. This inquest was at the longer end of the spectrum of delay. The oral evidence of those few witnesses who appeared at this inquest deserved to be viewed through that prism.

*Scope, Human Rights Act 1998 and ECHR Art.2*

[10] The scope of the inquest was defined by a document dated 16<sup>th</sup> January 2024 and adopted at hearing. The role of the inquest is defined by rule 15 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963, which provides:

“The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely:

- (a) who the deceased was;
- (b) how, when and where the deceased came by his death;
- (c) the particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.”

[11] Some inquests perform a function beyond that defined by rule 15. Article 2 of the European Convention on Human Rights enshrines a right to life. This right gives rise to both substantive obligations on member states to protect life and prohibit the intentional deprivation of life, and a procedural obligation to carry out effective investigations into alleged breaches of the substantive obligation. Where it arises, this procedural obligation to conduct an effective investigation can be fulfilled by an inquest. When a coroner conducts such an inquest, the coroner is compelled to conduct a broader inquiry, so that the ‘how’ question includes consideration of ‘by what means and in what circumstances the death occurred’ (*R (Middleton) v West Somerset Coroner* [2004] AC 184). I ruled that the article 2 ECHR investigative obligation did not apply to this inquest. In reaching that conclusion, I relied upon the decision of the High Court in the case of *Bradley* [2024] NIKB 12.

[12] Having considered *Re McKerr* [2004] UKHL 12, *Šilih v Slovenia* [2009] 49 EHRR 37, *Re McCaughey’s Application* [2011] UKSC 20, *Janowiec v Russia* [2013] 58 EHRR 30, *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69,

*Re Finucane's Application* [2019] UKSC 7, *Re McQuillan's Application* [2021] UKSC 55 and *Re Dalton's Application* [2023] UKSC 36, Humphreys J distilled a set of principles guiding the application of the Article 2 investigative obligation to the legacy inquests before him. He said:

- “[99] The principle of legal certainty, espoused by all parties to this litigation, delivers the following outcomes:
- (i) No death which occurred before 2 October 1988 can engage the article 2 procedural obligation as a matter of domestic law, save where the Convention values test is met. This is the fixed and outer limit of the genuine connection test;
  - (ii) Where a death occurred between 2 October 1988 and 2 October 1990, the article 2 obligation may be engaged where:
    - (a) The original investigation was seriously deficient; and
    - (b) The bulk of the investigative effort was carried out after 2 October 1990.
  - (iii) Where a death has occurred between 2 October 1990 and 2 October 2000, the temporal aspect of the genuine connection test will be satisfied but the article 2 procedural obligation will only apply when much of the investigation took place, or ought to have taken place, after 2 October 2000;
  - (iv) For any death occurring after 2 October 2000, the article 2 procedural obligation will apply;
  - (v) If the Convention values test is satisfied, then the article 2 obligation will apply to a death occurring after 14 January 1966.”

[13] Applying those considerations to this inquest, the matter being inquired into falls within sub-paragraph (i); a death before 2 October 1988, to which the article 2 procedural obligation does not apply. The Convention values test did not apply here.

[14] However, and as was noted by Humphreys J in *Bradley*, the impact of that ruling on the nature of the inquest, whether in terms of evidence admitted, questioning of witnesses or the nature of the findings delivered, may vary.

[15] The scope of this inquest, beyond a simple restatement of the rule 15 questions, encompassed the following:

- “3. Related to the “how” question, the coroner will consider:

- (a) Evidence relating to the circumstances in which the deceased and military personnel came to be at the locus of the incident(s) at the relevant time.
- (b) the evidence of witnesses at or near the scene of the incident in which the deceased was allegedly struck by a baton round.
- (c) evidence relating to the use of baton rounds around the locus and time at which the deceased was injured.
- (d) evidence relating to the nature of the injury sustained by the deceased, to include the treatment of the injury.
- (e) evidence addressing the mechanism of injury, including;
  - i. all witness and documentary evidence providing a history of how the deceased came to be injured
  - ii. pathology evidence and in particular, pathology evidence relating to the cause of death;
  - iii. evidence relating to the weapon and baton rounds used in the incident, to include;
    - a) evidence of the range at which rubber baton rounds were discharged, and as to the likelihood of the rounds inflicting injury at such ranges.
    - b) evidence of what such rounds were aimed at, to include training, rules of engagement, guidance and practice in that regard, and the accuracy of such rounds.
  - iv. evidence relating to the condition of the accident locus.
  - v. evidence as to whether the deceased fell and what he fell onto.
  - vi. evidence as to how the deceased was removed from the scene of the incident.

[16] It is worth also stating that the disclosure exercise, including the review of sensitive disclosure undertaken by the previous coroner, performed for the November 2021 inquest was not repeated, neither were the applications in relation to anonymity, screening and remote evidence re-argued. With the agreement of the Properly Interested Persons, this inquest operated on the basis of those previous rulings, and on foot of the previously provided disclosure. The question of disclosure remained under review at all times. However, in the event, given the evidence received, which rarely progressed beyond that already given, no additional disclosure was triggered.

[17] In terms of the basis on which the inquest operated, this is an inquisitorial procedure. There is no 'party' as such who bears an onus of proving a particular fact. However, any conclusion or fact that I find must be proven to the civil standard, of being proved on the balance of probabilities.

## **REVIEW OF THE EVIDENCE**

### ***Brian Murphy***

[18] Although he did not give oral evidence to me, Mr Brian Murphy, Consulting Engineer, provided reports, maps and photographs of the locus and surrounding area. He gave oral evidence to the November 2021 inquest, his reports, a transcript of his evidence, his maps and photographs were all admitted in evidence pursuant to r.17.

[19] Much of the evidence in this inquest relates to a feature referred to as the sunken path. This is still in existence. However, there has been what was described as in-fill development between it and Creggan Heights, so it is possible that the edge of the path has changed. The path itself is now fenced. There is no useful information to be gained about its elevation or illumination from an engineering review of available documentation. Similarly, the site of the old military camp, from where the military patrol emanated, has been obliterated. The position of the army camp on Piggery Ridge cannot now be identified. The mouth of the sunken path seems likely to have changed, where it meets Blighs Lane.

[20] However, Mr Murphy was able to examine contemporaneous Ordnance Survey mapping, grid references provided in soldiers' statements and marked maps prepared as part of the original investigation of this death. From that data he was able to say that the distance from the end of the sunken path to the junction of Creggan Heights and Blighs Lane is 85m. This is an approximate figure, the topography of the mouth of the path having changed. The papers contain a map, marked C8 and exhibited to the statement of Constable Parks. It has locations marked for the home of the deceased, the location of Soldier B and the position of the Deceased. The latter is marked 'X' and bears the label 'Position of Deceassd' (sic). The origin of the 'X' on that map is unclear. It may have been added by Royal Military Police ("RMP") when military statements were being collated, it may have been added after the police spoke to Seamus Friel, as it is exhibited to d/c Park's statement. It is not possible to say. The distance from this 'X' to the junction of Creggan Heights and Blighs Lane is 62.1m. It

follows that this 'X' is a little over 20m away from the end of the sunken path, and a little further from soldiers, who had taken up a position on the sunken path.

[21] The position of this 'X' does lead to a discrepancy, noted by Mr Murphy and the Historical Enquiries Team ("HET") investigation of this death (that took place in the early 2000s). Soldier B says that he was lying on the bank of the sunken path when he fired at targets he describes as being 25 - 30m from him. While this might meet with a rough approximation of the distance between his position and the marked 'X,' it does not accord with his next remark - that the person hit fell about 20m from the junction (of Blighs Lane and Creggan Heights). A point 20m from that junction would still be 35 - 40m from the marked 'X.'

[22] The Deceased's home was only a short distance along Creggan Heights from the junction with Blighs Lane, approximately 10 doors along the street of terrace houses.

### Civilian Evidence

[23] None of the civilian witnesses gave oral evidence to me. However, statements they made, and depositions to the original inquest, were received, as were subsequent published accounts and transcripts of their evidence to the November 2021 inquest, all pursuant to r.17.

[24] At the time both Friel brothers had criminal records, Seamus for public order and dishonesty and Thomas was the subject of a suspended sentence, imposed for being drunk and disorderly.

### *Seamus Friel*

[25] Seamus Friel was the brother of the Deceased. He died prior to the November 2021 Inquest. He gave a statement on 23<sup>rd</sup> May 1973, and he gave evidence to the March 1974 inquest. In his statement he said that Thomas Friel came to his home on 17<sup>th</sup> May 1973, sometime after 3:00pm. At about 5:00 or 6:00pm they went to the Telstar public house and had a 'couple of stouts' each. They stood for 1 - 1½ hrs, watching rioting between local youths and the Army, at Fanad Drive. Then they went back to his house. They got something to eat and, at around 10:00pm, they went back to the Telstar, staying until 11.30pm. He claims that, in that space of 1½ hours, they each drank 8 or 9 stouts. As they left the Telstar, they were told that a friend was getting a 'kicking' from the army and was being taken to the Piggery Ridge Army camp. The two men decided to go to the army base to see if they could get their friend back, but enroute they were told that their friend had not been arrested after all.

[26] At this point, both Friel brothers had walked beyond Creggan Heights, up Blighs Lane. Seamus Friel says that they were about 20m along Blighs Lane. He claims that there was no rioting in the area at this time. He says that they were about to turn around and go home when approximately six soldiers jumped out from their



right side and fired two rubber bullets from a range of 4 yards, and a position in front of them.

[27] Although he does not claim to have seen an impact, he says that the Deceased was lifted off his feet and thrown back. He knew the Deceased had been struck by a rubber bullet. He said that neither he nor his brother had been rioting or antagonising the soldiers in any way. Seamus Friel grabbed his brother by the arm and trailed him down towards Creggan Heights, while soldiers fired six more rubber bullets at them, none of which struck them. An unknown man helped him carry his brother to a house on Creggan Heights which was occupied by the Knights of Malta, from whence he was taken to Altnagelvin Hospital. He told the people taking the Deceased to hospital that the Deceased had received his injuries by falling down the stairs, as he did not want the army going to the hospital to 'lift him' for something he didn't do.

[28] Prior to his departure to Altnagelvin Hospital, Seamus Friel says that he could see that the Deceased had a large bruise to his forehead. The Deceased was wearing blue jeans, black coat and a white polo necked sweater. He was an unmarried labourer.

[29] Also received by r.17 was a report carried by the Derry Journal, dated 22<sup>nd</sup> May 1973, titled 'Creggan man "extremely ill" after being hit by rubber bullet' and a statement attributed to Seamus Friel reproduced in a book written by Fr. Dennis Faul and Fr. Raymond Murray, titled 'Rubber & Plastic Bullet Kill & Maim.' Although the Derry Journal article does not name Seamus Friel as its source, it refers to a relative who told the newspaper that he had been drinking with the Deceased in the Telstar Bar. The inference to be drawn is that the relative was Seamus Friel.

[30] This report attributes comments to 'a relative of Mr Friel'. This relative, whom I am satisfied was Seamus Friel, said he had been drinking with Thomas Friel in The Telstar Bar when they were informed by local women that a friend was being beaten up by soldiers in the laneway at the back of the shops. They ran up the road leading to the camp at Piggery Ridge but saw nothing. On their way back down, soldiers jumped out of a lane between fields and fired rubber bullets. According to Seamus Friel one struck the Deceased at point blank range and lifted him back a couple of feet. As Seamus Friel picked the Deceased up, the soldiers continued to fire rubber bullets. The Deceased was brought to a house and first aid members treated him. There are clear discrepancies between this account and the May 1973 statement.

[31] The account provided to the authors of the Fr. Faul and Fr. Murray book differs from the May 1973 statement. In this account Seamus Friel says that he was walking with the Deceased back to their home. They had heard of the arrest of a friend but paid no attention to it, as it was a regular occurrence. They reached 'the top of the lane' there were people standing about the end of the road that ran to the army camp. The area was now quiet, they were told that there had been trouble earlier on. As they crossed the street, to proceed home, "... soldiers jumped out from behind a fence at the back of the houses, they started to run up the road towards the camp, and as they did so, one of them fired a rubber bullet. It hit Thomas on the head, and he fell." The

soldiers then ran on to the camp. The Deceased was unconscious and was carried to Hugh Deehan's house. Seamus Friel told people to say that the Deceased had fallen, so that he was not charged with riotous behaviour. He later gave a true account to a surgeon.

[32] The absence of Seamus Friel as a witness prevented the discrepancies between Mr Friel's accounts from being tested. Nevertheless, there is a body of evidence contained within these various accounts that is in common with some of the military witnesses. In particular, the general locus of the incident, the account of soldiers having emerged from the Friel brothers' right and discharging rubber bullets, the account of the Deceased being struck and falling. His evidence is more problematic on issues such as the distance from which the round was discharged, whether there was active rioting when the round was discharged, or the description of the round lifting the Deceased off his feet. Given the inconsistencies within these accounts, they attract limited evidential weight on contentious issues.

### *Patrick Curran*

[33] Mr Curran was identified as a witness prior to the November 2021 inquest. He had died by the time it was held. His statement was received pursuant to r.17.

[34] Mr Patrick Curran gave a statement in April 2011 to a member of the Pat Finucane Centre. He said that, on the evening of 17<sup>th</sup> May 1973 he left the Telstar public house with Thomas Friel and Jazz Canning. A woman called Mrs McBride told them that a named friend of theirs had got 'a kicking' from the army and been taken away in a jeep to Piggery Ridge. Mr Curran says that this information was false and that the named man was at home, in bed.

[35] Acting on this information the three men decided to go to Piggery Ridge. Between 00:00 and 01:00am they were in Danny Barr's field. This was located close to Blighs Lane. It was very dark, there were about ten people coming behind them. He then says that the army must have been coming down from the base towards Creggan; he heard shots and 'hit the deck' he describes 4-5 rounds in total which he was able to say were plastic bullets, not live ammunition.

[36] He says, "I didn't know Thomas was hit, because it was Jazz (Canning) who grabbed him and we took him into Bertie Deehan's house." The inference from this statement must be that Mr Curran became aware of the deceased having been hit shortly after the injury was sustained, if he was party to taking the deceased to Deehan's house. He uses the name 'Bertie Deehan' to describe the owner of the house. Mr Deehan's forenames, as per his statement, are Hugh Eugene. On the other hand, Mr Curran is not mentioned by Seamus Friel at all, either at the Telstar bar or afterwards. He says that, "An unknown man helped me carry my brother to a house in Creggan Heights." This does not appear an apt description of Mr Curran given the portrayal of the Deceased and he as friends in Mr Curran's statement.

[37] He also says that Seamus Friel was in the same field as him after the deceased was shot. He says that the crowd scattered after the shots. This does not sit with Seamus Friel's description of being with the Deceased when the Deceased was struck by the bullet and of immediately pulling him by the arm after he was hit. This statement and the evidence of Seamus Friel are in conflict on material issues. This statement was afforded limited evidential weight.

### *Local Treatment of Thomas Friel*

#### *James Doherty*

[38] Mr James Doherty gave oral evidence to the November 2021 inquest. He also provided a statement to police on 30 May 1973. That statement, the transcript of his evidence, his deposition to the March 1974 inquest and a later statement made in 2020 and were received pursuant to r.17.

[39] He was a member of the Order of Saint Lazarus, an auxiliary ambulance service which operated a first aid post in the Bogside area of Derry. On the night of 17<sup>th</sup> May 1973, he was on duty with Anthony Lynch in the Creggan area of Derry in connection with disturbances which had been going on sporadically for most of the evening. They were driving around in Anthony Lynch's car. At about 01:00 on 18<sup>th</sup> May 1973 they were stopped in Creggan Heights by several youths and told that there was an injured boy in a house further along the street. They went to 85 Creggan Heights. This was Hugh Deehan's house, who was a member of the Order of Malta and who he knew operated a first aid station from his home. There were 12 or 14 people in the house. A young man was lying on his back on the sofa. He could detect a smell of alcohol from this man. There was blood coming from a small wound on the left side of his forehead. He was unconscious and had a weak pulse.

[40] Mr Doherty administered first aid and sent for an ambulance. He was told that the injured man was Thomas Friel. He spoke to Seamus Friel, identified as Thomas' brother, who told him that Thomas, "... had fallen down the stairs a short time previous." In his 2020 statement Mr Doherty adds that he was told that this had happened in the Telstar Bar. When the ambulance arrived Mr Doherty travelled with Thomas Friel to the hospital.

[41] Mr Doherty provided a new statement in which he confirmed most of the details of his original account. When he gave oral evidence Mr Doherty confirmed that his original account reflected the memories he has of the incident.

#### *Anthony Lynch*

[42] Mr Anthony Lynch had died by the time of the November 2021 inquest. He had made a statement on 30<sup>th</sup> May 1973, received by r.17.

[43] In his statement he confirms the account of James Doherty. He notes the small cut as being on the right side of the forehead of the person identified to him as Thomas

Friel. He confirms that this person was unconscious, smelt of alcohol and that he was told by people in the house that he had fallen downstairs.

### *Hugh Deehan*

[44] Hugh Deehan provided a statement to police on 20<sup>th</sup> July 1973. He also gave oral evidence to the November 2021 inquest. The 1973 statement, a later statement made in 2020 and a transcript of his evidence was received pursuant to r.17.

[45] On 17<sup>th</sup> May 1973 Mr Deehan says that he was on duty, providing first aid as a part time worker with the Order of Saint Lazarus. He was also a full time Ambulance Driver, employed by the NI Hospital Authority. Although tasked to a particular first aid post, he was aware of rioting in the Creggan Heights area and was touring the area in his private car, looking for injured people.

[46] He lived at 85 Creggan Heights. At about 1:00am, he noticed a crowd of people standing at his front door. He stopped and went over to see what was wrong. He went into his house and saw a youth lying on the couch, receiving medical attention from Hugh Doherty. He was asked him to phone for an ambulance, which he did straight away. He returned to his home and the ambulance arrived a few minutes later. He was later told that the youth was Thomas Friel and both that he had been struck by a rubber bullet during rioting in Creggan Heights, and, by someone else, that he had fallen down the stairs in the Telstar Bar.

[47] In oral evidence to the November 2021 inquest, he said he could remember very little of that evening.

### *Marshall Heatley*

[48] Marshall Heatley had also died by the time of the November 2021 inquest. Again, his statement, dated 10<sup>th</sup> July 1973 was received pursuant to r.17. He was an ambulance driver, he received a call at 1:15 am from ambulance control tasking him to 85 Creggan Heights, where there was an injured man. The ambulance arrived at 01:22. When he entered the premises, he saw an unconscious male lying on a sofa, being administered first aid. He was told that the youth was called Thomas Friel, was from 70 Creggan Heights and that he had fallen downstairs and struck his head. Thomas Friel was taken to Altnagelvin Hospital and arrived there at 01:41.

### *Margaret Nixon*

[49] Mrs Nixon was identified as a witness prior to the November 2021 inquest but had died by the time it was held. Her statement was received pursuant to r.17.

[50] Margaret Nixon gave a statement to an investigator working on behalf of the coroner on 16<sup>th</sup> July 2020. She lived in Creggan Heights in 1973. She recalled that from her house she could hear rioting and the sound of rubber baton rounds in the area of Piggery Ridge and Blighs Lane, although she could not see anything. She remembered that it was dark when she heard this. She then saw a group of people

carrying a person into Hugh Deehan's house at number 85 Creggan Heights. He was a relative of hers, who she knew offered first aid. Shortly thereafter an ambulance arrived, and she went out to see what was happening.

[51] 30-40 youths had gathered outside 85 Creggan Heights. They were, "... agitated and hot headed about what had happened." The youths said that the injured person was called Thomas Friel but did not say how he had been injured. Mr Deehan was trying to diffuse the situation. Mrs Nixon and Mrs Dougherty (deceased) accompanied the Deceased to the hospital.

### *Hospital Treatment of Thomas Friel*

[52] The evidence of three medical doctors involved in the treatment of the deceased, after his admission to Altnagelvin Hospital, was admitted pursuant to r.17. Their evidence was in the form of letters written in 1973, either unaddressed, to the police or to the Deceased's GP.

### *Dr Ram, SHO*

[53] Dr Ram described himself as an Orthopaedic Senior House Officer. He says that the Deceased was brought into the Casualty Department of Altnagelvin Hospital at around 01:45am on 18<sup>th</sup> May 1973, with a history of being drunk and having fallen down "from" stairs. He had been unconscious since the accident happened.

[54] He was deeply unconscious, unresponsive to stimuli, breath smelled of alcohol ++, both pupils were fixed, dilated and not responding to light. There was a laceration over the forehead with swelling, described as  $\frac{1}{3}$ " and  $\frac{1}{4}$ " and there was a small bump over the occipital region. He was admitted to the Intensive Care Unit for observation and the Surgical Registrar informed.

### *Mr Bennett, Consultant Surgeon*

[55] He was a Consultant Surgeon at Altnagelvin Hospital. In his statement he said (after reciting the admission history);

"About 12.30pm on 18 May we commenced operative procedures and did two burr holes first on the left side as he had an abrasion on that side of his temple.

The sub temple incision showed a minor crack of the outer table of the skull but on making a burr hole nothing but a tense brain (cerebral oedema) was found.

A burr hole was made posteriorly and with like findings though here the brain was rather less tense.

A burr hole on the right sub temple area did uncover a certain amount of subdural clot but here the evidence was

of gross bruising of the brain as well as further evidence of oedema.

I considered that his condition was unlikely to be helped by further surgical exploration and returned him for intensive observation and treatment by hyperventilation with oxygen and dexamethasone.

Despite the above his condition deteriorated and he died about 6.10pm on 22 May 1973.

P.S. After operating on the above patient I was interviewed by his brother who told me that the history as given above was incorrect and that the injury had in fact been from a rubber bullet. There was nothing in the clinical findings to enable me to distinguish which of the two histories given was correct."

### *Dr J Bovill*

[56] Dr Bovill, a Consultant Anaesthetist, was not involved in the care of the deceased. He pronounced life extinct at 18:10 on 22 May 1973.

### *Military evidence*

[57] In order to assess the decision of the soldiers to discharge baton rounds it is important to understand the context and the situation in which they found themselves on the evening in question. Unless otherwise stated, the soldiers evidence came in the form of statements taken by the Royal Military Police ("RMP") in May 1974, and admitted in evidence pursuant to r.17.

[58] During the course of the evidence, it became clear that the statements of soldier witnesses produced in 1973 had been subject to more than simple transcription by those taking them. For example, the statements were replete with two terms; 'DYH' (Derry Young Hooligans) and 'Tac loc' (Tactical location). The witnesses who gave evidence to the inquest denied any familiarity with the acronym 'DYH,' while some said that they may have been familiar with the term 'Tac loc' at the time, but were no longer able to say whether they would have known it in 1973. Some of the statements included map or grid references and only Soldier F, who was familiar with orienteering, asserted that he would have been capable of providing a map reference when making his statement. Some of the statements included timings for various events and witnesses gave evidence that they would not have known the timings of events and would not have been able to insert those in their statements. It was notable that, when compared with one another, some of the statements repeated phrases or sentences verbatim that had been used in other statements. It is possible that phrases were repeated between statements because soldiers, tasked with drawing up statements in relation to this event, copied between one another.

[59] This court could only conclude that some information, contained in statements, did not represent the *independent* recollection of the statement maker or, on occasion, contained information not within the knowledge of the statement maker.

[60] The soldiers' statements were collected by the RMP. On balance, I find that the RMP added information to statements made by soldiers. This information went on to become evidence in the March 1974, November 2021 and this inquest. It comprised times of events, locations of events and the use of acronyms. It is possible that this happened by the RMP collating statements and trying to cross reference details or having access to sources of information not available to this inquest. However, that is speculative.

[61] The soldiers were prepared to sign statements containing information that they accept they could not have known, each one endorsed with the caution, "This statement, consisting of ... pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true." That speaks to the attitude that the soldiers held towards the RMP members taking their statements; that it was, as Soldier C said in evidence, a relaxed process and that the RMP were 'on their side.' It was not a situation where statements prepared by the RMP had to be closely checked before signing. However, subject to that criticism, I did not find evidence of statements containing narratives that were anything other than the soldiers' own accounts.

[62] The statement makers almost unanimously now declaimed much memory of these events. This is not surprising given the nature of events that were unfolding in May 1973. By way of example, Soldier F gave evidence that, on checking the logbooks, he found that some 500 baton rounds were fired on the day following the events that formed the subject of this inquest.

[63] As a result, it was not possible to test the soldiers' evidence and recollection in detail, in order to ascertain how much of their statements, and hence their evidence, was accurate, independent recollection, and how much was inserted by the RMP or by some other mechanism. In general, the court is satisfied that the broad sweep of evidence was accurate, it bears reasonable consistency, while allowing for a degree of variation that adds, rather than detracts, from its authenticity. However, the conclusion that the statements were not entirely independent recollections must affect the weight that the inquest affords to the detail contained therein, on issues such as timings.

#### ***Soldier F (Lieutenant)***

[64] Soldier F was a lieutenant in charge of a platoon that made up B Company of the 3<sup>rd</sup> Royal Anglian Regiment in May 1973. They were based in a camp known as 'Piggery Ridge camp' located in the Creggan area of Derry. The camp was situated somewhere along Blighs Lane. Some personnel were involved in repairing the perimeter fence of the camp and his instructions were to afford protection to those

personnel, by conducting a patrol into the Creggan area. Hence, on Wednesday 17<sup>th</sup> May 1973, at approximately 23.45, he deployed the three sections of his platoon. 'A' section was commanded by a non-commissioned officer, with six men. 'B' section was commanded by L/Cpl Rogers, with five men, and 'C' section was commanded by TFM15 with six men.

[65] In relation to the events pertinent to this inquest, Soldier F remained with 'C' section. He was not present when soldiers in 'A' section discharged the initial baton gun rounds; he heard the shots. However, he moved along the sunken track to meet up with 'B' section.

[66] When he looked over the bank of the sunken track there were 20 to 30 youths around the junction of Creggan Heights and Blighs Lane. It was a dark night, visibility was limited and restricted because stones were landing in his area. He says that some of the youths made their way up Blighs Lane, he heard 2 baton rounds being fired, he did not see if anyone was hit, and the crowd drew back. He moved to the Blighs Lane end of the sunken track and was able to see one youth through a starlight scope, about 20m away from him, on Blighs Lane, opposite the end of the sunken track.

[67] He realised that, as he put it, their position had been turned. He ordered his section to follow him and he ran out of the sunken track to try to arrest this youth. The section ran after this youth as he ran back towards Blighs Lane. They came under heavy stoning and he decided to give up the chase and head back, as he did so, he turned to look back and both heard a baton gun fire and saw the youth he had been chasing fall to the ground. He quickly heard a second baton gun fire. At this point he was about 20 yards from the sunken track and between the baton gunners and the crowd. He turned to arrest this man, but he got up and ran back to the junction. He said that the shots were fired at around 01:20. The crowd then dispersed and he was able to return to the camp. He described visibility on Blighs Lane as limited to about 20m. Soldier F accepted that he did not know where he got the time of 01:20 from.

[68] In oral evidence, he added that there was no street lighting on Blighs Lane and that the camp was about 200m along the lane. He said that Blighs Lane was a tarmac rural track, while the sunken track featured a berm of earth affording cover to the soldiers. He explained that the purpose of the patrolling had been to prevent terrorists from using the opportunity of unarmed soldiers repairing the fence around the camp to get into position to shoot at them from one of the many houses that were within easy shot of the perimeter of the camp. He said that his 1973 statement had been accurately transcribed by the RMP and he said he was able to add the specific grid reference to his statement in 1973 because the camp had maps from which he was able to read the reference in order to describe his location. He was not able to see the man at the end of the sunken track without the scope, because visibility was so bad, down to 20m.



## B Section

### *L/Cpl Rogers*

[69] L/Cpl Rogers, formerly known as Soldier A, was deceased at that time of the 2021 inquest. His evidence was in the form of a statement made to the RMP on 20<sup>th</sup> May 1973. According to L/Cpl Rogers, his section comprised soldiers B, C, D, E, TFM17, TFM11 and TFM12. Their patrol took them in a broad circuit in which they moved into Swilly Gardens, across Blighs Lane and into Rinmore Drive, then onto Balpane Pass. Initially it was a quiet patrol, until they entered Rinmore Drive, when a drunk man approached TFM17 and pushed him over a wall. Soldier C restrained the drunk man. There was a noisy struggle and people started to come out onto the street. Metal lids were banged, whistles were blown, and car horns sounded. The result of this was that a crowd began to develop around the soldiers. L/Cpl Rogers says that, by the time his patrol reached Lislane Drive, and turned towards Creggan Heights, 15 to 20 youths had gathered behind them, at a distance of about 100 metres, shouting abuse. Whenever the patrol reached the junction of Lislane Drive and Creggan Heights, they turned right, to move towards Blighs Lane and back towards the entrance of their camp.

[70] When they reached a point about 80 metres from the junction of Creggan Heights and Bligh's Lane, he saw a group of 12 youths, who started to throw stones and bottles in their direction. His section made their way back to Blighs Lane, where he led them to take up a position on what is described as a sunken track, at grid reference 41581668. L/Cpl Rogers describes this track as running parallel with Creggan Heights, slightly elevated and affording them a good view of the houses of Creggan Heights. This sunken track was a spur, running off Blighs Lane. To return to the camp, the soldiers would have to move back out onto Blighs Lane and then make their way up it. He says that his section remained in that position for about 10 minutes, during which time 20 to 30 youths had grouped below them, at the junction of Blighs Lane and Creggan Heights. He says that those youths were just standing around and could not see his section, because they were deployed behind a bank on the track.

[71] There matters might have ended, save that at 00.55 he received instructions to deploy his section to observe Balpane Pass, where three people were reported as acting suspiciously. This meant leaving their positions behind the bank on the sunken track, moving away from their camp, down Blighs Lane, towards the area where youths had been gathering, across Creggan Heights and into the houses and streets beyond. He was able to lead his patrol across Creggan Heights and into an alleyway between 83 and 85 Creggan Heights, so that they were able to observe Balpane Pass. As he crossed Creggan Heights, he left Soldier D to his rear, with four men, to secure the Blighs Lane/Creggan Heights junction. However, when he was in the alleyway, he says that 20 to 30 youths then appeared to his rear, throwing stones and bottles at them. Presumably this would have placed these youths at or around the position of Soldier D. He responded by pulling his section back, along the alleyway and back through the position held by Soldier D and his men. L/Cpl Rogers says that, as he

ran with his section past Soldier D, he instructed him to fire baton rounds to disperse the youths. He says that the baton gunners of his section were Soldiers C and B, and he saw both men fire 2 rounds each at youths who, he says, were at a distance of approximately 20 to 30 metres.

[72] He then led his section back behind the bank of the sunken track. At this point he estimates that the number of youths had grown to 40 to 50. The third section, with Soldier F and his men, came back down the sunken track from the northeast direction and joined them. He says that the crowd of youths then started to move up Blighs Lane towards them and that approximately 12 of the youths were slightly ahead of the main group. He says that it appeared to him that those youths had not yet spotted his section in the sunken track; the youths were walking on the far side of Blighs Lane from the sunken track. However, he said stones and bottles were being thrown towards them and towards the football pitches, some of which came close to his patrol. He says that another soldier was struck by a stone and was taken back to the camp.

[73] At one point some of the youths had reached a position very close to where he was; some of them were just across Blighs Lane, opposite them, presumably at the point where the sunken track met Blighs Lane. He says that the position was becoming quite serious, as the youths were more or less encircling their position. From his description of events it seems that, if the youths had managed to move past his position, further up Blighs Lane, then he would have been effectively cut off from any retreat back towards his camp. So, he said that the 2 sections decided to advance towards the youths. He says the youths nearest to them ran back down Blighs Lane towards the Creggan Heights junction and they gave chase. As they got closer to the junction, he estimated the number of youths at between 50 and 60. They were stoning and bottling them quite badly and he says that they had to retreat back towards the camp. He says that at this stage the youths began to surge towards them, and he gave the order for baton rounds to be fired.

[74] In his statement he says that, at 01:20, both C and B fired 2 baton rounds each, when they were parallel to him and Soldier D, in a line across Blighs Lane. I will return to the issue of timings, and this 01:20 time in particular, later in these findings. He says that he saw a youth, about 30 metres away, stagger backwards and fall onto his back. He says that this youth was in front of the main crowd, with about eight other youths, and that they were the main rioters. The one who fell was one of the leaders, because he had noticed him to call on the others throughout this part of the rioting. He did not see the three other baton rounds strike anyone. Missiles continued to be thrown towards them over the next 5 to 7 minutes and he saw the youth who had fallen being dragged into the main crowd of rioters by two other youths; he did not see him again. At that point the rioters started to disperse. He goes on to say that it was dark, the visibility from their position towards the rioters was limited; it was the general outline of the rioters that could be seen. He estimates their age at 18 to 24.

## *Soldier B*

[75] This witness provided a statement to the RMP dated 20<sup>th</sup> May 1973. He gave oral evidence to the November 2021 inquest and again to me. Soldier B's oral evidence in 2021 was the subject of challenge in the judicial review proceedings, to which I have earlier referred. The High Court concluded that he had not been appropriately cautioned in relation to his right to refuse to answer questions on the grounds of potential self-incrimination. As this issue arose at the commencement of his evidence in 2021, even though the issue of self-incrimination might not have arisen in relation to all of the questions that he was asked, I have not taken into account any of his oral evidence in 2021.

[76] He says that, in 1973, he was a private, he was part of a patrol, with 6 other men, under the command of L/Cpl Rogers. He describes the early part of the patrol until they complete their circuit and take up a position in the sunken track. He says that, at 00:55 hours, L/Cpl Rogers led them from the track, back to the junction of Blighs Lane and Creggan Heights, where he remained, along with soldiers D, C and TFM11 while the other half of the section, commanded by L/Cpl Rogers, moved forward, between houses. He says that there were a few youths shouting abuse at them. A few minutes later L/Cpl Rogers and his half section suddenly ran back towards them, being chased by around 15 youths. As they passed them, the youths were throwing missiles and L/Cpl Rogers ordered himself and C to fire baton rounds. He says that he fired 2 baton rounds at the main group and he saw one youth being struck on his leg by one round. He held his leg for a few seconds and then ran back to the others.

[77] He says that the youths began to advance towards them and that they retreated back into Blighs Lane and back into the same sunken track. He says that about 30 youths began to advance towards them with some of them coming very close to their position and one actually passing the end of the track at this time. Soldier F ordered him and some of his section to rush towards the rioters. He says that he fired a single baton round in the direction of the rioters but he was sure that it did not strike anyone. The rioters returned towards Blighs Lane and they returned to the sunken track. He then saw the rioters begin to advance again he says there were about thirty of them. He could not be sure, because visibility was poor, he could only see about 30 metres in front of him. The rioters were continuing to throw missiles were led by three men. When they got to approximately 25 to 30m away he fired one baton round at the central leading figure. He was lying down when he fired. He could not see what happened to the person he fired at, because of the smoke from his gun, but he then saw that this man had fallen amongst the many bricks, stones and bottles that were lying on the road. He and Soldier F were going to arrest this man but, as he ran out from the track, he saw two youths drag the man back towards the main body of the rioters. The time was about 01:20.

[78] In terms of the shot he fired, he said that he aimed for the stomach and the general area of a white jacket.

[79] Giving evidence before me, he said that he did not recall making his statement in 1973 and he did not recall the events in question. He did recall stones being thrown at him, as he headed back towards the camp. He declined to answer questions in relation to the discharge of baton rounds in and around the locus of the sunken track, on the grounds that his answers may incriminate him. He said that he could not recall receiving training in relation to the use of baton rounds. He could not recall being trained to aim them at the ground in front of rioters, so that the baton would bounce up to strike the target, and he had not encountered that practice. He was asked whether, in a hypothetical situation, if he was firing at a rioter, he would have aimed directly at them, and he said 'yes.' His recollection was that he was supposed to aim at the chest. He did not recall training in relation to minimum distances for use of a baton round. He said that whether he would fire a round at a close range would depend on the situation and what his target had in their hands.

[80] He said that he had not seen the standard operating procedure of the 3<sup>rd</sup> Royal Anglian Regiment at the time, he didn't remember either the rules of engagement for Rubber Baton Rounds or the Yellow Card rules for opening fire. He had not heard of firing baton rounds in volleys but he said the gun from which they were fired was breach loaded and it took quite a few seconds to reload. In terms of accuracy he said that the guns used to fire the baton rounds were not very good at all.

### *Soldier C*

[81] This witness provided a statement to the RMP dated 20<sup>th</sup> May 1973. He gave oral evidence in 2021 and again to me.

[82] In his 1973 statement he said that he was part of 'A' section with B, D, E , TFM12, TFM17 and TFM11. He and B were the baton gunners for the section. Dealing with his evidence from the point that the section was situated in the sunken track, he says that at about 00:55 they were given an order to move to the junction of Blighs Lane and Creggan Heights. When there they began to get stoned. He says that Soldier D shouted, "there go on," he looked and saw a man running, he fired a baton round at the man, who looked like he was about to throw something, but did not observe a strike and the man ran off.

[83] The section was directed by Soldier D to withdraw back to the sunken track where they were joined by Soldier F and his section. The youths moved up Blighs Lane, one reached as far as the track. Along with Soldier F, he ran out to grab this youth who ran off down Blighs Lane. Soldier C dropped to one knee and fired one baton round at the man, as he ran away. Although Soldier C did not see the baton round hit the man, he did see him fall onto one knee. He and Soldier F retreated back to the sunken track.

[84] Some minutes later the same scenario was repeated. Another youth moved on Blighs Lane to the end of the sunken track, he and Soldier F moved out onto Blighs Lane, the youth ran off down Blighs Lane. He fired another baton round at this youth who was running away, but observed no hits.

[85] He says that he fired four rounds in total. His statement accounts for 3. The latter two rounds that he describes firing were at people running away from him. All three shots were aimed at individuals.

[86] Giving evidence to the November 2021 inquest, he said that he could not recall making his 1973 statement to the RMP and was not prepared to accept it as his account. He could recall very little of the events in question. When discussing the issue of RMP statements, soldier C was of the view that the process of taking a statement was a relaxed process. He indicated his view that the RMP officers were soldiers too and were 'on his side.'

[87] He was able to say that he would have fired a baton gun from his hip, since the weapon was very inaccurate. He thought that the baton gun was to be used against anyone not complying with his instructions and he stood over the decision to fire as set out in his 1973 statement.

[88] Giving evidence to me, he said that while he did not remember his 1973 statement, he accepted that it was unlikely that the RMP had made it up. He did recall some of his training in relation to the use of baton guns. He said that they were trained to fire at the ground, so that the projectile bounced up, but he said that this did not work, and he accepted that this gave the target the ability to get out of the way of the round, which they could see coming, so instead they fired directly at people; he didn't think that anyone else did any different.

[89] He said that the weapon was completely inaccurate and that he fired at the body mass of the target, he said it was very rare and a lucky shot if they were able to hit what they fired at. He thought that, if somebody was hit with a baton round at close range, it would sting. He had never seen a projectile strike someone in the head.

[90] He had never heard the term DYH as an acronym for Derry Young Hooligan and he had not used it. He said that the Royal Military Police could be a little creative in those days, but he accepted that there were terms that he might have known in 1973, but not now.

[91] He accepted that he would have fired from the waist, without warning and aimed at the person, including people running away, in order that they might be able to arrest them. In terms of a minimum range for firing the weapon, he said that he would fire on instinct regardless of the range, if he thought that he was under threat.

### ***Soldier D***

[92] This witness provided a statement to the RMP dated 20<sup>th</sup> May 1973. He provided a further statement in 2020, gave oral evidence in 2021 and again to me.

[93] In his 1973 statement he said that he was second in command of a section, commanded by L/Cpl Rogers, with B, C, E, TFM12, TFM17 and TFM11. Commencing with the point that the section reached the sunken track, he said that at 00:55 L/Cpl

Rogers ordered them to advance to the junction of Blighs Lane and Creggan Heights. There were still 10-15 youths at that junction. When they reached it, he was told to secure the junction with three men, including the baton gunners, who we know to have been Soldier B and C. He said that L/Cpl Rogers and the remainder of the patrol advanced between 83 and 85 Creggan Heights but were confronted by 20-30 youths throwing stones and withdrew past his position. As they did so, L/Cpl Rogers ordered him to use baton rounds if necessary. A large group of youths were throwing bottles and stones at them. He, Soldier D, ordered his baton gunners to fire, they fired two rounds each. He saw one man about 25 years fall to his knees with hands clasped to his chest. This man was dragged away by the crowd.

[94] They withdrew back up to the sunken track. The youths began to move up Blighs Lane and the football pitches, one reached the end of the sunken track. F and L/Cpl Roger's section, including Soldier D, ran out to attempt to arrest this youth, but he ran back down Blighs Lane, they gave chase but came across a crowd of 50-60 youths. They were throwing stones. At about 01:20 Soldier F told them to withdraw, Soldier B and C brought up the rear. Stoning continued and L/Cpl Rogers ordered the baton gunners to fire. He heard two firings but was looking away from the youths and could not say if anyone was hit.

[95] When giving oral evidence in 2021, Soldier D said he could remember very little from that night, to the extent that he thought that these events happened during daylight. He remembered preparing a statement for the RMP but was unaware of a death having occurred, until contacted for the purpose of the inquest.

[96] As regards baton gun training, he had been taken to a shed to fire at targets about 30 m away. He remembers being told that a baton was to be fired at the ground in order to bounce at a target, but he said that, when fired that way people could see the baton coming and get out of the way of it. He said that he would not fire a baton from the hip as that was not a stable platform.

[97] He had never heard the term DYH, when asked why this term was used in his statement, he suggested that it must have been put there by the RMP. He would not have used the term, neither would he have known the grid references used in his statement which also must have been put there by someone else.

[98] When giving evidence to me, in addition to confirming the above, he said that it was possible that he did know what the term Tac Loc had meant in 1973. He said that he did not know the timings that were contained in his statement.

### *Soldier E*

[99] This witness provided a statement to RMP on 20<sup>th</sup> May 1973. He was unfit to attend the 2021 inquest. His evidence was received then by r.17 as it was in this inquest, at which time he was out of the jurisdiction and not compellable.

[100] Commencing with the point at which 'B' Section had moved to the sunken path, he says that at 00:55 hours, L/Cpl Rogers moved 'B' section from this position back down towards the junction of Creggan Heights and Blighs Lane, by which time the majority of the youths had moved away from the junction. He remained with D, B and C to cover L/Cpl Rogers and his half of the section, as they advanced towards Balpaine Pass. A few moments later L/Cpl Rogers and his men ran back towards them, followed by about 15 youths who were throwing stones and similar missiles at them. His half section passed through them and he heard L/Cpl Rogers instruct that baton rounds be fired to disperse the youths. He saw C and B each fire one baton round at the youths. He saw one strike a youth, who fell down and quickly got up and ran away.

[101] They returned to their position on the sunken track from where they could observe the Creggan Heights/Blighs Lane junction. He says that he was able to see about 20 youths congregating. Some of them started to approach their position along Blighs Lane and went past their position along the track. L/Cpl Rogers gave orders and the two baton gunners each fired some baton rounds, he couldn't remember how many. He did not see any strike. F and his patrol then joined them. He then saw some of the patrol leave the position to advance on the rioters, but he remained lying on the track. He heard a final baton round being discharged and a man screaming, the youths started calling them names, he did not see a strike, or anyone fall to the ground. The rounds were fired at around 01.20. They returned to the camp.

### *Remaining soldiers*

[102] TFM 10 provided a written statement as part of the inquest process. He could recall that he was a Corporal in 3 Royal Anglian, B Company in 1973. He was in charge of a section of 6-7 men. He did not know who had been trained in use of the baton gun in his platoon or section but thought there would usually be 1-2 baton gunners per section.

[103] He said that while he was on waste ground, close to the camp, he could hear baton rounds being fired but he did not fire any baton rounds and no one from his section fired any baton rounds.

[104] TFM 12, 13 & 17 provided statements as part of the inquest process. They were part of the relevant platoon, but not the section involved in firing baton rounds. They had no useful evidence to provide, save that TFM12 had never been trained in, or used, a baton gun. He remembered that the baton gun was intended to be aimed at the ground in front of the intended target.

### *Additional military evidence -Rules of Engagement*

[105] The statements of L/Cpl Roger's, Soldiers B, E and F were all taken by TFM8, of the Army Special Investigations Branch (SIB) – an investigatory unit of the RMP. His statement was accepted into evidence pursuant to r.17. He also secured a copy of a document on the use of the federal riot gun, exhibited to a statement of TFM1. This

is an extract from the Standard Operating Procedure of the 3rd Royal Anglian Regiment. In so far as they are relevant, they state:

“20. General details

a. This weapon has proved effective when used in the right way, in conjunction with mobile snatch squads who assault the crowd perhaps from a flank and seize any rioter struck by the rubber projectile

b. It should be noted however that there is a tendency for soldiers to adopt the 1½” pistol or riot gun as a form of personal weapon for dealing with trouble makers at close quarters, particularly when in a difficult situation. It must be emphasised that the baton round is not an anti-individual weapon, but for use against crowds. Excessive misuse of this kind could well degrade its deterrent value.

21. Use

The baton round will either be fired from a 1½” pistol or from a riot gun. When fired from the former, it is extremely inaccurate and hence should not be used against a crowd in volleys of less than 6 pistols firing simultaneously. In lesser numbers it is distinctly less effective and the crowd is able to remove single casualties before the arrival of the arrest squad. The riot gun with its longer barrel and (sic.) can be far more accurate and with practice selected troublemakers can be engaged, though with limited success. The following points should be remembered:

a. ...

b. The effective range of the baton round is only 30 - 40 metres and the velocity is less when fired from the 1½” pistol. The point of aim at 30 metres is 1 metre in front of crowds, or a weapon can be aimed directly at the rioters

c. Standing position is better than kneeling as it provides a more consistent ricochet angle if the weapon is to be used in this way

22. Sequence

Just as in the case of tear smoke, there must be clear and repeated warnings that the baton round will be used if the



crowd does not disperse. Time must be given for the crowd to consider the warning and to act upon it. When a commander decides to use the baton round the overall effectiveness is increased if the 50 firers can produce their discharger, previously hidden, and fire simultaneously to increase the measure of surprise

[106] Within the materials disclosed by the MoD and relating to baton rounds in Northern Ireland, there is also a document issued by Headquarters Northern Ireland on 4<sup>th</sup> December 1972, entitled 'Rubber Baton Round - Current Instructions.' This would appear to be the up-to-date instructions in place at the date of the death of the deceased. Within paragraph 1, its preamble, it states, "The purpose of this letter, without changing in any way the current guidance, is to reiterate the rules of engagement with the Rubber Baton Round (55 grain) in one instruction."

**"Rules of engagement for the use of the rubber baton round**

2. The round is best fired from the standing position in volleys of 6 to 12 shots
3. The round must NOT be fired at a range of less than 20 metres except when the safety of soldiers or others is seriously threatened.
4. The round must whenever possible be fired at the ground in front of the crowd which has to be dispersed. The round may be fired directly only when the safety of soldiers or others is threatened by the crowd AND when indirect fire is impossible or has proved ineffective. When the round is fired directly it should always be aimed at the lower part of a person's body and never at the head or neck.
5. Whenever possible the baton round should be fired in conjunction with the deployment of arrest squads in order to pick up members of the crowd struck by the round."

[107] By way of contrast, a later document, described as a December 1975 revision and entitled 'ROE (Rules of Engagement) Baton Rounds' includes the following:

- "2. The rounds must be fired at selected persons and not indiscriminately at the crowd. They should be aimed so that they strike the lower part of the target's body direct (without bouncing)"

### *Additional military evidence - RMP*

[108] Corporal TFM9 was a member of the RMP, identified as having taken the statements from Soldiers C and D in 1973. He gave oral evidence to the November 2021 inquest. While he told the inquest that he could not remember anything about the investigation of this death, he was able to describe the process for taking a statement - he said that he would ask a series of questions to a soldier and then record an agreed narrative with them, however he said that he would never have deliberately changed a statement. In relation to Soldier C's assertion, that the RMP could be quite creative in those days and may have changed the narrative to assist a soldier, he said that he had never heard of such a thing and most certainly did not change soldiers' statements to help them. He also denied knowing what the acronym DYH stood for and he couldn't assist in terms of how map grid references had turned up in soldiers' statements.

[109] It was put to him that in the RMP log there is an entry, which appears to relate to this incident, it bears the serial 1667, the name of TFM8 and it refers to the deceased, gives his address and states that allegedly he was assaulted by the security forces, is very seriously injured, and there is a reference to a rubber bullet.

[110] TFM8 was identified as having recorded the statements of L/Cpl Rogers, Soldier B, Soldier E and Soldier F and having prepared a special investigation report into the death of Thomas Friel dated July 1973. TFM8 had been excused from giving evidence to the 2021 inquest on medical grounds. The nature of his illness meant that he was also unable to give evidence to me.

### *Additional military evidence - Army radio logs & Director of Operations Briefing*

[111] Army radio logs were provided to the inquest. The relevant entries for 17<sup>th</sup> - 19<sup>th</sup> May are as follows:

"17<sup>th</sup> May 1973

[illegible] - Crowd [illegible] 0-30 at Bligh's Lane/Central around barricade where fire is burning. Group 13 strong move East along Linsford. Approx 10 DYH area Lislane, Aranmore ptl meeting

[12.50] - C/S 13 now moving NE along Westway crowd 200-250 following. Some baton rds and some gas fired. Bus has been used to buffer P1

[15.00] Barricades junction. Leenan/Creggan Broadway, Rath/Westway, Linsford/Balbane Pass, Central Drive Bligh's Lane.

[15.37] - Barricade on CENTRAL DRIVE now on fire

[16.01] - White car at Linsfort/Central now burning

[19.00] - Ammo Return

Batonx Rds	214	
CS 1.5		3
CS Gren	1	
Smoke		1

[19.22] - Total ammo expenditure for Bn

Baton Rds	524	
1.5 CS		35
CS Gren	9	
Smoke	4	

[20.06] - Barricade at junc Iniscarn/Linsfort Blocking the Rd. 20 Youths at Fanad/Central also barricade that looks like car

[21.55] - Hawkeye reports barricades at Central Drive just North of Bligh's Lane and one just west of junc Central Drive/Linsfort will be cleared at 0330.

18<sup>th</sup> May 1973

[00.16] - Request FELIX at 03:00hrs at Bligh's Lane to help clear barricades.

[00.59] - C/S 22 fired 2 Baton Rds. at a crowd of 30 at junc. Bligh's Lane/Creggan Hts.

[01.17] - A crowd of 70 followed 2 sub units up to this loc. Then split into two some going South the others back to Creggan Hts/ Bligh's Lane.

[01.32] - Some people about but reasonably quiet.

19 May 1973

[00.14] - Ptl in South Creggan were met by serious agro as soon as they try to enter the area. Army being blamed for death of man [illegible] at present in Altnagelvin Hosp on VSI List. Ptl wdr. Black flags flying from many houses. Crowd would not listen to reason. Soldier called by a Mrs Friel and had to be pulled away by another soldier."

A Director of Operations Briefing document was also provided, for 18<sup>th</sup> - 19<sup>th</sup> May. It records;

"3. Londonderry

- a. A 21 year old Creggan man is VSI (very seriously ill) in hospital, it is possible that he was injured by a baton round in the rioting at 180100 (18<sup>th</sup> 01:00) May which was reported in the previous D of Ops Brief. A man was certainly dragged away unconscious during the riot. (the previous brief does not contain useful specifics)

I do not know how this document was compiled or have a complete understanding of the sources for that information. However, it is notable that neither this briefing nor the radio log makes reference to the time of 01:20 provided for the discharge of Rubber Baton Rounds in military statements. The source for the time of 01:20 used in soldier's statements is unclear. Given that I heard evidence that individual soldiers would not have known what time events unfolded at (which is unsurprising), I treat the time of 01:20 with considerable caution, as the radio log entry refers to 00:59 and the Director of Operations Briefing refers to a general time of 01:00 as the time of rioting.

### Expert Evidence

[112] The inquest heard evidence from 4 expert witnesses. Two in relation to ballistics and two in relation to pathology. The report of an additional pathology expert, Dr Shepherd and Mr Hepper, a Senior Principal Engineer within the MOD, were received by way of r.17. They had given evidence to the November 2021 inquest and a transcript of that evidence was also received pursuant to r.17.

### *Mr Hepper*

[113] Mr Hepper is a Chartered Engineer and an employee of the Ministry of Defence, where he is employed as a Senior Principal Engineer at the Defence Science and Technology Laboratory (DSTL), Porton Down. His main post responsibilities are for issues related to human vulnerability and injury assessment/modelling including the assessment of non-lethal/less-lethal weapons systems.

[114] His report set out to explain the role played by his predecessor organisation, the Chemical Defence Establishment Porton Down (CDE), in the development of baton rounds and to address some specific questions asked of him. He said that, if the military identified capability gaps, then they issued a staff requirement which resulted in funding being allocated to research and develop an appropriate solution. CDE had performed work looking at the effect of chemical agents, performing animal testing, looking at wound ballistics, which involved military and civilian medical personnel. It also had a manufacturing capability. It had been looking at riot control techniques already and CDE was tasked with undertaking baton round research. Mr Hepper was able to review the files and documentation held by DSTL relating to the development of both rubber and later plastic baton rounds (XL2 and L2 series of rubber baton round and L3 and L5 series of PVC plastic baton round) at CDE between 1969 and 1975. His report focused on the state of knowledge at the date of the index event in May 1973.

[115] It was his evidence that Baton Rounds were first authorised for use in Northern Ireland on 3<sup>rd</sup> July 1970. They were introduced to bridge a perceived gap between the use of CS gas and small arms ammunition, due to the deteriorating public order situation and the risk of injury, either to rioters due to the use of small arms fire, or injury to security forces personnel. The first Baton Rounds were Rubber Baton Rounds. They were still described as 'under development' some months later. Long-Range PVC Plastic Baton Rounds were authorised for use on 6<sup>th</sup> July 1972 and Medium-Range PVC Plastic Baton Rounds were authorised for use on 8<sup>th</sup> March 1973. The aim of the latter was to eventually replace the Rubber Baton Round, but manufacturing problems delayed the replacement of the Rubber Baton Round. The Rubber Baton Round was removed from service on 24<sup>th</sup> December 1975. Given that long range Plastic Bullet Rounds were allocated only to soldiers who had received special training (no such training was claimed by any of the personnel involved in this incident) and were for use only when the Medium Range Round had proved inadequate, and that the Plastic Baton Round had only been authorised for use 2 months prior to this incident, it is very likely that it was Rubber Baton Rounds that were discharged during this incident.

[116] In his report Mr Hepper said that the Rubber Baton Round available to the Army in May 1973 was the L2A2, 55 grain Rubber Baton Round. This was a 150g baton made from solid rubber, fired at a velocity of approximately 73ms<sup>-1</sup>. An earlier round with a 35 grain propellant charge (XL2E1) was introduced in Northern Ireland in July 1970, then an updated version with an increased charge weight (45 grain) was introduced as the XL2E2 (later known as the L2A1) in February 1971. This change was to improve the internal ballistics (i.e. the motion up the barrel). A third version (called the L2A2) with a further increase to the propellant charge (to 55 grain) was authorised for use in May 1971. This was introduced to improve the consistency of the round (without an appreciable increase in velocity). There is no evidence of the production of the XL2E1 or L2A1 after mid-1971, therefore the Rubber Baton Round most likely to be available in 1973 was the L2A2 Rubber Baton Round. The baton was 149mm long and 37mm diameter, with an ogival nose. This round could be fired from the RUC Pistol (Webley-Scott No 1 Mk 1), the Federal Riot Gun or the Gun, Riot XL48E1.

[117] He was asked what testing had taken place prior to their introduction. He said that there had been limited wound ballistic testing and accuracy/consistency testing of the Rubber Baton Round prior to introduction, due to the urgency of introducing the round into service. It was described as "hurried work on relatively few animals." Further testing was conducted when the round was in service and as the round was developed. This informed guidance in-service.

[118] There was some wound ballistic testing and accuracy/consistency testing of the PVC Plastic Baton Rounds before introduction into service, which in fact delayed the introduction of the L5 Medium-Range PVC Plastic Baton Round. He said, "There is some contradiction on the opinion provided on the injury causing potential of baton rounds. Early advice that the likelihood of serious injury being very small for a rubber

baton round is changed to a risk of serious injury or lethality must be accepted for a weapon at ranges up to 50m.”

[119] However, Mr Hepper was able to refer to some testing that had been done by the US Army. The report of that testing was produced in January 1972, received by the UK in April 1972 and fully reported in October 1972. The object of the testing undertaken by the US Army was to examine the impact hazards of rubber baton round on the skull. The methodology was to examine tests on human skull models over a range of velocities. This work determined that the rubber baton round could produce serious head injuries during a direct impact and should be regarded as very hazardous at ranges up to 63 feet (19.2m) from the muzzle; hazardous at ranges between 63 feet (19.2m) and 240 feet (73.1m) from the muzzle; and relatively safe above 73.1m, although eye injuries were still possible. These results were caveated upon the strike angle, the degree of contact and assumed that no energy was dissipated in flight (for example during a ricochet), so would have been representative of direct strikes (i.e. without ricochet) at the ranges given.

[120] In his oral evidence Mr Mastaglio provided cogent and persuasive criticism of the methodology adopted in the US Army testing. The US Army had, for understandable reasons, used dried human skulls. Further they had re-used skulls the same skulls in multiple tests. He noted that dried skulls lack the elasticity of a living skull and that, once struck, it is likely that a re-used skull will not have the impact resistance of a living undamaged skull. Nevertheless, it was his evidence that a skull fracture could be caused by an impact of 120J, below the level of energy that could be expected from a Rubber Baton Round at a range of around 20m.

[121] Mr Hepper was asked how this round was meant to be used by soldiers in May 1973. He said:

“The Rubber Baton Round was designed to be fired in circumstances where there was a risk of injury to soldiers or others, predominantly at ranges greater than 20m. The round was designed to impact the lower part of the body after ricochet with the ground or directly, but there was an acceptance that direct hits may increase the risk of injury. There was no evidence that the Rubber Baton Round should not be used against certain populations such as children, people of small stature or vulnerable adults. There are repeated references that the Rubber Baton Round should have been volley fired for best effect and that the round should be ricocheted off the ground, but there was also an acceptance that the round may be fired directly at individuals or at ranges of less than 20m, but only when there was a risk of serious injury and when indirect fire was impossible or had proven ineffective; even so, it should have been aimed to strike the lower body. The Standard Operating Procedures for 3 R Anglian mention

aiming a weapon directly at a crowd, but do not repeat the limitations or concerns of firing the rounds directly at individuals. It is not known why these limitations are not included in the Standard Operating Procedures, nor what was communicated to soldiers who may fire the weapon operationally.”

[122] He was unable to add much in terms of training provided to soldiers on the use of Rubber Baton Rounds other than to say that supply issues meant that, in the early days, it was not possible for soldiers to get experience of the round before they deployed to Northern Ireland.

### *Geoffrey Arnold*

[123] Geoffrey Arnold, instructed on behalf of the NOK, prepared a report and gave oral evidence to the November 2021 inquest and to me. He is a forensic scientist, specialising in forensic firearms examinations, ballistics, tool marks and incident reconstruction.

[124] He conducted a week of testing of the recorded weapon system(s) at Helston Forensic, Ballistic Laboratories in Helston, Cornwall. He set out to fire rubber bullet projectiles at simulated skulls - synborne spheres. His intention was to produce evidence of the damage caused to the synborne spheres at various firing ranges, to assist the medical assessment of the case, principally to enable the medical experts to assess the range from which the projectile that struck the deceased (assuming it to have been a rubber bullet) was fired. However, he was unable to produce sufficient data to perform that task. He was hampered in a number of respects. He used both the Federal Riot Gun (“FRG”) – as used by the 3<sup>rd</sup> Royal Anglian Regiment in 1973, and another weapon system, the L67. He told the 2021 inquest that he used the L67 in the expectation that it would be more accurate and would produce more strikes on the spheres, but that was not the case. Unlike the FRG, the L67 has a rifled barrel, and therefore different characteristics from the weapon actually used in 1973. He did not have the same type of propellant charge as was used in 1973, or projectile casing, and he did not have an easy supply of the same type of rubber bullets as used in 1973. He had to reuse projectiles and experiment with casings and charge.

[125] However, those limitations were not the fundamental reason for the lack of data produced by his tests. Even firing at a range of just 3.7m, he was only able to strike the target with one of his two shots, and the Doppler radar that he was using to measure projectile velocity was unable to track the projectile in the 3.7m test because of the amount of combustion material ejected from the muzzle. Mr Mastaglio was critical of his tests, opining that the actual weapon would not have produced the degree of combustion gas discharge as Mr Arnold produced. He then attempted to repeat the test at a range of 25-30 m, however after 1½ days of firing, he had not managed to strike the target at all. He reduced the range to 20m and in 13 shots,

recorded one hit. The presence of just two strikes did not allow enough data to be generated to properly comment on damage at various ranges.

[126] However, his testing and his oral evidence, did support two propositions. Firstly, the weapon system, of FRG firing a rubber bullet, was inherently inaccurate. He explained that the FRG was designed to fire a tear gas projectile, in an upward arc, it was never designed as a direct fire weapon. It was not fitted with a sight system designed to facilitate an aimed shot. It was operated via a trigger action that was heavy and long, resulting in the firearm moving during the firing sequence. The projectile was not tightly fitted within the barrel of the FRG, so that the gas pressures on firing, within the barrel, were variable and the projectile could move within the barrel. More fundamentally, the projectile had no aerodynamic stabilisation and, being launched from a smoothbore barrel, it left the launcher with no imparted spin, and therefore no gyroscopic stabilisation either. The result was that the projectile adopted an entirely unpredictable tumbling motion as it passed through the air, which inevitably resulted in variation of path.

[127] Placing all these factors together, his attempts to strike a head sized target at a range of +20m echoed the evidence that the inquest heard from the soldiers who gave evidence – that this was a wholly inaccurate weapon system, incapable of reliably taking an aimed shot at an individual. Picking out a single individual at 20m, and striking that individual was very unlikely. Mr Arnold said that it was virtually impossible to take an aimed shot.

[128] Mr Arnold further confirmed that taking an aimed shot from a kneeling position, at a distance of 20m from the target, and aiming 1m in front of the target, so as to create ricochet, would require the firer to depress the FRG sight by 3° when compared to an aimed shot, fired directly at the target. The weapon system was incapable of that degree of accuracy. It follows that, at 20m, it mattered little whether the firer aimed directly at the target, or 1m in front. The rubber baton would adopt an unpredictable flight path. It might strike the ground more than 1m in front of the target (in which circumstances it could easily rebound reaching the target at head height, or above), it might strike the ground at exactly 1m before the target, it might strike the target directly in the chest, or the head, it might pass above the target, or indeed, it might well miss the target laterally. During testing, Mr Arnold fired 66 rubber baton rounds, he hit a human sized target (any part of the target) with just over 10% of his shots.

[129] It follows that if the firer was not firing from a kneeling position, but was prone, as Soldier B says he was when he fired, then the angle of declination would be much less than 3° and wholly beyond the weapon system's capacity.

[130] Having reached that conclusion, I find that nothing turns on whether a round was aimed at the ground or directly at the target, or what the training was in that regard. The weapon system, certainly at ranges of around 20m, simply launched a projectile in the general direction of aim.



[131] The second proposition relates to the energy of the rubber bullet at any given range. Mr Arnold had difficulty reproducing the appropriate muzzle velocity of a round on discharge from the FRG, as provided by contemporaneous tables. The quoted muzzle velocities were 70-73 ms<sup>-1</sup>. Mr Arnold provided a table in which he set out measured velocity and calculated energy in respect of two of his shots – shot 10 and 13. He chose these because shot 10 was the highest muzzle velocity that he obtained – 78 ms<sup>-1</sup>, while shot 13 was the shot that hit the synborne sphere. Shot 13 had a muzzle velocity of just 64 ms<sup>-1</sup>. While there were problems with the system of projectile firing that Mr Arnold was using, and it is likely that more consistency would have been achieved in actual firings in 1973, I accept that the purpose of firing is to obtain the appropriate muzzle velocity, once the projectile leaves the barrel with a given velocity, its performance is reasonably representative.

[132] Although shot 10 left the barrel with a muzzle velocity of 78ms<sup>-1</sup> and a calculated energy of 452J, at 20m its velocity had decreased to 53ms<sup>-1</sup> and energy to 207J. It had lost 55% of its energy. On the other hand, shot 13, which left the barrel with a muzzle velocity of 64ms<sup>-1</sup> and calculated energy of 304J, at 20m had a velocity of 56 ms<sup>-1</sup> and calculated energy of 223J. It had lost 16% of its energy. Although exiting the barrel with 49% more energy than shot 13, at 20m shot 10 had 8% more energy than shot 13.

[133] Mr Arnold's opinion was that these variations in retained energy were caused by the unpredictable nature of flight of the projectiles. One may have spent more of its flight travelling in a relatively stable end-on profile, the other may have spent its flight tumbling or side-on to the direction of travel.

[134] The import of this is that two consecutively fired rounds may reach any given point with considerable variation in speed and hence energy. This is another aspect of the unpredictability of the Rubber Baton Round.

[135] Mr Arnold's testing produced limited value information in terms of assessing the range from which the projectile that struck the deceased was fired from. In 2021 he said more than 3.7m, because of the extensive comminuted damage to the synborne sphere at that range, but less than 20m.

### *Mark Mastaglio*

[136] Mr Mastaglio, instructed on behalf of Solider B, prepared a report and gave oral evidence to the November 2021 inquest and to me. He is a forensic scientist, who commenced his studies with a BSc in Chemical Physics. He has wide experience and expertise in firearms, co-authoring text book, chairing a European working groups on firearms issues and advising a United Nations body on ballistic issues. He is a Fellow of the Chartered Society of Forensic Sciences.

[137] It was his opinion that (presuming that it was a Rubber Baton Round that caused the Deceased's skull injury) (a) it is not possible to accurately determine the range at which the shot had been discharged (b) the absence of powder tattooing

indicates that he had not been shot at a very close range, and (c) it is not possible to determine whether the shot was a direct or ricocheted fire.

[138] He noted that trials of the Rubber Baton Round had showed that, when it ricocheted off the ground, it rose to head height and that its flight path was quite unpredictable. Furthermore, it could ricochet without serious loss of energy. He agreed with Mr Arnold that it was an inaccurate weapon system. He drew attention to some research carried out by the Chemical Defence Establishment at Porton Down ("CDE") which showed that even at ranges in excess of 50m a rubber baton round could possess a kinetic energy in excess of 200J, which was deemed capable of breaking bones. A graph produced from that research shows that at 20m, the energy of such around could be closer to 300J.

[139] Work conducted by the Royal Small Arms Factory concluded that the Rubber Baton Round could have even greater kinetic energy than that reported by CDE. A graph produced from its testing suggested that at 20m a rubber baton projectile could retain 400J of energy. They said that the L2A2 rubber baton, used by the British Army, could always cause serious damage within a range of 19m, with impact energies up to 275J or more. Within a larger range of 19m to 80m it was to be regarded as hazardous, with energy levels from 275J to 80J with, "Mixed results occurred here, ranging from comminuted, depressed fractures, through simple hairline cracks, to no damage at all to the bones of the skull."

[140] He cites an interdisciplinary reference book (*Wound ballistics Basics and Applications (2011)*) stating:

"Impact energies of between 40J and 120J can cause dangerous wounds (Bruises, abrasions, broken ribs, concussion, blindness and damage to organs near the surface, such as the liver.)

At energies over 120J severe damage is to be expected, such as severe crush injurie/lacerations, skull fractures, tearing of kidneys or the heart and heavy bleeding."

[141] He said that textbook and US Army research suggested that skull fractures would be possible at ranges in excess of 20m and that the projectiles could strike either end on or side on, causing varying injuries both in terms of extent and shape. The greater energy density of an end-on strike could lead to a more severe injury. However, an impact from such a projectile would not cause a human sized target to move or change direction.

[142] In oral evidence he disputed Professor Crane's suggestion that the presence of a skull fracture suggested firing at a range less than 20m. He said that the impact of a round ricocheting would be marginal on its energy retention. He accepted Mr Arnold's point that the energy of any given two rounds would vary considerably as range increased because of the uncertain attitude of the rounds in flight. Hence, the

graphs produced by the CDE and Royal Small Arms Factory, which plotted energy against range, depicted averaged data. The degree of variation would be considerable.

[143] It follows from Mr Mastaglio's evidence that if the plotted data represents an average, then it must be an average of data points both in excess of the plotted average, as well as below it. So, where the Royal Small Arms Factory suggested an energy level of 350J at 30m for a rubber round, a round might have an energy level considerably in excess of that. CDE suggested an energy level of less than 300J at 25m for a 55 grain rubber round. An individual round might have considerably more than that.

[144] If one accepts that 120J can cause a skull fracture then it is possible for a skull fracture to be caused by a Rubber Baton Round at a range well in excess of 20m. If a person, standing at 20m from the firing point, is struck by a rubber baton round that is travelling with unusually high velocity, but within the range of expected variation, and the baton round strikes end-on, then the evidence of Mr Mastaglio suggests that it would be capable not only of causing a skull fracture, but one of a more severe type.

### Pathology evidence

[145] The pathology evidence in this case is difficult. The experts who gave evidence before me were balanced in their approach to the evidence, setting out their preferred explanations, but accepting that there were features of the case that spoke against their hypotheses. They each favoured an interpretation of the evidence that would result in diametrically opposed explanations for the cause of death, in one case caused by a fall to the ground and in the other, a projectile strike to the head. Professor Crane said that normally pathologists could be fairly certain when interpreting injuries, but here they were less certain.

[146] Throughout the discussion of the medical evidence in the preceding paragraphs there are references to four distinct head injuries:

1. A left forehead abrasion injury, with associated subjacent bruising (This is distinct from the left-sided skull fracture).
2. A large right-sided scalp abrasion (this is not associated with the site of the right-sided brain injury).
3. A left-sided skull fracture, with associated left-side brain injury.
4. A right-sided brain injury.

[147] The difficulty in the interpretation of these injuries flows, in large part, from the fact that there is no suprajacent bruise or abrasion associated with either the left-sided skull fracture and associated brain injury, or the right-sided brain injury. This makes it more challenging to determine the cause of those most significant injuries.

*Dr Carson - Post-Mortem Examination*

[148] On 23<sup>rd</sup> May 1973 Dr Derek Carson, Deputy State Pathologist for Northern Ireland, carried out a post-mortem examination. He is now deceased, and his report was admitted pursuant to r.17.

[149] His findings, insofar as they are relevant were as follows:

“External Examination Head: An irregular area of abrasion, 8 cm. x 3 cm., on the right upper forehead and right temporal region. The long axis of this area of abrasion was more or less horizontal. On the left side of the forehead below the hairline and 5½ cm above the inner third of the eyebrow there was a sutured laceration, 1½ cm long, surrounded by abrasions within an area of 2½ cm diameter.

Internal Examination Scalp: When reflected there was bruising of its undersurface beneath the wound on the left forehead and around each of the burr holes. There was also a separate, distinct area of bruising, 10 x 10 cm over the vertex and extending down onto the left temporo-parietal region.

Skull: Of average thickness and density. In the vault a fissured fracture extended upwards and at first backwards from the upper posterior margin of the anterior burr hole in the left parietal bone just below and in front of the parietal eminence. Having passed upwards and backwards for 2 cm it then turned upwards and forwards, almost at right angles, for a further 7 cm to end in the coronal suture 1 cm to the left of the midline. The coronal suture was slightly sprung over a distance of 4cm.

Brain: Soft and swollen with patchy subarachnoid haemorrhage in many areas and particularly within an area 5cm x 4cm in the left fronto-parietal area. Beneath the burr hole in the right temporal region and extending back onto the right temporal lobe there was cortical necrosis and bruising within an area 9 x 5cm.”

[150] He made no findings in relation to the spine, although he removed a section and fixed it for further examination.

[151] Dr Carson had found an area of abrasion and laceration on the left forehead, about 1 inch in diameter. He found a separate large abrasion on the right side of the forehead. Beneath the scalp there was bruising over the top and on the left side.

However, there was also a significant skull fracture on the left side of the head. This was not associated with the abrasion and laceration on the left forehead. Indeed, it was not associated with any surface mark at all. "This was quite distinct from the injuries on the forehead and could not have been caused by the same blow or blows. When the skull vault was removed, quite extensive brain damage was revealed. Again, this was associated with the fracture and must have been caused by the same injury which caused the fractures. It was this brain damage which caused his death."

[152] Dr Carson had been given a history that the deceased had fallen downstairs and that he had been struck by a rubber bullet. He had this to say:

"The interpretation of the injuries is difficult. Even if the abrasions on the right side of the forehead are disregarded, there remains the injury on the left forehead, not associated with a skull fracture or brain injury, and separate injury on the left side of the skull with its associated brain damage. All these injuries could have been caused by a fall downstairs and indeed this view would be supported by the number and severity of the injuries and the fact that there was also some bruising over the lower part of the spine in the neck. On the other hand, the injury on the left side of the forehead could have been caused by the impact of the nose of a rubber bullet. On its own this injury was not severe and should not have offered a threat to life. The skull fracture on the left side is most unlikely to have been caused by a rubber bullet since it was above the thin temporal bone, which could perhaps be damaged by such a missile. It was much more likely to have been caused by a heavy fall on a relatively flat hard surface. It may be that he was hit first on the forehead by a rubber bullet and then fell heavily striking his head on the ground. This would not, however, explain the abrasions on the right forehead.

The possible effects of alcohol should also be borne in mind. Since he survived several days a blood test taken after death would have been of no value. It is not clear whether a sample was taken for analysis after his admission to hospital, if he were drunk at the time of the injury, this of itself could have caused a fall or rendered him more likely to fall on being hit by a rubber bullet.

In conclusion, therefore, it was not possible to say from the autopsy findings alone which of the two accounts given for the injuries sustained is the correct one."

[153] Dr Carson formulated the following cause of death:

1(a) BRUISING, NECROSIS AND OEDEMA OF BRAIN

associated with

FRACTURE OF SKULL

due to

(b) A BLOW ON THE LEFT SIDE OF THE HEAD.

*Dr Swift*

[154] Dr Benjamin Swift is a Consultant Forensic Pathologist who has been on the Home Secretary's Register of Forensic Pathologists for almost 20 years. Having been retained by the legal representatives of Soldier B to review the post mortem findings in this case, he provided a report. He gave oral evidence in 2021 and to me.

[155] Reviewing the findings of Dr Carson, he additionally noted some bruising over the outer left cheekbone. He agreed with Dr Carson's formulated cause of death. In his report he stated:

"It is clear that there is a clinical description of a left-sided skull fracture associated with contralateral subdural haematoma and contusional injury (bruising) to the surface of the right temporal lobe (site of operation). The finding of injury to the diametrically opposed site of an impact is often referred to as a "contrecoup injury" and is typically seen with heavy falls whereby the head strikes a solid surface, and especially when a fall is accelerated beyond the simple effects of gravity. Such a pattern (coup/contrecoup injury) is far less frequently seen in cases of direct impacts from blunt objects.

In this case, although I would agree that there appears not to be injury to the skin surface at the point of skull fracture formation, the pathology points to Thomas Friel striking the left side of his head against the ground or similar hard surface, the force of the impact being transmitted across his head and creating the damage seen to the opposite side of the brain as well as tearing to small veins, thus accounting for the subdural bleeding. A possible previously undescribed bruise over his outer left cheekbone might also lend support to the possibility of the side of Thomas Friel's head broadly impacting a flat surface.

The reason as to how he came to strike his head cannot be identified in this case, though any intoxication might have put him at increased risk of falling in response to an

impact, stumble, or push, as the ability to anticipate actions or react to protect oneself is diminished by alcohol.”

[156] He did not exclude the possibility that the deceased had perhaps fallen down a short set of steps. He felt that the left sided forehead abrasion was in keeping with a collapse to the ground, but said, “I would not entirely exclude the possibility of an impact from a rubber baton round. If it is accepted that he was struck by a rubber baton round, he may then have struck the left side of his head when falling to the ground.”

[157] In relation to the right forehead injury, while it did have a superficial resemblance of the type of parallel bruises left after a side-on rubber bullet strike, he agreed with Professor Crane that they were in fact abrasions, to which this characteristic pattern does not apply. In addition, it was not noted by the treating clinicians, neither did it prompt right sided investigations. He felt it more likely that it was an incidental and unrelated finding, perhaps caused post-admission to hospital, during the process of treatment.

[158] In oral evidence before me he said that the right sided scalp abrasion was not associated with bruising under the scalp, so must have involved a mild level of force. It could be discounted as having an involvement in death.

[159] The left forehead abrasion was irregular in shape, more likely to have been caused by an irregularly shaped object, had some subjacent bruising and must have been associated with a mild to moderate level of force. It could have been caused by falling onto a hard surface or being struck by a brick or a stone. During questioning Dr Swift did allow for a possible mechanism of injury in this case; that a fall to the forehead might have caused the injury to the left side of forehead and transmitted the forces along the joint lines (or suture) in the skull, so as to result in the left side fracture. However, it is difficult to see how this would cause the contrecoup brain injury, which would not then be opposed to the site of application of the force. Additionally, it is not consistent with Dr Swift’s analysis of this injury as having only involved mild to moderate force. I discount that scenario, to be fair to Dr Swift, he was clear that it was not a scenario that he favoured. It was also dismissed by Professor Crane.

[160] In relation to the left side skull fracture, he accepted that it would be uncommon to see a skull fracture caused by a fall without a mark or abrasion on the overlying skin. However, hair could prevent such an abrasion. In terms of how this fracture could be caused without involvement of the shoulder, he posited alternative scenarios of falling forwards, with head turned to the side, or falling onto a raised object, such as a kerb. As to a fall to the side, he said that he could not entirely exclude the fracture having happened in this way, but the presence of the shoulder made it less likely to occur. He accepted that this would have created another locus of potential injury - the shoulder. There were no marks noted on the deceased’s shoulder, but he said that clothing may have shielded the skin from such injury.

[161] It was his opinion that a simple, non-accelerated fall could have caused this fracture. He accepted that it could have been caused by a strike from an object such as a bat or a rubber bullet. He would have expected abrasions or lacerations from such a strike, but the hair could have prevented it. He could not exclude the fracture having been caused by a rubber bullet but to positively say that it had been, he would have wanted to see circular or tramline bruising; it was not his favoured explanation. He accepted that a coup and contrecoup injury could be caused by a strike, but this was a less common source than a fall.

[162] He attached some significance to the fact that the fracture involved sufficient force to separate the sutures of the bone plates, but did not involve comminuted fracturing. He felt that a missile, conveying its force across a small surface area, would be more likely to cause a comminuted fracture, if it imparted this amount of energy, while a fall onto a broad surface would spread the force more widely and be less likely to cause a comminuted fracture. Having said that, he would not go so far as to say that a missile strike causing this fracture must have led to a comminuted fracture.

### *Professor Crane*

[163] Professor Jack Crane was the State Pathologist for Northern Ireland from 1990 until 2014. He is currently a Professor of Forensic Medicine at the Queen's University of Belfast. Professor Crane was retained by the coroner in the 2021 inquest to review the post mortem findings and provide a report. He gave oral evidence in 2021 and to me. He gave evidence that, as a junior doctor, he worked in the Accident and Emergency Department of the Royal Victoria Hospital, where he witnessed many injuries caused by rubber and, more frequently, plastic baton rounds. He and his colleagues had conducted a study in the mid-1970s to compare the injuries caused by rubber and plastic bullets to determine which were more harmful. It was not published.

[164] Professor Crane thought interpretation of the injuries was difficult, compounded by the different histories provided – i.e. the fall down stairs or the rubber baton strike. He also felt that errors had been made by Dr Carson. However, the cause of death was clear; a head injury causing a skull fracture associated with some bleeding over the surface of the brain and bruising of the brain itself. He identified three separate and distinct areas of injury:

- 1) The elongated area of abrasion on the right temporal region of the scalp and which extended to involve the upper part of the right forehead.
- 2) The laceration lying within an area of abrasion on the left side of the upper forehead.
- 3) A fairly extensive fissured fracture involving the left parietal area of the skull and which extended upwards and forwards to the top of the front part of the skull.



[165] He agreed with Dr Swift that the first of these injuries could be excluded from playing a role in death. He did not know if it was caused post-admission to hospital. He thought it might well have been, as it was not mentioned in the hospital notes, and it did not result in any immediate investigations to the right side of the head. It was not caused by a Rubber Baton Round strike. It was not associated with an underlying brain injury. In oral evidence in 2021 he said that he could not offer an explanation for that injury.

[166] He thought a fall down a flight of stairs could be excluded as a cause for these injuries, given the lack of injuries elsewhere on the body or face.

[167] In relation to the second injury, the left forehead abrasion, it was his opinion that this somewhat irregular, streaky abrasion, below the laceration, would be more consistent with impact with a hard-rough surface. Also, its position would be consistent with a so-called collapse injury to the ground. He did not believe it likely to have been caused by a rubber bullet. He noted that there was little bleeding beneath the scalp in this area, so it must have been caused by a modest blow.

[168] The most significant injury was that to the left side of the head. In his report Professor Crane expressed some doubt about Dr Carson's findings, which referred to bruising and necrosis on the right side, in his examination section, but referred to brain damage associated with the fracture, in his opinion section. He raised the possibility that Dr Carson may have confused the side of the brain that was damaged. When asked about Dr Carson's opinion, that this injury was unlikely to have been caused by a rubber baton strike, Professor Crane said he did not know why Dr Carson had ruled this out as a mode of injury.

[169] He was of the opinion that an impact from a rubber bullet could cause a fracture of the skull with no external injury (he accepted that one might expect to see such an injury, but it would not always be the case) and at the same time an impact sufficient to fracture the skull would be associated with a significant underlying brain injury, such as to cause death. While he accepted that a simple fall from a standing position onto a hard-unyielding surface, such as the road, could cause such injury, Professor Crane thought this unlikely. He said that skull fractures are more commonly associated with accelerated falls onto the ground, i.e. a fall as a result of an input beyond gravity.

[170] In oral evidence, in 2021, he noted that the fracture was not to the thickest part of the skull, so somewhat easier to fracture, however the fracture had involved sufficient energy to cause the joint between the two bones of the skull in that area to separate. He said that this would be uncommon from a simple fall. He said that it was not uncommon to see an absence of external injuries from a blow to the head, more so if the object causing the impact is smooth. Hair protected the scalp from injury. He said a brick or a stone striking the skull could have caused the fracture to the left side of the head. When he considered the colour post-mortem photographs Professor Crane noted bruising on the left cheek and around the left eye which he said could be consistent with a fall or strike.

[171] Professor Crane said that, if it was shown that Thomas Friel had been struck by a rubber baton, then the left sided skull fracture could have been caused by such a baton strike, even though there was no external injury.

[172] In general terms, he said that falls rarely cause skull fractures to the side, because the shoulder tends to protect the head, if the body falls to the side. Hence, in his experience, a left sided skull fracture, like the one sustained by the deceased, is more common from a blow than a fall. He did accept that a skull fracture could happen with a simple fall. He also accepted that quite a few people were hit in the head by rubber bullets, but there were relatively few skull fractures.

[173] He commented on Dr Carson's reference to bruising to the anterior surface of the spine and neck. He did not see further reference to the nature of that injury, he accepted that it could have been caused by a fall downstairs, or onto the back. There was also some bruising to the left eye and cheek, not mentioned by Dr Carson, but noted by Dr Swift, from the photographs, again possibly caused by falling onto the ground.

[174] He was asked about the possibility of the right sided brain injury having been caused by a coup and contrecoup mechanism. He accepted that this was possible, but, he thought, less likely. He agreed that the normal mechanism for this was a fall onto hard ground, with either the front or back of the head.

[175] He was not impressed with the studies done in relation to skull fractures from plastic bullets in the US. The skulls used there were dried and brittle, when compared with a living person.

[176] A fall downstairs could not be excluded as being the cause of the skull fractures. Neither could he rule out the possibility that the skull fracture was caused by firing a rubber bullet at a range of more than 20m.

[177] Apart from the coup and contrecoup mechanism, the other possibility entertained by Professor Crane to explain the right sided brain injury was that Dr Carson had made an error in describing a brain injury on the right side. However, Dr Carson had localised the right sided brain injury by reference to burr holes on the right side. These holes are described by Dr Bennett, the treating doctor, who also describes findings in relation to the right sided brain, after making the burr holes. Hence, I have little difficulty in discounting that possibility that Dr Carson did not observe separate left and right sided brain injuries.

[178] In oral evidence before me Professor Crane said that the left side forehead injury was associated with subjacent bruising under the scalp, which was consistent with a blow to that area, or that area having struck something. He did not think that it could be taken much further than that. However, he did not think that it was caused by a rubber bullet because, while it might cause bruising, it was unlikely to cause an abrasion.

[179] He felt it unlikely (although possible) that the left sided skull fracture had been caused by a simple fall. He noted that it was a substantial fracture, that had, as he put it, 'sprung the suture,' that is, caused the panels of bone within the skull to separate. Again, he reiterated that in a fall to the side, the skull would be protected by the shoulder. He accepted that a good head of hair could prevent an abrasion injury from occurring with a fall onto the ground, although he said that one would still normally expect to see some injury. He did not accept that the abrasion injury to the forehead could have been the cause of the skull fracture. It was too far removed from it.

[180] He did accept that the right sided brain injury was a contrecoup type injury, although he was not particularly happy with the term. It was the result of an application of force on the injured or 'coup' side of the head, which resulted in variation of pressures on the opposite side of the brain, sufficient to cause 'contrecoup' injury there also. There was no evidence of any impact to the right side of the head. Coup/contrecoup is more frequently seen with a fall than with an impact. However, he said that it is also more common with a fall onto the back of the head, and a reciprocal injury to the front of the brain. It is less common in injury to the side of the head. He accepted that it is more common with a fall than with a blow. However, he said that a direct impact (from a missile strike) could also cause an injury to the opposite side of the brain. The left sided injury could have been caused by a blow from, for example, a bat or a rubber bullet. The absence of surface injury made it more likely that it was caused by a smooth object. A rubber bullet would have the potential to cause a skull fracture.

[181] However, he retained his central position which was that a simple fall was unlikely to have caused this injury. He felt that it was a difficult case. His preferred mechanism of injury was impact rather than a simple fall, because of the nature of the skull fracture. It could have been from a rubber bullet impact. He did note that history is important in the assessment of injuries.

[182] Both Dr Swift and Professor Crane could see bruising to the left cheek, although this was not commented on in the original autopsy and no dissection was performed of the area to confirm it.

### *Dr Shepard*

[183] Although he did not give oral evidence to me, Dr Shepherd, a Home Office registered forensic pathologist, was asked to review the case by the HET and gave evidence at the 2021 Inquest. His reports and a transcript of his 2021 evidence was received pursuant to r.17.

[184] He did not believe that the injuries to the Deceased were consistent with a fall downstairs, given the absence of other limb or trunk injuries. However, he identified a right sided skull fracture which he associated with the right sided forehead injury, and right sided brain injury. He opined that this was all consistent with a rubber bullet strike to the right forehead. This was the pathology evidence presented to the HET.

[185] Unfortunately, it does appear that Dr Shepard made a mistake in his interpretation of the photography provided to him. He provided an addendum report in 2021. Having been provided with the reports of Professor Crane and Dr Swift and some additional photographs, he now identified a left sided skull fracture. However, he remained of the view that the right sided forehead injury had the overt characteristics of the object that caused it – which in his opinion was strongly suggestive of a rubber bullet, which he thought could have caused a fracture at a distant point within the skull, i.e. a right sided forehead strike causing a left parietal fracture. He did not favour a left sided rubber bullet impact, because there was an obvious right forehead injury. He did concede that hair could reduce or prevent the formation of skin injury following blunt trauma.

[186] He did not consider the potential for a fall onto a hard surface, such as a road, to have caused the side sided skull fracture.

[187] I prefer the explanations offered by Professor Crane and Dr Swift in relation to the right sided forehead injury. It would be remarkable if such an injury had not drawn the attention of the treating physicians at the time of the Deceased's admission to hospital. The absence of reference to it supports the contention that it is likely a post admission injury, perhaps during treatment. Additionally, I note his acceptance that the right sided forehead injury was an abrasion and I accept Professor Crane and Dr Swift's evidence that a smooth rubber bullet would not have caused an abrasion. Finally, I accept Dr Swift's oral evidence at the November 2021 inquest that there is little bruising below the skull at the site of the right sided abrasion, which also weighs against it as a site of a substantial impact. Having reached that conclusion, it follows that I do not accept his conclusions, that were predicated on that mechanism of impact.

### CONCLUSION

[188] The Deceased had spent the evening in the Telstar Bar, drinking with his brother Seamus Friel. They had consumed a considerable quantity of alcohol. They were aware of rioting in their area. They left the bar somewhere around 11.30pm, and they were told that a friend of theirs had been arrested by the army. This evidence comes from Seamus Friel, on issues in respect of which he had no motivation to provide other than the truth. It is corroborated, to an extent, by Patrick Curran.

[189] The two brothers made their way towards the local army base on Piggery Ridge, which was positioned along Blighs Lane. Blighs Lane intersected Creggan Heights and the brothers lived only a short distance away from this intersection, so the area and the army camp location, would have been well known to them, and one might expect that they would have been familiar with the other young people in the area.

[190] When the brothers arrived at the intersection of Blighs Lane and Creggan Heights, there was an on-going confrontation between the army and local youths, with stones being thrown towards the army. I do not accept Seamus Friel's statement to the contrary, suggesting that the brothers arrived to find a peaceful situation, which

is at variance with the military logs, army witnesses, the limited other civilian evidence, in terms of what had been going on that evening, and the course of events that was to follow.

[191] That same night, the 3<sup>rd</sup> Royal Anglian Regiment had been tasked to patrol into the Creggan area of the city, to provide some protection for men involved in repairing the perimeter fence of the Piggery Ridge camp. The relevant platoon was commanded by a Lieutenant, Soldier F and split into 'A,' 'B' and 'C' sections. 'A' section was commanded by TFM10; 'B' section by L/Cpl Rogers and 'C' section by TFM15. They commenced their patrol before midnight. In relation to 'B' section, this is also described as comprising Soldiers B, C, D, E, TFM17, TFM11 and TFM12. The designated baton gunners for 'A' section were Soldiers B and C.

[192] The precise course of that army patrol is not relevant to the findings required of this inquest. However, suffice it to say that the patrol was passing relatively peacefully until there was an innocuous confrontation between 'B' section and a drunk man. In the tense atmosphere of an army patrol into the Creggan, this acted as something of a spark and resulted in youths confronting the army patrol in increasing numbers. Eventually L/Cpl Rogers led his section back to the Creggan Heights area, with some tens of youths behind him. He turned to lead his section back up Blighs Lane towards the camp. At this point his section was the recipient of stones and bottles being thrown by the youths.

[193] L/Cpl Rogers did not return to the camp. Instead, he deployed his section on the sunken path. The path ran parallel to Creggan Heights and broadly perpendicular to Blighs Lane. The path was somewhat elevated and afforded a good view of Creggan Heights. No doubt L/Cpl Rogers felt that he was deploying his section to protect the approach to the Piggery Ridge camp. However, his deployment also meant that, were youths to advance up Blighs Lane, beyond the sunken path, then his section would be isolated and cut off from the camp. It was a dark night, and the soldiers were in a concealed position. It might not have been apparent to youths making their way up Blighs Lane that they were cutting off 'B' section from the camp. L/Cpl Rogers states that the youths standing around the junction of Blighs Lane and Creggan Heights could not see his section.

[194] The above scenario is derived from the evidence of the military witnesses and is not contradicted by other sources, save Seamus Friel's account.

[195] Later, L/Cpl Rogers was ordered to move his section from their position, back down Blighs Lane, across Creggan Heights and into the streets below, in response to reported suspicious activity. This movement resulted in a series of confrontations with youths, with stones and bottles being thrown at them, and one confrontation in which some of his men came close to being cut off from the camp, it involved the discharge of Rubber Baton Rounds and the eventual return of the section, back to their position on the sunken path, only this time being pursued by a larger group of youths, and being actively stoned.

[196] The above narrative is by way of background to the presence of the Deceased and soldiers at the intersection of Blighs Lane/Creggan Heights and the sunken path. 'B' Section was joined by one of the other sections while on the sunken path, and by Soldier F.

[197] Some of the youths did then advance up Blighs Lane. In all likelihood, unaware of the location of the soldiers on the sunken path and unaware that their movement risked isolating these soldiers and drawing a response.

### *Discharge of Rubber Baton Rounds*

[198] In response to the risk of being cut off from Piggery Ridge camp, Soldier F ordered a charge of the youths, to drive them back down Blighs Lane. This had some short-term success, causing the youths to run back down Blighs Lane, pursued by a few soldiers. However, this handful of soldiers was running into the greater body of youths. When they got closer to the intersection with Creggan Heights, the stoning of the pursuing soldiers increased, and the soldiers had to retreat.

[199] At this point L/Cpl Rogers says that he ordered the use of Rubber Baton Rounds. Soldier B says that he fired one round. He was sure that this did not hit anyone. Soldier B says that he then returned to the sunken path, resumed his position and later fired a second round towards another group when they started to make their way up Blighs Lane. He claims to have fired from a range of 25-30m and from a prone position. He claims to have shot at a central leading figure. He aimed for a direct shot towards the stomach of a man wearing a white jacket. He was not able to see what happened to the round because of smoke from his gun, but then saw that this figure had fallen amongst the stones, bricks and bottles and was dragged away by two youths. I am satisfied that this happened somewhere around 01:00. I am not satisfied that it happened at 01:20, for the reasons that I have set out, for example at [111] above.

[200] Soldier C also recalls being in the sunken path, running out along with Soldier F to grab a youth, the youth running away, firing one baton round from a kneeling position, at this youth, possibly striking him with it, (he saw this youth fall to one knee then continuing away) before returning to the sunken path. Some minutes later he repeated the same procedure, but this time with no hits. In all, he accounts for 3 baton round discharges, but says that he fired 4 rounds.

[201] I broadly accept this account of the discharge of baton rounds. In some measure it accords with Seamus Friel's account. I accept that the brothers had advanced some distance along Blighs Lane before the baton rounds were discharged. Seamus Friel says 20m. I accept that soldiers did come from their right - that is the location of the sunken path, from their direction of travel. I do not accept that there was no rioting at this time or that the shot was fired from a range of 4 yards. I say this because of the lack of tattooing from gun fire debris on Thomas Friel and the evidence of the soldiers about how and when they charged towards the youths.

[202] I find that the Deceased was part of the group advancing from Creggan Heights, up Blighs Lane. Whether he personally was actively throwing stones, I cannot determine. However, the nature and action of the group that he was part of was confrontational, and, as a group, was involved in throwing missiles at the army.

[203] No warnings were shouted by soldiers before discharging Rubber Baton Rounds. They do not claim to have issued warnings and no one refers to receiving a warning. However, a shouted warning would have been meaningless in the context of the active confrontation that was making its way up and down Blighs Lane and the vicinity of Creggan Heights.

### *Whether the Deceased was injured on Blighs Lane*

#### *Timings*

- [204] 00.59 Army radio log records "C/S 22 fired 2 Baton Rds. at a crowd of 30 at junc. Bligh's Lane/Creggan Hts."
- 01:00 Director of Operations Briefing refers to rioting in which a person was possibly struck by a Rubber Baton Round and dragged away unconscious.
- c1.00 James Doherty says that he was stopped by local youths and told that there was an injured boy in No.85 Creggan Heights
- c1.00 Hugh Deehan says that he arrived at No.85 to find a youth on his sofa and is asked to summon an ambulance. After doing so, he returned to his home and the ambulance arrived a few minutes later
- 1.15 Marshall Heatley says that a telephone message was received at Ambulance Control that there was an injured man at No. 85 Creggan Heights. His ambulance was immediately tasked to No.85 Creggan Heights
- 1.20 The evidence of the army is of discharge of Rubber Baton Rounds at around 1.20am. This time is provided by Soldier B, D and L/Cpl Rogers. However, I have found that these timings are unreliable and, in all likelihood, inserted in the statements by persons other than the statement makers, with no identifiable basis for the time of 01:20.
- 1.22 Marshall Heatley says that his ambulance arrives at No.85 Creggan Heights
- 1.41 Marshall Heatley says that his ambulance arrived at Altnagelvin Casualty Department
- 1.45 Dr Ram accepts the Deceased into Altnagelvin Casualty Department

[205] All timings from the involvement of Marshall Heatley are precise, the earlier timings must be allowed considerable latitude. I say this because I am prepared to accept the accuracy of record keeping by medical authorities. The contemporaneous army radio log and Director of Operations Brief are more likely to be accurate than the military statements, recorded two and three days after the incident. For information about baton round discharge to be recorded in a radio log at 00.59 requires the baton discharge to have been before that. All baton rounds were not discharged at the same time, but there is only one relevant log entry. I attach little weight to the suggested time of 01:20, as I have explained above. I find that the timings support the proposition that the person struck by the baton round discharged by the soldiers, described at paragraph [199] et seq above, was Thomas Friel. I allow a wide margin of error in the recording of timings by the military, as I do not know the reliability of the source of timings in either the logs or the statements. However, the baton rounds are fired in and around the same time that Thomas Friel is brought for medical attention. It would be a very different matter if the logs recorded the discharge of baton rounds some hours earlier, but they do not. The military authorities record the discharge of baton rounds in and around the time that Thomas Friel was struck.

[206] The locations also support the same proposition. The army account is of Rubber Baton Round discharge at the bottom of Blighs Lane. It is of a man being dragged away. This is a matter of metres from No.85 Creggan Heights. No.85 as the home of someone known to provide first aid would have been a logical and proximate place to have taken someone injured on Blighs Lane. Seamus Friel says that he took his injured brother back to Creggan Heights. That is where Thomas Friel was brought. The Telstar Bar is considerably further away, and I consider it unlikely that Seamus Friel would have, or could have, dragged his brother such a distance if he had fallen down stairs in the Telstar Bar.

[207] I accept the evidence of Seamus Friel, that he initially gave an account of the Deceased having fallen down stairs because he did not want the Deceased to be arrested for rioting. This would have been a relevant consideration for him given Thomas Friel was subject to a suspended sentence for disorderly behaviour. I accept that, when he realised the gravity of the situation, and was speaking to a surgeon before the Deceased was operated on, he gave a true account. One can readily understand why he would want the treating clinicians to have the fullest and most accurate account, to maximise his brother's chances of a successful outcome. It is much more difficult to see why the reverse scenario would occur, why he would initially provide an honest account that the Deceased fell down stairs, but then provide a dishonest account that he had been struck by a rubber bullet, to the clinicians.

[208] I find that the deceased was injured on Blighs Lane and not by falling downstairs in the Telstar Bar or at home.



### *Whether the deceased was struck by a Rubber Baton Round*

[209] L/Cpl Rogers says that he witnessed Soldiers B and C fire two baton rounds. He saw a youth, about 30m away from him, stagger and fall onto his back. He was dragged into the crowd by two others. Soldier B says that he fired a round from a prone position at someone 25 to 30 metres away. He could not see what happened to the person, because of the smoke from his gun, but then saw that this man had fallen amongst the bricks, stones and bottles that were lying on the road, two youths dragged the man back towards the main body of the rioters.

[210] Seamus Friel refers to his brother being thrown back having been hit by a Rubber Baton Round. He says that he then trailed him by his arm, back towards Creggan Heights.

[211] Seamus Friel described the Deceased as wearing blue jeans, black coat and a white polo necked sweater. Soldier B described firing at the stomach of someone wearing a white jacket.

[212] Those present at the scene appeared to believe that a Rubber Baton Round had caused a significant injury to someone. Soldier E recalls someone screaming, and the army being called names after the last baton rounds were discharged, and the crowd then dispersing. What had taken place was sufficient for the RMP to quickly commence an investigation. Although Seamus Friel was maintaining that the Deceased had fallen down stairs, Margaret Nixon recalled that there was a crowd around Hugh Deehan's house (where the Deceased had been brought) and that they were hot-headed over what had happened. Army radio logs record a Mrs Friel confronting soldiers the next day. The first collated account prepared by the army, in the form of the Director of Operations Briefing, records, "A 21 year old Creggan man is VSI in hospital, it is possible that he was injured by a baton round in the rioting at 180100 ... A man was certainly dragged away unconscious during the riot."

[213] It does appear that all those present at the scene and with a view of events, formed the conclusion that a Rubber Baton Round had been discharged and had caused a significant injury, at the very least knocking a man to the ground. They did not seem to have much difficulty connecting that to the death of the Deceased. Of course, perusal of the facts may lead to the conclusion that those present misinterpreted what had in fact happened. However, there is no body of evidence available to lead me to that finding.

[214] There is no evidence of anyone else falling to the ground and sustaining a significant injury that night, at that locus and approximate time. It would be remarkable, if the Deceased was not the person struck by a Rubber Baton Round as described by L/Cpl Rogers and Soldier B, that he somehow received a head injury and was trailed to Creggan Heights, unconscious, without his injury being noticed by anyone else. It would similarly be unlikely that another person, independently, was knocked to the ground by a Rubber Baton Round, as described by L/Cpl Rogers and Soldier B, and was trailed back into the crowd, but sought no medical attention at all.

Both these matters would have to occur within metres of one another and within a time frame of around 20 minutes.

[215] It is more likely, and I find on the balance of probabilities, that the Deceased was struck by a Rubber Baton Round, and that this was the round observed by L/Cpl Rogers and Soldier B and was fired by Soldier B. I cannot rule out the possibility that the baton round that struck the Deceased was fired by Soldier C. The rounds were fired in the same time frame and were inaccurate. I find that the shot was fired by Soldier B on balance because he fired and when the smoke cleared the Deceased had fallen, hence the timing of the firing of the Rubber Baton Round and the Deceased falling correlated, certainly in the mind of Soldier B.

[216] The rubber baton/FRG system, was wholly inaccurate. There is significant discrepancy between L/Cpl Rogers and Soldier B's description of the Rubber Baton Round strike of the Deceased. Soldier B places himself prone, lying on the bank of the sunken path, while L/Cpl Rogers describes Soldier B firing as part of a line of soldiers, across Blighs Lane. However, both speak of the round striking the central rioter. Soldier B says that he picked out this person for a single aimed shot. He says that he aimed for direct fire, not rebound. This was a meaningless distinction given the inaccuracy of the weapon system. However, L/Cpl Rogers said that the night was so dark that it was possible only to pick out general outline of rioters, and that a rioter would have to be within 15-20m to be identified. Soldier F said that visibility was limited to 20m. He used a starlight scope to see that one youth had approached to within 20m of him. L/Cpl Rogers and Soldier B speak of a shot discharged at someone 25-30m away. I do not accept that, in the prevailing conditions, as described by the soldiers themselves, it was possible to identify a single lead rioter.

[217] The findings that I make in relation to the actions and role of the Deceased when shot are set out at [202] above. The evidence that I heard suggests that the use of the rubber baton gun system to take a single aimed shot and strike a specific target at 25-30m is fanciful. I find that the lighting was such that the soldiers would have been able to make out the pattern of people and to notice one fall. That one was wearing white could have been observed, but that is the extent of what would have been possible. They would not have had the ability to make out interactions, such as one person speaking to or directing others. Providing a statement asserting such, and claiming a single, directed, successful, aimed shot, represented an effort to create a narrative justifying a discharge of a Rubber Baton Round, after its consequences had become clear, and I reject it.

[218] The instruction or training of Soldier B in relation to discharging direct or rebound shots and any confusion in that regard, was immaterial. Firing from a prone position, at a target over 25m away, the weapon system was incapable of such distinctions.

### *The mechanism of the Deceased's injury*

[219] I have set out the competing theories in relation to how the Deceased sustained his head injuries in some detail above. I acknowledge the concession of the pathology experts, that the interpretation of the Deceased's injury presents challenges. In short, I prefer the explanation offered by Dr Swift.

[220] The Deceased suffered a left-sided skull fracture. However, this was not a comminuted fracture. It was a blow with sufficient force to separate the sutures of the bone plates, without fragmenting the bone. I accept that this makes an application of point force less likely. The Deceased suffered a contralateral subdural haematoma and contusional injury to the surface of the right temporal lobe, referred to by the experts as a contrecoup injury. This is an acceleration injury, it is caused by sudden and dramatic change in pressure within the skull, which causes significant brain injury. It requires a high level of acceleration or deceleration of the brain, within the skull. This classically happens in a fall, simply because the skull is falling with a certain speed and instantly stops upon hitting the ground. This produces very large levels of deceleration. While it is true that an accelerated fall e.g. a fall following a push, or from a height, will have greater deceleration forces than an unassisted fall, the key remains the instant stopping of the skull when hitting the ground. I accept Dr Swift's evidence that this produces much greater deceleration forces on the brain than those induced by a Rubber Baton Round, of mass 150g, striking a human head which might weigh 4-5kg.

[221] A fall onto a solid surface will have spread the pressure of the blow somewhat, compared with being struck by a small projectile. I accept that this is the most likely explanation for the Deceased having received a blow with sufficient energy to separate bone plate sutures and cause a contrecoup injury, without causing a comminuted fracture.

[222] I accept his argument that to transmit such acceleration to the skull from a missile impact, bearing in mind the relative masses of the missile and skull, would require such force as to have likely caused a comminuted fracture at the impact point on the skull.

[223] Professor Crane points out that a coup/contrecoup injury is more likely with a front to back fall, because the shoulder cushions the fall in a side fall. He accepts that it is, however, possible. Similarly, Dr Swift, while not favouring the projectile theory, accepted that he could not entirely discount it. I must endeavour to make a finding on balance of probabilities and, having heard all of the evidence, feel able to do so.

[224] In so doing I reject the evidence of Seamus Friel that Thomas Friel was thrown off his feet and fell backwards. Mr Mastaglio comprehensively dismissed the possibility that such a small projectile could have rendered sufficient force to do this. I find that this is one aspect of Seamus Friel's evidence that was embellished. Similarly, while soldiers gave evidence that the man struck by the Rubber Baton Round fell backwards, their limited ability to observe the detail of events means that

I am able to conclude that they are mistaken in that respect. The manner of Thomas Friel's fall was such that the side of his head hit the ground.

[225] I also note that Dr Carson, who was an experienced pathologist, and at the time, the Deputy State Pathologist, conducted the autopsy of Mr Friel. While he did not develop the contrecoup explanation of the brain damage to the right side of the Deceased's head, and thus found it difficult to explain the brain injury, that does not mean that his comments in relation to the skull fracture do not carry some weight. He had the singular advantage of conducting the examination of the body. In relation to the skull fracture, he said, "The skull fracture on the left side is most unlikely to have been caused by a rubber bullet since it was above the thin temporal bone, which could perhaps be damaged by such a missile. It was much more likely to have been caused by a heavy fall on a relatively flat hard surface." In that respect I agree with Dr Carson.

[226] I find that the Deceased died as a result of a fall, in which he struck his head on the ground. I note Dr Swift's conclusion that this could occur from a simple or an accelerated fall. On balance this is more likely than the alternative scenario of a direct rubber bullet impact.

[227] This also has implications for the question of the range at which the rubber baton was fired. There was much evidence about the range at which a rubber baton would have sufficient energy to fracture a skull. This issue falls away, as I do not find direct impact from a Rubber Baton Round to have been the cause of the skull fracture. However, I do not accept the suggestion from Seamus Friel that the baton round was fired at very close range. I broadly accept the evidence of Soldier B in terms of the nature of his shot.

### *What caused the Deceased to fall*

[228] I have found that the Deceased was struck by a Rubber Baton Round, that the Deceased immediately fell and that he struck his head on the ground, causing the skull fracture and subdural haematoma that led to his death.

[229] I do not accept the dramatic account of Seamus Friel that the Deceased was knocked off his feet by the impact of the Rubber Baton Round. As I have said, Mr Mastaglio explained that the relative masses of the human body and baton round are so disparate to render that an impossibility. However, I do accept that there is a temporal correlation between the impact of the Rubber Baton Round on the Deceased and his falling to the ground. On balance, I find that there is a causal link between the two events. It is not by simple coincidence that the Deceased was struck by a Rubber Baton Round and that he was then seen to fall to the ground, such that both Soldier B and L/Cpl Rogers assumed one to be the result of the other.

[230] There was debris on the ground on which the Deceased was standing, he had alcohol taken, he did have a good head of hair, which could, according to the evidence that I heard, mean that a Rubber Baton Round strike might leave no mark. However, there is insufficient evidence placed before me to enable me to draw any conclusion

as to the mechanism that caused the Deceased to fall to the ground having been struck by a Rubber Baton Round to the standard of the balance of probabilities.

### *Verdict*

[231] I therefore find that the Deceased was struck by a Rubber Baton Round, he immediately collapsed to the ground and struck his head on the ground causing a skull fracture and contrecoup brain injury, from which he died.

[232] Finally, it is important to note the evidence provided to the inquest by Thomas Friel's family. Thomas was one of ten children of James and Margaret Friel. His last surviving sibling, his younger brother Liam, described a kind and caring big brother who took him under his wing and when Liam would follow his brother on his Sunday walk to a shop across the border to buy toffee, Thomas would allow his little brother to come to the shop for sweets and then carry him back home. Liam described poignantly the profound impact the loss of Thomas had on him, his mother and the entire family. Thomas was clearly a much-loved young man who like so many during the times that we refer to as the Troubles, lost his life in tragic circumstances and in this case, following a sequence of individually unimportant events that came together to result in his presence at a confrontation between the army and local youths that neither had intended just a few hours before. I also want to acknowledge the long campaign that his family, in particular his sister Margaret and brother John until their deaths and thereafter his brother Liam, have pursued to have his death recorded as having involved the discharge of a Rubber Baton Round and Thomas recognised as a victim of the Troubles, which campaign has been vindicated.

[233] I, therefore, find that the verdict on inquest is:

- a. The deceased was Thomas Friel, a single male, of 70 Creggan Heights, Creggan Derry
- b. He was born on 9<sup>th</sup> April 1952 in Springtown Camp, Derry
- c. He was employed as a labourer
- d. His parents were James Friel and Margaret Friel
- e. He died at 18:10 on 22nd May 1973 in Altnagelvin Hospital, Glenshane Road, Derry
- f. Cause of death - 1(a) bruising, necrosis and oedema of brain associated with fracture of skull due to (b) a blow on the left side of the head.