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

Delivered: 06/02/2025

IN THE CORONER'S COURT IN NORTHERN IRELAND

**IN THE MATTER OF AN INQUEST INTO THE DEATHS OF
KEVIN BARRY O'DONNELL, PATRICK VINCENT, PETER CLANCY AND
SEAN O'FARRELL**

**FINDINGS OF MR JUSTICE HUMPHREYS
SITTING AS A CORONER**

**David McDowell KC & Lauren Cheshire (instructed by the Legacy Inquest Unit) for the
Coroner**

**Frank O'Donoghue KC & Sean Devine (instructed by KRW Law) for the next of kin of
Kevin Barry O'Donnell**

**Michael Duffy SC, Séamus McIlroy & Éamann Donnelly (instructed by Mallon &
Mallon) for the next of kin of Patrick Vincent**

**Arthur Harvey KC & Fintan McAleer (instructed by McCourt & Maguire) for the next of
kin of Peter Clancy**

**Mark Robinson KC, Fiona Fee KC & Leona Gillen (instructed by the Crown Solicitor's
Office) for the PSNI**

**Joseph Aiken KC, Andrew McGuinness, Michael McCartan, Nicola McKenna &
Aoife Murphy (instructed by the Crown Solicitor's Office) for the MOD**

**Mark Mulholland KC, Ian Skelt KC, Ian Turkington KC & Michael Egan KC (instructed
by MTB Solicitors) for the Former Military Witnesses**

The next of kin of Sean O'Farrell were not represented.

Glossary

AKM	Avtomat Kalashnikova Modernizirovanny
ARF	Air Reaction Force
CID	Criminal Investigation Department
CLF	Commander of Land Forces
CO	Commanding Officer
DShK	Degtyaryova-Shpagina Krupnokaliberny
ECHR	European Convention on Human Rights
FMWs	Former Military Witnesses
GOC	General Officer Commanding
GPMG	General Purpose Machine Gun
HMSU	Headquarters Mobile Support Unit
LO	Liaison Officer
MOD	Ministry of Defence
MSU	Mobile Support Unit
NIFSL	Northern Ireland Forensic Science Laboratory
NOK	Next of Kin
OC	Officer Commanding
PIP	Properly Interested Person
PIRA	Provisional Irish Republican Army
PSNI	Police Service of Northern Ireland
QRF	Quick Reaction Force
RACC	Regional Assistant Chief Constable
RHSB	Regional Head of Special Branch
RUC	Royal Ulster Constabulary
SB	Special Branch
SMU	Specialist Military Unit
SOCO	Scenes of Crime Officer
TCG	Tasking and Co-ordination Group

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HUMPHREYS J

Chapter 1

Introduction and Scope

[1] This inquest arises out of and concerns the deaths of Kevin Barry O'Donnell, Patrick Vincent, Peter Clancy and Sean O'Farrell which occurred on 16 February 1992 in the grounds of St Patrick's Church, Clonoe, County Tyrone. No inquest has previously been held into these deaths.

[2] Each of the deceased met their death following engagement with members of a Specialist Military Unit ('SMU'), a unit within the British Army. All the Properly

Interested Parties ('PIPs'), including the Ministry of Defence ('MOD') and the Former Military Witnesses ('FMWs') agreed that the procedural requirements of article 2 of the European Convention on Human Rights ('ECHR') applied to the inquest.

[3] The scope of the inquest as agreed by all PIPs was finalised in writing as follows:

"The inquest will seek to ascertain the statutory questions as required by Rule 15 and Rule 22(1) of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 ('the 1963 Rules'), namely:

- (a) who the deceased were;
- (b) how, when and where the deceased came by their deaths.

Regarding the question of 'how' the deceased came by their deaths, the Coroner will examine the following matters:

- (i) the purpose of the military operation;
- (ii) the intelligence available to the RUC and the SMU in advance of the operation and the deployment thereof,
- (iii) any failure by the RUC or SMU to share intelligence and the impact thereof;
- (iv) the state of knowledge of those involved;
- (v) the planning and control of the operation on the part of the relevant authorities;
- (vi) the training and experience of those involved;
- (vii) the circumstances in which the deceased came to be at location;
- (viii) the actions of those involved in the operation, at all stages of the operation;
- (ix) the threat posed by the deceased during this incident;

- (x) the nature and degree of force used;
- (xi) the circumstances in which that force was used;
- (xii) whether the use of lethal force was justified;
- (xiii) insofar as is relevant to the issues above, the RUC investigation."

Chapter 2

The Legal Principles

[4] Article 2 ECHR states:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

[5] Article 2 ECHR imposes three discrete duties on states:

- "(i) A positive duty to protect life;
- (ii) A negative duty to refrain from taking life; and
- (iii) An investigative duty to inquire into the circumstances of death which is enhanced in certain circumstances, some of which arise automatically and others where there is reason to believe there may have been a breach of the state's substantive article 2 obligations."

[6] In cases involving the use of lethal force by state agents, where article 2 is in play, Lord Bingham held in *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182:

“Only one change is in our opinion needed: to interpret ‘how’... in the broader sense previously rejected, namely as meaning not simply “by what means” but ‘by what means and in what circumstances.’” [para 35]

[7] Colton J stated in *Re Deery* [2017] NICoroner 1:

“The abundance of case law on this point makes it clear that in considering “the broad circumstances in which the death occurred” an inquest must be capable of leading to a determination of whether the use of lethal force was justified. This should also lead to the further consideration of whether the use of such force and the operation in which it was used were regulated, planned or controlled in such a way as to minimise to the greatest extent possible any risk to life.” [para 9]

[8] In *R (Smith) v Oxfordshire Assistant Deputy Coroner* [2011] 1 AC 1, Lord Phillips set out the requirements of an article 2 ECHR compliant investigation:

- (i) It must have a sufficient element of public scrutiny of the investigation or its results.
- (ii) It must be conducted by a tribunal that is independent of the state agents who may bear some responsibility for the death.
- (iii) The relatives of the deceased must be able to play an appropriate part in it.
- (iv) It must be prompt and effective. [para 64]

[9] In a case involving the use of lethal force by the state, it is for the state to justify the use of force to the civil standard, namely on the balance of probabilities – see *Re Jordan* [2016] NICoroner 1 per Horner J:

“However, the ECtHR has made it clear that in circumstances such as the ones presently under consideration the onus of proving that Article 2 has been complied with lies on the State. In *Hugh Jordan v UK* Appl No 24746/94 the court said at paragraph [103]:

‘In the light of the importance of the protection afforded by Article 2, the court must subject

deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the State agents but also all the surrounding circumstances where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities ..., strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.” [para 58]

[10] In the leading case of *McCann v UK* [1995] ECHR 31 the Grand Chamber considered whether there was a violation of article 2 in relation to the killings of three IRA members engaged in a plan to explode a bomb in Gibraltar. The court recognised:

“In carrying out its examination under Article 2 (art. 2) of the Convention, the Court must bear in mind that the information that the United Kingdom authorities received that there would be a terrorist attack in Gibraltar presented them with a fundamental dilemma. On the one hand, they were required to have regard to their duty to protect the lives of the people in Gibraltar including their own military personnel and, on the other, to have minimum resort to the use of lethal force against those suspected of posing this threat in the light of the obligations flowing from both domestic and international law.” [para 192]

“... in determining whether the force used was compatible with Article 2 (art. 2), the Court must carefully scrutinise, as noted above, not only whether the force used by the soldiers was strictly proportionate to the aim of protecting persons against unlawful violence but also whether the anti-terrorist operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force.” [para 194]

“[T]he use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty,

perhaps to the detriment of their lives and those of others.”
[para 244]

[11] In the event, the court held that the decision by the soldiers to open fire and use lethal force was justified on the basis of an honest belief that it was necessary in order to prevent loss of life. However, it found that there was a breach of the article 2 obligation as a result of the planning and control of the military operation.

[12] In *Bubbins v UK* [2005] 41 EHRR 24 the ECHR said:

“In carrying out its assessment of the planning and control phase of the operation from the standpoint of Art.2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as the way in which the situation developed. Its sole concern must be to evaluate whether in the circumstances planning control of the operation outside Michael Fitzgerald’s flat showed that the authorities had taken appropriate care to ensure that any risk to his life had been minimised ...” [para 141]

[13] The law on self-defence is uncontroversial and is set out in *R v Beckford* [1988] AC 130:

- (i) Did the person who fired the shot that caused the death do so with the honest belief that he needed to use force to defend himself or others from unlawful violence?
- (ii) Was the force used reasonable for the purpose of defending himself or others from unlawful violence, having regard to the circumstances which he believed existed at the time?

[14] Section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which was in force in 1991, provided as follows:

“A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.”

[15] In *Da Silva v UK* [2016] ECHR 314, a decision arising out of the killing of Jean Charles de Menezes by the Metropolitan Police in 2005, the applicant alleged that the failure to prosecute any of those responsible was a breach of the procedural aspect of article 2. In particular, it was argued that the authorities ought to have been able to consider whether the mistaken belief of those who fired shots that the use of force was

necessary was itself reasonable. The Grand Chamber of the European Court of Human Rights stated:

“In a number of cases the Court has expressly stated that, as it is detached from the events in issue, it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of those events ... Consequently, in those Article 2 cases in which the Court specifically addressed the question of whether a belief was perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead, it attempted to put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used.” [para 245]

It can therefore be elicited from the Court’s case-law that in applying the *McCann and Others* test the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary. In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable (that is, it was not based on subjective good reasons), it is likely that the Court would have difficulty accepting that it was honestly and genuinely held.” [para 248]

[16] Rule 16 of the 1963 Rules provides:

“Neither the coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to in the last foregoing Rule.”

[17] However, this restriction does not prevent findings of fact that, by inference, point strongly to such liability. In *Re Jordan* [2014] NIQB 11 Stephens J adopted the analysis of Lord Bingham in *Jordan v Lord Chancellor* [2007] UKHL 14:

“(a) A jury in Northern Ireland may not return a verdict of unlawful or lawful killing; see Rule 16 of the Coroners (Practice and Procedure) Rules (Northern

Ireland) 1963. This is in contrast to the position in England and Wales where such a verdict is permissible provided no person is named.

- (b) A jury may find facts, either as primary facts or as inferences from primary facts, directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist."

[18] Rule 9 of the 1963 Rules provides:

"(1) No witness at an inquest shall be obliged to answer any question tending to incriminate himself or his spouse.

(2) Where it appears to the coroner that a witness has been asked such a question, the coroner shall inform the witness that he may refuse to answer."

[19] It is noteworthy that, in coronial proceedings, a witness may not decline to testify on the grounds that they may incriminate themselves nor can a coroner refuse to permit incriminating questions to be asked. The privilege only extends to refusal to answer particular questions.

[20] In civil proceedings, it is recognised that the invocation of the privilege may lead to a court drawing an adverse inference against a witness or party - see *R(Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 2048 (Admin) and *Manzi v Kings College Hospital NHS Foundation Trust* [2018] EWCA Civ 1882.

[21] In the regulatory sphere, the courts in England & Wales have held that disciplinary tribunals have the legal power to draw adverse inferences from the silence of an individual charged with breaches of the regulatory scheme to which he or she is subject (*R(Kuzmin) v General Medical Council* [2019] EWHC 2129 (Admin)).

[22] However, the learned authors of *Jervis on Coroners* state (15th Edition, at para 12-97):

"Since it is the right of a person asked an incriminating question to decline to answer, neither the coroner nor any jury is entitled to draw any inference adverse to the witness from the exercise of the right."

[23] I proceed on the basis that this is a correct statement of the law. It is significant that Rule 9 was introduced as part of a parcel of measures to ensure that the procedures adopted at inquests in Northern Ireland were compliant with the article 2

obligation. In particular, the previous position that a person suspected of involvement in a killing could not be required to give evidence was swept away following the ruling of the European Court in *Jordan v UK* [2003] 37 EHRR 52. By the time the reforms came into effect, in February 2002, the issue relating to inferences being drawn from a failure to answer questions was well recognised. Had the legislature intended that coroners could draw such inferences in the event of a Rule 9 refusal to answer a particular question, it could have said so.

[24] This approach also recognises the nature of a coroner's inquest. It is not a criminal trial nor a civil action but an inquisitorial process intended to arrive at findings of fact and answer the statutory questions.

[25] There are therefore three distinct questions arising in a case where lethal force has been inflicted by state actors:

- (i) Did the person opening fire have an honest and genuine belief that it was necessary to use lethal force?
- (ii) Was the force used reasonable for the purpose of defending himself or others from unlawful violence, having regard to the circumstances which he believed existed at the time?
- (iii) Was the military operation planned and controlled so as to minimise, to the greatest extent possible, the need to have recourse to lethal force?

[26] In *E7 v Sir Christopher Holland* [2014] EWHC 452 Sir Brian Leveson P observed:

- (i) The use of lethal force by state actors must be subject to "the most detailed and rigorous examination"; and
- (ii) The requirement that "the examination must be prepared to consider every perspective. Those perspectives include a full recognition of the enormous challenges facing the police along with the urgency and almost instantaneous decision making required of the highly trained officers involved." (para [1])

Chapter 3

The Security Forces in Northern Ireland in 1992

[27] In my findings in the Coagh inquest (*In the matter of an inquest into the deaths of Lawrence Joseph McNally, Anthony Patrick Doris and Michael James Ryan* [2024])

NICoroner 22) I set out at paras [21] to [29] the structure of the security forces operations at the relevant time. In summary:

- (i) RUC played the lead role in security operations, with the ability to call for army support when necessary;
- (ii) The RUC was divided into three regions – Belfast, North and South - with each having a corresponding Special Branch ('SB') region, headed by a RHSB holding the rank of Detective Chief Superintendent;
- (iii) The South region was based at Mahon Road, Portadown and the RHSB was the late Frank Murray;
- (iv) Each RHSB had a Tasking and Co-ordination Group ('TCG'), made up of both police and military personnel, to help manage the process of exploiting intelligence;
- (v) The HMSU was a specialist unit within the RUC which took part in rapid reaction and anti-terrorist operations;
- (vi) TCG also had the option of SMU involvement. If the SMU were involved, then HMSU would provide support;
- (vii) If intelligence became available which TCG determined could be exploited, it would discuss potential operations with Liaison Officers (LOs) within both the HMSU and SMU. These units would then put forward proposals to the TCG which could either be accepted or rejected. It was open to a unit to decline a task if it was perceived that it could not be carried out effectively or safely;
- (viii) If a proposal were accepted, TCG would seek permission from RHSB and the Regional Assistant Chief Constable ('RACC') to carry out the operation. When the relevant permissions were in place, a written Tasking Sheet would issue containing the details of the operation including its name, the location, aim and objectives, time frame, the units involved and the necessary intelligence. If the operation engaged the SMU, then internal permissions also had to be obtained through the military chain of command;
- (ix) The operations themselves were run from the TCG Operations Room at Mahon Road but the tactics and activities on the ground remained a matter for the unit carrying out the operation.

[28] The inquest heard evidence from P19, who was a Detective Inspector based at TCG Mahon Road at the time of the operation in question. He described how TCG was running multiple counter-terrorist operations on a daily basis. Surveillance was being undertaken by four close observation platoons, as well as by SB and the SMU.

On any given day between five and ten tasking sheets could issue in what was a volatile and unpredictable situation.

[29] Colonel A, the Commanding Officer ('CO') of the SMU in Northern Ireland in 1992 gave evidence that the SMU was composed of a number of specialist sub-units including units which provided capabilities in covert surveillance (the surveillance sub-unit), arrest and detention (the reactive sub-unit), air support and technical support. Each sub-unit had an Officer Commanding ('OC'), who usually held the rank of Captain who would report to the OC of the SMU (usually a Major).

[30] Colonel A or the OC of the SMU, generally reported daily to the Commander of Land Forces ("CLF"). On Friday he, the OC of the SMU and occasionally the OC of a particular sub-unit, briefed the CLF and occasionally the General Officer Commanding ("GOC") with an overview of the week's operations.

[31] The planning and control of specific SMU operations for arrest and detention was the responsibility of the OC of the reactive sub-unit in conjunction with his team leader or ground commander. Any plan which involved the arrest of terrorists required to be approved by the CO and by either CLF or GOC.

Chapter 4

Training and the Yellow Card

[32] Colonel A, the CO of the SMU in February 1992, gave evidence that every soldier in the SMU was trained in the 'Yellow Card' and this was consistently referred to in briefings. The soldiers underwent scenario training in the application of the Yellow Card rules as part of their pre-deployment training for Northern Ireland.

[33] Soldier F was responsible for training within his SMU sub-unit. He stressed that the scenario training focussed principally on making arrests and ensuring that soldiers understood the rules of engagement. There was always a need to plan for contingencies and respond to the particular threat which was being presented.

[34] The Yellow Card in force at the relevant time stated as follows:

"INSTRUCTIONS FOR OPENING FIRE IN NORTHERN IRELAND

General Rules

1. In all situations you are to use only the minimum force necessary. FIREARMS MUST ONLY BE USED AS A LAST RESORT.

2. Your weapon must always be made safe that is NO live round is to be carried in the breech and in the case of automatic weapons the working parts are to be forward, unless you are ordered to carry a live round in the breech or you are about to fire.

Challenging

3. A challenge MUST be given before opening fire unless:
 - a. To do so would increase the risk of death or grave injury to you or any other person
 - b. You or others in the immediate vicinity are being engaged by terrorists.
4. You are to challenge by shouting:

“ARMY: STOP OR I FIRE” or words to that effect.

Opening Fire

5. You may only open fire against a person:
 - a. If he* is committing or about to commit an act LIKELY TO ENDANGER LIFE AND THERE IS NO OTHER WAY TO PREVENT THE DANGER. The following are some examples of acts where life could be endangered, dependent always upon the circumstances:
 - (1) Firing or being about to fire a weapon;
 - (2) Planting, detonating or throwing an explosive device (including a petrol bomb);
 - (3) Deliberately driving a vehicle at a person and there is no other way of stopping him*
 - b. If you know that he* has just killed or injured any person by such means and he* does not surrender if challenged and THERE IS NO OTHER WAY TO MAKE AN ARREST

*“She” can be read instead of “he” if applicable.

6. If you have to open fire you should:
 - a. Fire only aimed shots.
 - b. Fire no more rounds than are necessary.
 - c. Take all reasonable precautions not to injure anyone other than your target.”

Chapter 5

The Scene

[35] The former RUC station in Coalisland was located at the bottom of Platers Hill in the town. It has now been demolished and replaced by an apartment building. St Patrick’s Church at Clonoe is situated to the east of the town, about 1.6 miles or five minutes’ drive from the old police station. The route takes one along the Annagher Road, past Coalisland Fianna GAA club, to the junction with Moor Road, known locally as Dernagh crossroads, then onto the Mountjoy Road. The church can be accessed either from the Mountjoy Road or the Cloghog Road to its car park. At that time, on the opposite side of the Mountjoy Road, was a dwelling house and sheds belonging to the McGrath family.

[36] The church fronts the Mountjoy Road for approximately 150 metres and adjoins the Cloghog Road to its west side for about the same distance. The car park is to the south of the church and the southern boundary, some 70 metres long, consisted of a hedgerow, of varying density and height, and a post and wire fence. There was a gap of some two paces between the hedge and the fence. The hedgerow was located at a distance of approximately 60 metres from the rear of the church.

[37] The chapel itself was set back about 28 metres from the Mountjoy Road. On the opposite side of the Cloghog Road is a graveyard.

Chapter 6

The deceased

[38] Kevin Barry O’Donnell was born in Dungannon on 24 March 1970 and was aged 21 when he died. He was convicted at the Old Bailey on 15 March 1991 of weapons offences for which he was sentenced to nine months in a Young Offenders Centre. He was then served with an Exclusion Order and returned to Northern

Ireland. In April 1991 he was charged with possession of firearms with intent but this charge was subsequently withdrawn.

[39] Patrick Vincent was born in Dungannon on 17 July 1971 and was aged 20 at the time of his death. He had a criminal record for minor public order matters and driving offences. There was no intelligence linking him with PIRA and his family refused to allow any paramilitary trappings at his funeral.

[40] Peter Clancy was born in Dungannon on 31 October 1970 and was 21 when he died. He had no relevant criminal record.

[41] Sean O'Farrell's date of birth was 20 September 1969 and was aged 22 at the date of his death. He had no relevant criminal record. He had been jointly charged with Kevin Barry O'Donnell in April 1991 with possession of firearms with intent but this charge had been withdrawn.

[42] PIRA issued a statement on 17 February 1992 stating that the four deceased were members of the East Tyrone Brigade and on active service at the time of their deaths. The statement said that one of the volunteers had his hands in the air at the time he was shot.

Chapter 7

The Intelligence and Planning of the Operation

[43] SB had intelligence in July 1991 relating to the involvement of Kevin Barry O'Donnell and Peter Clancy in the wake and funeral of Tony Doris, who had been shot and killed by the SMU at Coagh.

[44] Further intelligence reports in September 1991 linked both O'Donnell and Sean O'Farrell with an armed robbery at a hotel in Cookstown. In the same month Clancy and O'Farrell were reportedly involved in a bomb attack on police in Coalisland.

[45] In October 1991 it was reported to SB that PIRA was planning an attack on a security force base in Tyrone, possibly using a lorry. In November 1991 information was received to the effect that the East Tyrone Brigade was planning "a spectacular attack."

[46] O'Donnell, O'Farrell and Clancy are all named as PIRA members in intelligence received by SB between November 1991 and January 1992.

[47] On 3 February 1992 SB was in receipt of intelligence to the effect that East Tyrone PIRA was planning attacks in the Dungannon/Coalisland area. On 12 February a message stated that reces had been carried out at Coalisland RUC station by PIRA and that some sort of attack may be imminent.

[48] At 1730 hours on 14 February SB records that East Tyrone PIRA had a series of attacks planned which were believed to be “at an advanced stage.”

[49] The following day, information was received to the effect that East Tyrone PIRA was planning a number of attacks on 15 and 16 February and those involved would include Francis McNally, Kevin Barry O’Donnell, Joseph Gerard Bell, Pick Donnelly, Kevin Coney and Patrick Vincent. Specifically, it was recorded:

“A heavily armed gun team, armed with a 12.7 heavy machine gun and 3 AKM rifles, will attack Coalisland RUC station from the grounds of the chapel opposite the station.”

[50] This intelligence also noted that Francis McNally was to arrange for the handover of ammunition for the weapons and that the heavy machine gun had been supplied by Cappagh PIRA prior to 14 February 1992.

[51] On 16 February 1992 further intelligence was received to the effect that PIRA had a major operation planned for that night. The detail provided stated:

“The attack planned by PIRA on Coalisland RUC station for 16.2.92 is to be mounted from Clonoe Chapel car park, Coalisland. The 12.7 heavy machine gun is to be mounted on a hi-jacked lorry and is to be fronted into Coalisland Chapel car park by 3 gunmen carrying AKM rifles.

A number of vehicles will be at the car park at Clonoe Chapel after the attack to convey the weapons and personnel to a safe house.”

[52] All of the available intelligence emanated from SB and the consistent position of all witnesses was that other agencies, including the SMU, did not see the written intelligence materials. The military was therefore dependent upon SB for the information received regarding any potential attacks.

[53] Colonel A gave evidence that he met with the RHSB, Detective Chief Superintendent Murray, and other members of TCG on either 13 or 14 February 1992 at which time he was informed of a possible attack on Coalisland RUC station using a heavy machine gun. On 15 February, in a follow up call, he was told that the heavy machine gun may be a DShK mounted on a lorry.

[54] Colonel A recalled a request being made by Captain A, the OC of the SMU reactive sub-unit, whose role was to formulate a plan for the task, for reinforcements in the form of additional personnel.

[55] Colonel A was asked to attend a meeting on 16 February at RUC HQ but having arrived at this location was informed that his attendance was not required. Some time later that day he was briefed by Captain A in relation to the plan which he recalled involving the SMU reactive sub-unit detaining the PIRA personnel when they were occupied with the task of mounting the 12.7 mm weapon onto the truck in the carpark. He was clear that he was not informed of any intention on the part of the PIRA operatives to return to Clonoe after the attack on the police station.

[56] Soldier AV was the LO for the SMU reactive sub-unit. He was in daily contact with TCG South at Mahon Road. When briefed by SB, he passed this information onto Captain A as the OC of the sub-unit. He himself had no role in the planning of operations or decision making processes.

[57] He gave evidence that SB provided information on a strict 'need to know' basis. In the Clonoe case, it was furnished on a drip feed and he was not privy to the SB50 intelligence reports themselves or the detail contained within them. In particular, he did not recall any names being provided by SB. He could not say why such information might be withheld from the SMU.

[58] The evidence of Soldier A was that several days before 16 February 1992 he was informed that information had been received relating to an attack on Coalisland RUC station. He attended TCG South in the company of Captain A and a discussion took place concerning a gun attack on the station which may have involved a heavy machine gun.

[59] A meeting then took place of the reactive sub-unit to brief its members on the potential task. Soldiers A and F, the ground commander and his 2 I/C respectively, carried out reconnaissance the following day at the RUC station and a decision was made that it was not possible to devise a plan to foil such an attack due to the topography of the area and the limited information available.

[60] Subsequently, additional information was provided concerning a potential forming up point and Soldier A carried out further reconnaissance. This assessment was to the effect that, if Clonoe chapel car park was the chosen point, it may be possible to formulate a viable plan to intervene and arrest those responsible.

[61] Soldier A gave evidence that, close to the time of deployment of the SMU, it was confirmed to him by Captain A that Clonoe chapel car park was indeed to be the forming up point. In the patrol report, prepared in the aftermath of the shootings, it states:

"1800hrs - Changes. Now to concentrate on the FUP in the chapel car-park and react when they form up for the attack."

[62] The evidence of each of those in the SMU who planned this operation was that they did not know:

- (i) The number of PIRA operatives who would be involved;
- (ii) The identities of the PIRA operatives;
- (iii) The vehicles which they would use;
- (iv) The weapons which would be available to them;
- (v) The time at which the forming up would take place; and
- (vi) That there was any intelligence to the effect that the operatives would return to the car park at Clonoe after the attack.

[63] P19 gave evidence that he recalled the car park at Clonoe was to be the forming up point for an attack to be carried out by East Tyrone PIRA. He was well aware of Kevin Barry O'Donnell, a man he described as a "very active terrorist" and the "driving force" behind the IRA in Coalisland. He knew that he had served a prison sentence for weapons offences in England.

[64] CP8, a Sergeant in HMSU, stated that he attended a TCG meeting around 3pm on 16 February when he was told the staging point for the PIRA attack was to be Clonoe chapel. He said that the names or numbers of PIRA members involved were not disclosed to him.

[65] Captain A was excused from giving evidence to the inquest for medical reasons. He made a statement on 24 September 1992 in which he says that, in light of the intelligence received, he made Soldier A aware of his plan to arrest the terrorists involved and prevent the attack on the RUC station. The plan entailed:

- (i) Soldier A was directed to go to the chapel with a patrol, take up position and monitor the area for terrorist activity;
- (ii) The hedge line adjacent to the car park was identified as the only suitable position from which to do so, albeit the cover was poor;
- (iii) If persons arrived who appeared to be terrorists, preparing to carry out a terrorist attack, they must be arrested;
- (iv) The use of firearms by Soldier A and his patrol was to be governed at all times by the Yellow Card;
- (v) Other mobile patrols were to be in the vicinity to assist if required; and

(vi) The actual physical deployment of the patrol at the locus was a matter for Soldier A, in order to ensure their safety.

[66] In his evidence to the inquest, Soldier A outlined three options which were considered:

- (i) Using vehicles to stop and detain the terrorists in transit including the use of roadblocks. This was rejected as no information was available as to which vehicles the terrorists might use, where they may come from or by which route;
- (ii) Detaining the terrorists prior to their commencing the journey to the Clonoe car park. This was rejected as no information existed as to their whereabouts;
- (iii) Intervening and detaining the terrorists as they formed up at the car park. This was regarded as the only viable option.

[67] Soldier A stated that he proceeded to formulate a plan, taking into account the ground at the carpark and the requirements in respect of vehicles, soldiers and equipment. This entailed the deployment of:

- (i) Soldiers on foot to the area of the hedgerow at the southern boundary of the car park;
- (ii) Soldiers in vehicles on the routes leading to Clonoe chapel;
- (iii) SMU LO's positioned with the RUC HMSU at TCG South;
- (iv) A military air reaction force ("ARF") as back up support and for the provision of an outer cordon;
- (v) A ground based Quick Reaction Force ("QRF") to provide an inner cordon - originally to be regular soldiers but later changed to the HMSU.

[68] The southern hedgerow was identified as the only location from which the reactive sub-unit could deploy. All members of this team were to carry a standard Heckler & Koch G3 rifle, save that one soldier would carry a general purpose machine gun ("GPMG"), in light of the intelligence relating to the use of a heavy machine gun by the PIRA unit.

[69] The plan therefore was to close in on the PIRA operatives and detain them as they assembled and mounted the heavy machine gun onto the vehicle in the chapel car park.

[70] Soldier A also stated that consideration was given to the use of the SMU surveillance sub-unit but it was determined not to deploy them due to the lack of intelligence relating to the identities of the PIRA members who were to carry out the

attack. It was also recognised that Coalisland was a difficult place in which to conduct surveillance. If PIRA was alerted, the attack may well have been postponed and planned for a future occasion when no similar intelligence existed.

[71] The plan was considered and approved both by the military chain of command and by the RUC. Colonel A recalled considering the plan as viable and seeking and obtaining the approval of GOC.

[72] Soldier A drew up a set of written orders which included the following information:

- (i) A general outline of the operation;
- (ii) A brief description of the ground in question;
- (iii) The situation recording the possible approval of a plan and the requirement to ready kit and equipment;
- (iv) The mission to detain terrorists in the carpark;
- (v) The deployment of soldiers on the ground, the MSU, the QRF and the ARF;
- (vi) Detailed tasks including listing which soldiers performed which tasks;
- (vii) Deployment including details of which soldier was allocated to which vehicle, how they were to deploy to the ground and by which route;
- (viii) 'Actions on' including those to be taken on possible movement of terrorists into the car park; and
- (ix) Kit and equipment.

[73] These written orders, setting out the precise details of the plan, were not available to the inquest, presumably because they were destroyed by the SMU. P19 referred to "a policy of the routine destruction of documents" in the context of the police and there seems little doubt that this culture extended to the military, even in circumstances where operations entailed the use of lethal force.

Chapter 8

The Events of 16 February 1992

[74] At 1655 hours, Sean O'Farrell and Kevin Coney were stopped at a checkpoint in a Vauxhall Astra by members of the Queen's Lancashire Regiment, including CM27. Their car was searched but they were allowed to proceed.

[75] By 1940 hours, twelve members of the SMU (Soldiers A to L) were in situ at the southern boundary of the Clonoe chapel car park.

[76] The soldiers observed the movements of various vehicles in and out of the car park. These included three Vauxhall Cavaliers, one Vauxhall Astra and an unidentified Japanese car.

[77] At around 2100 hours on 16 February four masked men entered the home of CC8 in Coalisland and hijacked his Ford Cargo tipper lorry, registration C104 JFM. CC8 was threatened and told not to make any report to the police for two hours. At some stage thereafter an improvised metal pipe was welded to the top and centre of the rear tailgate of the lorry and a heavy machine gun, a Russian made DShK, attached to it.

[78] At around 2240 hours the lorry was used in an attack at Coalisland RUC station. Some 60 rounds were fired from the DShK and from AKMs but no one was injured. The gunfire could clearly be heard and observed by those in the car park at Clonoe.

[79] The lorry proceeded from the RUC station to the car park of the chapel at Clonoe. En route, further shots were discharged by the occupants of the lorry in a salute to Tony Doris, who had died at Coagh in June 1991.

[80] The soldiers opened fire on the occupants of the lorry and three other vehicles in the car park. The four deceased were shot dead shortly before 2300 hours. Father Kieran MacKeone administered the last rites at the scene. Life was pronounced extinct by Dr Acharya between 0230 and 0243 hours on 17 February.

[81] The body of Kevin Barry O'Donnell, identified by SOCO officers as body C, was found to the east of the chapel, lying on the grass close to a lorry. An AKM rifle was beside this body.

[82] The body of Peter Clancy, identified as body B, was similarly located on the grass close to the lorry with an AKM rifle close by.

[83] Patrick Vincent's body, known as body D, was in the cab of the lorry.

[84] The body of Sean O'Farrell was found close to a hedge on the far side of the Mountjoy Road to the north of the church. This was identified as Body A. The blood staining around the body indicated that it had been turned over into the prone position prior to police arrival.

[85] Aidan McKeever lay wounded by the driver's door of a dark blue Cavalier, registration KIB 5878. It had been struck by 15 bullets and McKeever had been shot in the arm and shoulder. He was given first aid at the scene and taken to South Tyrone Hospital by ambulance.

[86] One soldier, Soldier H, suffered a facial injury caused by a bullet.

[87] Two other Cavalier vehicles drove off from the scene. A light blue Cavalier (registration IJI 9887) was found crashed on the Moor Road, just over a mile from the chapel and close to the junction with the Stewartstown Road. It had five bullet holes to the rear and two to the nearside rear. This vehicle was owned by Martin Woods. Martin Woods received treatment in the early hours of 17 February at South Tyrone hospital for a bullet wound to his right upper arm.

[88] A burnt out car, a red Vauxhall Cavalier registration YIA 5904, was located just outside Coalisland Fianna GAA club on the Annagher Road, about a mile from the church at Clonoe. It had been struck to its nearside by at least four bullets. All its seats were laid flat save for that of the driver. This vehicle was owned by CC3.

[89] A total of 514 spent cartridges, attributable to the 11 G3 rifles and the GPMG were recovered from the scene. The chapel itself had been struck 60 times and a house belonging to the McGrath family, across the Mountjoy Road and close to where the body of Sean O'Farrell was found, was struck 20 times. The lorry itself was struck by at least 68 bullets.

Chapter 9

The Evidence of the Soldiers

[90] Eleven of the twelve soldiers who opened fire at the Clonoe chapel car park gave evidence to the inquest. One, Soldier H, absented himself and could not be located.

[91] Each of those who testified exercised their lawful right to refuse to answer particular questions, invoking the privilege against self-incrimination enshrined in Rule 9 of the 1963 Rules. In each case, I was satisfied that the questions were such that an answer the witness might give would tend to incriminate him. I emphasise that no adverse inference has been drawn against any witness by reason of the assertion of the privilege.

[92] The FMWs did, however, give relevant evidence around the planning of and preparation for the operation. The inquest also had the benefit of interview notes and statements prepared during the police investigation in 1992. These had undoubted evidential value although the assertions and comments made therein were not subjected to any testing by way of cross-examination.

[93] Soldier A gave evidence in relation to the planning of the operation which is addressed above but invoked his privilege in relation to the events which unfolded on the evening of 16 February 1992.

[94] He gave a statement to DCI Molloy on 13 November 1992. In it, he states that he briefed the members of the patrol on the plan to “arrest the terrorists.” On 16 February at 1830 he deployed two members of the patrol and the others joined and were in situ by 1930 hours. Soldier A describes that he took up a position to the right of a gap in the hedge, lying down. He states that the hedge was sparse and offered little cover. Various vehicles came and went from the car park, including a dark blue and a red Cavalier, and a blue Astra. The drivers of these vehicles at one point dismounted from the vehicles and the Astra driver was heard to say, “no joy yet.”

[95] The statement records that Soldier A then heard shooting coming from the direction of Coalisland. This was fully automatic fire from a heavy weapon and tracers could be seen in the sky. The two Cavaliers made their way to the rear exit of the car park and were joined by the Astra before it left in the direction of Stewartstown.

[96] A blue Cavalier then led the lorry into the car park from the Cloghog Road entrance. A heavy machine gun was visible mounted on the tailgate of the lorry and Soldier A could see a number of persons in the rear of the truck, one of whom was holding a rifle in the air with the barrel pointed upwards.

[97] The statement says that Soldier A then stood up and started to move through the gap in the hedge towards the car park. It also states:

“I was satisfied that the gunmen in the back of the lorry presented a very serious threat to my life and to that of the rest of my patrol.”

[98] On hearing gunfire, Soldier A states that he engaged the man holding the machine gun at the rear of the lorry. He then states that, as the lorry moved along the back of the church, the gunman at the machine gun went out of view and he then turned his attention to the other gunman whom he had seen in the truck. Soldier A engaged that gunman before turning his attention to cars in the car park.

[99] Soldier A saw the driver of the red Cavalier moving and believing that he was about to exit the vehicle and that he was part of the group of gunmen, he engaged the occupant of that car. The blue Cavalier began to move off towards the exit and, believing the occupants of this vehicle to be armed, Soldier A opened fire on the driver. The blue Cavalier exited the car park and made off in the direction of Stewartstown. The red Cavalier moved as if to follow suit and Soldier A fired at it also. He continued to fire at both Cavaliers as they made off on the Cloghog Road.

[100] The dark blue Cavalier remained in the car park and the statement records that Soldier A observed its driver exiting the vehicle and taking up a position behind the front of the car. This appeared to be a firing position and Soldier A then fired at him. He then saw two persons running down the left hand side of the church in the direction of the Mountjoy Road, wearing dark tops and balaclavas. He concluded they had come from the back of the lorry and fired at them until they went out of view.

[101] Soldier A then moved forward, with other soldiers, towards the dark blue Cavalier where a man was lying on the ground shouting “don’t shoot.” He was found to be unarmed and there was nothing of note in the vehicle. The man was wounded and an ambulance called.

[102] Soldier B gave evidence of his involvement with the SMU and the training he had received. He had no role in the planning of the operation. He had a vague recollection of a briefing which involved a hard arrest at a church car park to prevent an attack at Coalisland RUC station. He invoked his privilege in relation to the events of the evening in question.

[103] Whilst Soldier B did not recognise or recall it, the evidence reveals that he made a statement to DCI Molloy on 14 December 1992 in which he describes taking up his position to the right of the gap in the hedgerow about 1945 hours. The movements of various vehicles in and out of the car park over the next period of time is set out. Then, at 2245 hours, the statement records that Soldier B heard heavy machine gun fire from the Coalisland direction and saw tracer rounds in the sky. A lorry, fronted by a car, was then seen to approach from the junction with the Cloghog Road towards the car park. The statement reads:

“The car that was fronting the lorry turned in my direction and I was illuminated in its headlights. The men in the back of the lorry brought their weapons down from being raised and I believed that I had been seen”

[104] The statement goes on to say that Soldier B engaged the terrorists on the back of the lorry as he had seen flashes from the lorry and believed the terrorists were firing at them. Soldier B fired short bursts of automatic fire at the lorry until his magazine was empty. He changed the magazine and moved forward into the car park where he dropped onto a knee and fired three or four aimed shots at the driver of the lorry. He could hear gunfire from the other side of the lorry and fired a burst in the that direction, believing that the terrorists were firing at soldiers.

[105] Soldier B’s focus remained on the cab of the lorry and, on hearing movement from within, he fired a burst through the driver’s door of the cab. No more movement was heard. He then went around the front of the lorry with Soldier F and saw two individuals on the ground. According to the statement:

“The one furthest away from me was sitting up. The top half of his body was up and alert. There was still firing going on and believing him to be a threat to both me and Soldier F I fired a short burst at him.”

[106] Soldier C gave evidence that he was one of the reinforcements called into action on the morning of 16 February. He did not recall the briefing but understood the task

to be the detention of terrorists in the car park of the chapel, believed to be the forming up point for an IRA attack at Coalisland RUC station. Beyond this point, he invoked his privilege.

[107] He also did not recognise the statement purportedly made by him to DCI Molloy dated 13 December 1992. In it Soldier C describes taking up a position, lying down, to the right of the gap in the hedge around 1945 hours. The hedge was sparse enough that it could easily be seen through. He was aware of the movement of various vehicles through the car park. At about 2200 hours he heard heavy machine gun fire and saw red tracer in the sky. He could then see a lorry with men in the rear waving rifles in the air. The lorry was fronted by a car and both vehicles turned down the Cloghog Road and into the side entrance of the car park. At this stage, the statement records that Soldier C was on one knee. He heard firing to his left and believed that the occupants of the lorry were firing at the soldiers. He fired two bursts of automatic fire and then single aimed shots at the men on the back of the lorry.

[108] According to the statement, Soldier C then moved forward towards the lorry in the company of other soldiers. He was standing by the nearside of the cab of the lorry and concluded that it had not been cleared. On hearing movement, the statement records:

“I stepped away from the cab and fired two rounds into the cab as I still believed that a threat existed and my life was still in danger.”

[109] Another soldier opened the door of the cab and Soldier C saw the body of a male lying on the seat wearing a mask.

[110] Soldier D gave evidence that he played no role in the planning of the operation but had received extensive training and was very familiar with the rules of engagement. The briefing was to deploy to a car park to intervene and arrest terrorists before an attack. He invoked his privilege in relation to the events of the evening in question.

[111] On 27 October 1992 Soldier D gave a statement to DCI Molloy. It describes him occupying a lying down position to the right of the gap in the hedge from around 1930 hours. Various vehicles including a dark and a red Cavalier came and went from the car park. In his opinion they were clearing the car park to ensure there were no security forces in the area. The statement says that Soldier D heard gunfire coming from Coalisland and saw tracers in the sky. He became aware of a lorry, being driven in the wrong gear, with five or six men standing in the back, some of whom were holding rifles above their heads. A heavy machine gun was mounted on the rear of the lorry. As the lorry approached the junction, turning into the Cloghog Road, he became aware of the fronting vehicle.

[112] At this stage, the statement records, a number of members of the patrol were standing up and the fronting car swung around and illuminated the patrol in its headlights. Soldier D believed that everyone in the car park had been involved in the Coalisland incident. He saw flashes from the rear of the lorry and believed he was being fired upon. He then fired at the men in the lorry and continued to do so as the lorry moved from left to right across the rear of the church. He saw a number of individuals jump from the lorry and run to the right of the church and engaged those men also.

[113] Following a magazine change, Soldier D moved forwards through the car park and down the right hand side of the lorry. The statement says:

“As I approached the rear of the lorry I saw a terrorist dressed in dark coloured clothing on the ground and I was satisfied that he was one of the occupants of the lorry. I saw him lurch forward and I believed he was armed and ... I believed my life or the life of other members of the patrol were in danger and I fired one round at him.”

[114] Soldier D then describes that he observed another terrorist on the ground, more to the front of the cab, but he did not present a threat. He also made his way to the Mountjoy Road and saw a body lying on the grass verge and quickly assessed that this person also posed no threat. He also became aware of an injured man beside a dark Cavalier receiving first aid.

[115] Soldier E did not recall the briefing for this operation but did remember that a PIRA attack was anticipated at Coalisland RUC station and the aim was to detain terrorists forming up at the car park in advance. He invoked his privilege in respect of the events of that evening.

[116] He gave a statement to DCI Molloy on 14 December 1992 in which he outlined his position at the car park as being on the extreme right of the gap in the hedge. He lay down there at around 1940 hours. He observed the movements of cars in and out of the car park and stated that he heard the words “no joy yet” used by one of the drivers.

[117] In due course he heard heavy machine gun fire and observed the tracers. The lorry was driven into the car park, fronted by a car, and Soldier E could see two men at the rear of the lorry one was behind the gun and the other was holding a rifle in the air. The lorry progressed to a position in front of the rear of the church and, at this time, the statement records that Soldier E stood up and members of his patrol opened fire. He also opened fire on the occupants of the lorry as he believed them to be a threat to him. He fired some 20 rounds as the lorry moved from left to right. He then moved forward, through the gap, and took up a position to the right of the patrol, firing five more rounds into the back of the lorry. According to the statement, he could

no longer see the terrorists but still believed them to present a threat to him and other members of the patrol.

[118] Soldier E moved forward alongside the lorry but fired no more shots. He observed a colleague fire into the cab of the lorry from the passenger side. He made his way to the main road to prevent any cars entering the area.

[119] Soldier F gave evidence that he received a message a day or two before the operation to attend the SMU base for a briefing. This was delivered by Captain A with Soldier A also present. Information was given to the sub-unit in respect of a PIRA attack at Coalisland RUC station the following evening. It was anticipated that this would involve firing at the station from vehicles, including by the use of a heavy machine gun.

[120] He stated that he went with Soldier A to carry out reconnaissance in Coalisland. Soldier F stated that he thought this was on the evening of Saturday 15 February. The key purpose of this was to assess whether an arrest operation could safely be carried out. They returned to base and Soldier F stated that, in his opinion, such an operation was too dangerous. There was a real risk both to soldiers and the local civilian population, particularly in light of the use of a heavy machine gun. Soldier A expressed a similar view.

[121] The following day further information was received to the effect that PIRA were to use the Clonoe car park as a forming up point, and consideration was given as to whether an arrest operation could be mounted during this 'window of opportunity.' The actual formulation of the plan was a matter for Captain A and Soldier A.

[122] Soldier F invoked his privilege in respect of the events as they unfolded on 16 February 1992. He had made a statement to DCI Molloy on 19 August 1993 in which he outlines his arrival at the car park around 1940 hours, and his position adopted, lying down to the left of the gap in the hedgerow. Cars were seen coming and going and manoeuvring around the car park, including dark and red Cavaliers. He overheard a conversation between two drivers which included the words "has there been any joy yet?"

[123] The statement goes on to say that Soldier F heard heavy machine gun fire and observed tracers in the sky. A minute or two later the lorry appeared in view, fronted by a car, and these vehicles proceeded towards the side entrance of the car park. The lorry moved across the back of the church and Soldier F records that he moved to a standing crouched position. He says:

"The persons on the lorry looked in my direction and started to bring their weapons round in my direction. I believed that they had seen us as we had been illuminated in the headlights of the car ... I believed that ... they were

about to open fire and I opened fire at the main threat of the group of men on the truck, which was the man holding the machine gun.”

[124] The lorry continued to move until it came to a halt on the grass and then four persons were seen to jump off the lorry. Soldier F moved forward, continuing to engage these individuals. Two of the men he observed to be carrying weapons and the other two ran off towards the north and disappeared behind the church. In his police interview, he stated that he fired at the two men with weapons until they fell over and he ceased firing at that stage.

[125] Soldier F then approached the lorry, slowed to a walk, and as he approached the rear of the lorry he saw a man on the ground with a rifle to his right. Believing him to be a threat, he engaged this individual. He then saw a second man on the ground who had a weapon within reach. Soldier F engaged this man also. He then moved back towards the front of the lorry and observed a hooded man moving about inside the cab and fired through the door of the cab. He moved to the front of the lorry and checked that this person no longer posed any threat. At this time he saw a man on the ground with a weapon within reach and he fired at him also.

[126] According to the statement, Soldier F then went with Soldier H towards the Mountjoy Road as they knew two individuals had fled in that direction. He saw a body lying on the opposite side of the road and moving. Soldier H engaged this individual.

[127] On his return to the car park, Soldier F noticed a man receiving first aid beside a dark Cavalier. That man stated that he was visiting his father’s grave and had nothing to do with the events that had taken place that evening.

[128] It was suggested to Soldier F by counsel for the NOK of Kevin Barry O’Donnell that he was responsible for shooting this deceased in the back and, after that, approached him again and shot him in the head.

[129] Counsel for the NOK of Peter Clancy suggested that Soldier F had also shot this deceased, including striking him in the armpit when he had his hands raised in the air. Soldier F declined to answer any questions about his actions that evening.

[130] Soldier G gave evidence that he recalled a briefing taking place but not the detail of it. He had no role in planning and invoked his privilege in respect of the events of the evening in question. His RUC statement dated 28 October 1992 records that he was briefed by Soldier A that terrorists would form up in the Clonoe chapel car park and their proposed attack would involve the use of a heavy machine gun. The purpose of the operation was to arrest them and the use of weapons was governed by the Yellow Card.

[131] Soldier G was in charge of the GPMG and took up a lying position to the left of the gap in the hedge, in the centre of the patrol. He was able to see the movements of the vehicles, including two Cavaliers, and overheard the words “no joy yet” being exchanged between two drivers. He believed that these vehicles were a “dicking circuit” looking for security forces in the area. Soldier G then witnessed the tracers in the sky and heard machine gun fire to his left.

[132] The statement continues that Soldier G saw the lorry approaching and as the front car swung around in the car park it illuminated the soldiers. He could see at least three armed men on the back of the lorry and the barrel of the machine gun mounted on the rear. The men in the truck were waving weapons around. Soldier G is recorded as saying:

“I then heard an exchange of gunfire and I then engaged the terrorists on the back of the truck. During the firing I saw a soldier go down and I believed he had been shot and this confirmed my belief that the terrorists were shooting at us so I continued to engage the terrorists.”

[133] Soldier G then saw three men running down the right hand side of the chapel and he engaged them as he believed they were getting into a firing position. Once he could no longer see them, he ceased firing. In the aftermath he witnessed one man receiving first aid by the Cavalier and two men lying dead beside the lorry.

[134] Soldier H played no part in the inquest. His statement, given to the RUC on 14 December 1992, was read into the record. It recounts a briefing from Soldier A in relation to the possible attack at Coalisland, the forming up point at Clonoe and the intended arrest of the terrorists. He was informed about the possible use of a heavy machine gun and that the use of weapons was governed by the Yellow Card. He took up position around 1945 hours to the left of the gap in the hedge.

[135] He was aware of the movement of various vehicles into and out of the car park. Around 2230 he heard the machine gun fire and the sky lit up with tracer rounds. The lorry and car approached and Soldier H could see men on the back of the lorry brandishing weapons. He could also see the heavy machine gun mounted. As the car entered the car park, Soldier H states that he and his colleagues stood up to see what was going on and then the headlights of the car ‘skylined’ them. At this stage, Soldier H believed his life to be in danger. The hedgeline afforded very poor cover and it was not possible to give a warning so he felt he had no option but to open fire on the men in the lorry.

[136] Soldier H moved forward towards the lorry and continued to fire at the armed men in its rear. At this stage he received a wound to his face which knocked him onto his back. He got back up and he and Soldier F skirmished forward, still firing at the lorry. Soldier F then walked towards the back of the lorry and was firing. Soldier H moved to the right of Soldier F and could see two men on the ground. They were

moving towards their weapons, which were also on the ground, and Soldier H fired five or six aimed shots at them. He moved back towards the cab of the lorry and Soldier F shot into the cab. As they moved out, they saw a man on the ground move towards his weapon and Soldier H shot at him again.

[137] Soldier H then followed Soldier F to the Mountjoy Road where they saw what was described by him as a 'possible terrorist' lying on the verge and he could see him reaching for a metal object. Feeling he was going for a weapon, Soldier H fired three to four automatic shots at him. On his return, Soldier H saw the two men on the ground by the lorry and another individual receiving first aid. He then went to seek medical attention for the gunshot wound to his face.

[138] Soldier I was one of the reinforcements flown in from England. He had no role in planning. He could recall a briefing around arresting terrorists who were planning an attack but no other detail. He claimed privilege in respect of any questions around the events of 16 February 1992.

[139] He made a statement to the RUC on 14 December 1992. In it he details the briefing as being given by Soldier A and concerning a possible attack at the RUC station, Coalisland, to be carried out using a heavy machine gun and rifles. The attack was to be launched from the chapel car park near Coalisland. Soldier I took up a lying position, to the left of the gap in the hedge. From there he observed a routine of cars coming in and out of the car park. One of these vehicles was a dark coloured Cavalier. He heard the heavy machine gun fire and saw the tracers. There were three cars in the car park when the lorry was seen approaching along the Cloghog Road. Soldier I could see the heavy machine gun mounted in position and figures on the rear of the lorry, one of whom was holding a rifle in the air.

[140] The statement describes how Soldier I and his colleagues stood up and he brought his weapon to bear on the men in the rear of the lorry. It says:

“Our presence seemed to be known to the terrorists as they turned towards our position. I believed at this stage the heavy machine gun was going to be used against us so I engaged the machine gunner.”

[141] Once the lorry had moved out of his arc of fire, Soldier I states that he then engaged the dark Cavalier since he “believed it was a threat.” He heard thumps into the bank to his right and believed this to be incoming fire. He then moved forward, covering Soldier J, and saw the driver of the dark Cavalier taking up a position to the offside front wheel arch. Believing this to be a firing position, he fired about 12 aimed shots at this individual. Soldier I did not see any weapon being held by this individual. The man came away from the car with his hands up and was evidently injured. Soldier I gave cover whilst others administered first aid.

[142] Soldier J had no recollection of any briefing and invoked his privilege in response to questions regarding the events of the evening in question. His police statement, dated 15 December 1992, refers to a briefing from Soldier A concerning a possible attack at Coalisland RUC Station, using heavy weapons and small arms, with a forming up point at St Patrick's Church. Soldier J was in position around 1930 hours, lying to the left of the gap in the hedge by a sawn off tree trunk. He could see three separate vehicles enter and exit the car park at different times. At 2230 hours he heard the heavy machine gun fire from Coalisland and saw tracers in the air.

[143] The statement continues that Soldier J observed a Cavalier leading a lorry and coming at speed from the direction of Coalisland. He could see three armed men on the rear of the lorry and the heavy machine gun. The vehicles entered the car park via the Cloghog Road entrance. When the lorry was level with the church, he states that he saw what he believed to be "muzzle flashes" from the weapons of the armed men on the lorry. He engaged those individuals, firing 10 to 15 rounds, and then fired at a Cavalier which was leaving the car park. He believed that he hit the vehicle but it proceeded away along the Cloghog Road.

[144] Soldier J then made his way to the western boundary of the car park and from this position he fired at the driver of the dark Cavalier who had taken up a lying position beside the vehicle. He fired about five rounds, at least one of which hit the man. He then ordered the man to stand up, which he did, and then searched him. He was unarmed. A priest arrived and the man said that he was only at the chapel to visit his father's grave.

[145] Soldier K arrived in Northern Ireland on the afternoon of 16 February 1992 and was briefed in relation to an operation to arrest terrorists when they were forming up in a car park next to a chapel and preparing to mount an attack on Coalisland RUC station. Soldier K could not recall if the location was identified as Clonoe at this point or later that afternoon. Soldier L and he deployed to the graveyard to the side of the church at around 1900 hours. At this time they observed two Cavaliers enter and exit the car park. Soldier K declined to answer any questions about the subsequent events, relying on his privilege against self-incrimination.

[146] Soldier K gave a statement to DCI Molloy on 26 October 1992 which states that he and L were joined by other members of the patrol and took up lying positions behind the hedgerow. Soldiers K and L were to the extreme left of the group. Soldier K observed an individual on foot moving along the Cloghog Road and then sitting on the wall at the entrance to the car park. He stayed there for a number of minutes before heading south down the Cloghog Road. Soldier K assumed he was checking the area for security forces.

[147] The statement continues that Soldier K saw five cars in the vicinity of the car park that evening - a red Cavalier, a blue Cavalier, an Astra and a Japanese car, all of which entered and exited the car park. The fifth car was a dark Cavalier which fronted the lorry into the car park. Following the sound of gunfire and the sight of tracers in

the sky, Soldier K saw the Cavalier and lorry on the Mountjoy Road before they turned right up the Cloghog Road. He could see three people on the lorry and the heavy machine gun mounted. When these vehicles arrived in the car park, Soldier K and others stood up. He believed that they had been seen by the occupants of the lorry, possibly having been picked up in the headlights of the Cavalier.

[148] The account given by Soldier K is that he saw flashes coming from the back of the truck and heard gunfire, which led him to conclude that one of the occupants had opened fire on him or his colleagues. He therefore fired on the persons on the back of the truck as it moved from left to right. As he moved forward, he could see three men running from right to left on the Mountjoy Road from behind the front of the chapel, and another man lying under the engine block of the dark Cavalier in the car park. Soldier K moved up the Cloghog Road and entered the car park from the entrance situated there. He then approached the male at the Cavalier and asked him to stand up. He eventually complied although he was wounded. The man was searched and found to be unarmed. He said that he was visiting his father's grave.

[149] Soldier K proceeded to carry out a search of the field to the north of the Mountjoy Road and became aware of the body of a man lying to the side of the road.

[150] The evidence disclosed by the MOD revealed that call sign 30 was attributed to Soldiers K and L. Soldier K was examined about the entry in the radio logs, from call sign 30, timed at 2014 on the evening of 16 February which reads:

"Red Cavalier 1up Kevin Barry O'Donnell."

[151] He said that at the relevant time he knew O'Donnell's name but not his physical description. He declined to answer any question about the events of the evening, citing his privilege against self-incrimination.

[152] Soldier L was one of the reinforcements who arrived on the Sunday. He was sent on the forward reconnaissance role with Soldier K and initially deployed to the graveyard across the road. The names of those involved in the PIRA operation "meant nothing" to him.

[153] In his RUC statement dated 15 December 1992 he references the Sunday briefing from Soldier A in relation to a gun attack at Coalisland with Clonoe chapel car park to be the forming up point. It states that they were to go there and arrest the terrorists prior to the attack. During his initial recce, he observed both the light blue and the red Cavalier enter and exit the car park.

[154] After taking up his position at the left hand corner of the hedgerow near the road, Soldier L saw the movements of vehicles, including the three Cavaliers and an Astra, in and out of the car park. He heard heavy machine gun fire and tracer flying into the sky. The Astra exited the car park and then he heard the approach of the lorry

in low gear. He could see two men at the rear of the lorry holding rifles and he believed the lorry was fronted by the red Cavalier.

[155] The statement continues that when the lorry and car entered the park, Soldier L stood up. He believes at this stage that they were seen by the occupants of the lorry. It states:

“I saw that the men on the wagon had brought their weapons down and these weapons were pointing in my direction. I then engaged the wagon and the man with the heavy gun”

[156] As the red Cavalier exited the car park, Soldier L then engaged it and saw the back window of the car go out. When it disappeared from view, he engaged the light blue Cavalier “because it was moving out of the car park at fast speed.” He then re-engaged the wagon and saw two men running by the right hand side of the church towards the Mountjoy Road. He then shot at the occupant of the dark Cavalier before turning his attention back to the two men running away. The statement says:

“I had a good view of these men because the street lights and full moon made them easily seen. I saw two tracers go past the first man and this was when I raised my rifle as he was running in such a manner that I believed he was carrying a weapon. I fired two or three rounds at him, then I reloaded and fired three shots at him and he fell. I disengaged and looked for the other person who I saw jump the fence and disappear into the dark.”

[157] Soldier L invoked his privilege in relation to any questions relating to his activities that evening.

[158] The inquest heard evidence from a number of other soldiers who were part of mobile support teams placed around the area of the chapel.

[159] Soldier M was the commander of a mobile support unit (‘MSU’) with two other soldiers in a vehicle. They took up position just off the Moor Road in a laneway. Whilst in situ, he heard gunfire from the attack at Coalisland RUC station and decided to make his way towards the chapel where he knew the reactive sub-unit was located. En route, he saw the Cavalier (registration IJI 9887) crashed at the side of the road. On examining the vehicle, there was blood on the inside of the door at the handle.

[160] Soldier M went into a nearby field with another soldier to look for the driver of this vehicle and reported by radio to the ARF helicopter. He blocked the road with his vehicle until relieved by the RUC.

[161] Soldier N was the team leader of the mobile support unit, having flown over from England with the reinforcements. He was briefed on arrival by Captain A and Soldier A. His team was to provide mobile support to a static reactive team on the ground. The object of the exercise was to surprise the PIRA operatives before the weaponry was mounted at the forming up point.

[162] Call sign 30, Soldiers K and L, deployed on the ground straight away. Soldier N was with Soldiers O and P to the east of Coalisland whilst M and his team were to the west. Call sign 40 was the reactive sub-unit.

[163] Once the shooting began, the MSU made its way to the car park. On arrival, the shooting had stopped but the chapel was on fire. Soldier N spoke to fire officers and arranged for the injured to be taken to hospital.

[164] At 2248 call sign 40 is recorded on the radio logs referring to “four dead bravos.”

[165] Soldier AX was in charge of the thermal imaging equipment within the helicopter. At 2241 hours the helicopter was ordered to go to Coalisland. At 2314 he recorded the identification of a heat source but this was reported by those on the ground as being an electrical transformer.

[166] Soldier V was the driver of an MSU vehicle under the command of Soldier AD. Their patrol also came across the crashed vehicle.

[167] Soldier AH was part of the MSU patrol and drove to the chapel car park in the aftermath of the incident. He observed two bodies lying beside the lorry with one AKM rifle sticking up out of the ground. He provided first aid to Soldier H who had a bullet wound to the face.

[168] The MSU soldiers all recalled hearing the gunfire associated with the attack at the RUC station and seeing green tracers in the sky. Green is the colour most often associated with Russian made weapons.

Chapter 10

The Evidence of Civilians

[169] CC1 gave evidence that he lived in Coalisland and was aged 18 at the time of the shootings at Clonoe. He denied having anything to do with the planning of the PIRA operation or being on the lorry that evening.

[170] Constable Graham of the RUC was familiar with CC1 and aware of that he owned a silver Zippo lighter with his name engraved on it. The same lighter was found at the Clonoe scene. When interviewed by CID in September 1995, CC1 made

the case that he gave the lighter to Sean O'Farrell shortly before the day of the shootings.

[171] In his evidence to the inquest, CC1 admitted that he did own the lighter but declined to answer any further questions about it. He denied being shot and wounded at the car park and declined to respond to questions relating to the injury sustained to his back. He invoked his privilege in respect of the movement of persons and vehicles on the evening in question. He also refused to account for his movements after the Clonoe shootings and the allegation that he went on the run to live in Monaghan.

[172] CC2 gave evidence to the inquest but declined to answer questions relating to the planning of the attack at Coalisland RUC station or the events that unfolded at Clonoe chapel car park. It was put to him that intelligence suggested he and CC1 had made good their escape from the red Cavalier which was later found burnt out on the Annagher Road. An SB50 intelligence report, typed on 24 February 1992, stated that certain individuals had:

“...made good their escape from the Army ambush at Clonoe Chapel on 16.2.92 in a red Cavalier.”

[173] He refused to answer questions around this or the leg injury which he allegedly sustained as a result of the shots fired by the soldiers. He also invoked his privilege in respect of the period of time spent on the run.

[174] Martin Woods accepted that he was present at the car park in order to help the gunmen escape. This was the basis of his plea of guilty in January 1995. He had left the scene in the light blue Cavalier and after he crashed the vehicle, went to the house of CC18. He was, however, unable to recall any further detail about the night in question or his movements.

[175] Aidan McKeever gave evidence that he had been asked by Kevin Barry O'Donnell to be at Clonoe for 10pm that Sunday evening. Everyone knew he was in PIRA and he told McKeever this was to be a “show of strength.” The purpose of being at the car park in vehicles would be to take some individuals to a safe house. McKeever said he agreed to go and took his brother's car, a black Cavalier KIB 5870, to the car park about 2000 hours. He recalled the lorry arriving in the car park and the shooting commenced. He was shot in the chest and took cover lying down behind the engine block of the car. Three or four soldiers came running at the car, shooting at him. He told them he was there to visit his father's grave. One of the soldiers said:

“Search the car and if you find anything in the car, kill him.”

[176] CC3 prepared a draft statement in conjunction with a coroner's investigator but then declined to sign it. The draft statement contains an account of the events leading up the incident at the car park. In it, CC3 confirms that he was the owner of the red

Cavalier and he was asked by O'Donnell and O'Farrell to attend at Clonoe chapel to take the heavy machine gun to another location. He placed all the seats in the car flat save for the driver's seat and opened the boot in anticipation of the PIRA unit arriving. His statement recounts the lorry coming into the car park, fronted by a car, and shooting commencing immediately. The rear window of the car was shattered by gunfire. CC3 drove off, under fire, towards the Mountjoy Road exit. He heard shouting and reversed back a short distance when two other individuals got into the car and they drove off towards Coalisland. As he was leaving, the driver's window of the car was shattered by gunfire. The vehicle stopped at the GAA club on the Annagher Road and the occupants left the scene.

[177] CC3 was interviewed by the police on 22 & 23 March 1995. In interview, he made the case that his Cavalier was hijacked from the snooker club by two men claiming to be from the IRA and he left that evening for Dublin.

[178] At the inquest, CC3 invoked his privilege in relation to questions concerning the events at the car park, the injuries to his passengers or the burning out of the vehicle. He also declined to answer questions about going on the run after the incident.

[179] Kevin Coney was medically excused from giving evidence to the inquest. In his 1992 statement to the police he stated that he was asked to attend at the Clonoe car park about 2000 hours and he went there in his blue Astra, registration OJI 4578. He spoke to the driver of the dark blue Cavalier and asked him "no joy yet?" He returned about 2130 and spoke to a young man in a brown Cavalier whose job it was to collect weapons. He left the scene in his car and went for a drink in the pub.

Chapter 11

The Aftermath

[180] Two HMSU call signs, containing CP1, CP2, CP3, CP4, CP6 and CP7, had parked up some one to two miles from the scene and these officers came on the scene in the immediate aftermath. They assisted with conveying the injured to hospital and liaised with CID.

[181] Detective Sergeant Black, CID, attended the scene at 2335 hours in the company of Constable Magee. En route, he had observed a crowd of around 50 civilians in the vicinity of a burning vehicle near the GAA club on Annagher Road.

[182] On arrival, he saw the bodies of four individuals, two beside the lorry, one in the cab and one on the grass verge at the Mountjoy Road. He instructed a photographer, a mapper, SOCOs and the NIFSL.

[183] CC18 was at home on the Moor Road around 2300 hours when a male came to his door with blood on the right side of his clothing. He said that he had been shot

and his car had crashed into a wall on the road. At this stage members of the Army arrived, including Sergeant CM31. The injured man identified himself to CM31 as Martin Francis Woods and he was taken away by ambulance.

[184] At 1219 hours on 17 February, the Fire Service attempted to extinguish the burning vehicle outside the GAA grounds but were unable to do so as a result of the actions of a hostile group around the car. The RUC cordoned off the area around 0230 hours. It was later identified that the registered keeper of this vehicle was CC3.

[185] Colette Quinn of NIFSL attended the following morning with Constable Magee.

[186] The police press release, prepared in the immediate aftermath of the events, and sent by fax timed at 0250 hours on 17 February, informed journalists:

“There was an exchange of gunfire. Four men were fatally injured. Two other men were wounded and are in hospital under police guard. One soldier was wounded and is in hospital.”

[187] As a result, the contemporaneous news reports are replete with references to an exchange of fire and to a “gun battle.”

[188] An MOD report to the Secretary of State for Northern Ireland dated 17 February records:

“The soldiers broke cover and moved towards the vehicles. The soldiers and terrorists are reported to have opened fire simultaneously at close range. In the ensuing fire-fight four terrorists died, two were wounded and one soldier was wounded in the face.”

[189] An internal SMU report of the incident repeats the claim that the terrorists and soldiers opened fire simultaneously. In relation to the planning of the operation it states:

“It was indicated that PIRA would use, at some stage, a car park beside a church near Dernagh, 2 km north east of Coalisland.”

[190] The RUC report of the incident, typed on 20 February 1992, records:

“An exchange of gunfire took place between the terrorists and the Army ... as a result of the exchange of fire, two persons were found dead outside the lorry, both with rifles convenient to their bodies.”

[191] In an MOD document dated February 1992 and entitled 'Truck Assault Group', it is outlined that when the truck entered the car park, contact was made. The call sign then split into two groups, one led by Soldier A moved to the left of the chapel and the other, led by Soldier F, "attacked the area of the truck." This latter group was made up of Soldiers B, C, D, E, F and H. The report describes an initial volley of fire, put down on the target area by all members of the call sign from the location of the hedgerow. After the split, six soldiers cleared the area around the truck and then five of them proceeded to the area north of the chapel and engaged one more terrorist. This report makes no mention of any plan to arrest any of the PIRA operatives.

[192] Throughout the sensitive disclosure provided by both PSNI and the MOD, the events at Clonoe are described as an "Army ambush."

[193] In an incident report, no 14/92, dated 24 April 1992, the MOD record:

"The deaths of four terrorists including two top PIRA members and the capture of a prestige weapon was an excellent Security Forces success."

Chapter 12

The RUC Investigation

[194] The various soldiers were interviewed under caution, accompanied by a legal advisor, by DCI Molloy and other members of the CID on various dates between 18 and 27 February 1992. Each of the soldiers gave a verbal account of their actions on the evening of 16 February. Notes were taken and the soldier then given an opportunity to read over the notes and sign them.

[195] One of the investigators, Detective Inspector Lyttle, stated that the purpose of the interviews was to:

"Record their account of the incident. We would not have been party to any intelligence or operations but were simply there to take an account."

[196] No questions were asked by the CID relating to:

- (i) The intelligence provided to the SMU;
- (ii) The planning of the operation;
- (iii) The briefing given to soldiers;
- (iv) The decisions made as events unfolded at Clonoe;

(v) The Yellow Card; or

(vi) The rationale behind the decisions to open fire.

[197] It is striking that, of the twelve soldiers who opened fire, only one mentioned any intention or plan to arrest the suspects during the course of police interviews. Soldier H stated that he felt it was impossible, in the circumstances, to issue a warning to enable the terrorists to be arrested. No other soldier even referenced arrest as a possibility or a planned outcome.

[198] The report compiled by Detective Superintendent Hart states:

“Before any of the group, now 10 in total, had the opportunity to leave the area, the soldiers concealed in the hedgerow opened fire on the terrorists. The soldiers have stated that due to the awesome power of the anti-aircraft gun, the lack of no hard cover protection they engaged those in the carpark without challenge or warning. In their view any warning would have put their own lives at considerable risk. In the shooting that followed approximately 570 rounds were discharged by the military. There is no evidence that any shots were discharged by the terrorists.”

[199] There is no mention in this report of an arrest operation.

[200] D/Supt Hart determined that, in light of the “type of weaponry possessed by the terrorists” and “the total lack of protection for the members of the security forces involved”, the use of firearms was the minimum force necessary in light of the very real threat to life. He therefore recommended no prosecution of any of the soldiers involved in the killing of the four deceased.

[201] A direction not to prosecute any of the soldiers concerned issued from the office of the DPP on 15 October 1992.

[202] D/Supt Hart concluded that of those who fled the scene, two were detained by An Garda Siochana and had evidence of recent gunshot wounds. Aidan McKeever was found injured at the scene and Martin Woods, also injured, was detained nearby.

[203] On 17 February 1992, the solicitor for Martin Woods provided the RUC with a statement in which he described having met Sean O’Farrell around 1430 hours the previous day and being told to meet him again at 1800 hours. At this time he was told by O’Farrell and Kevin Barry O’Donnell to be at the car park at 2230. He described how he was there for about five minutes when the lorry arrived with masked men in the front and rear and that he proceeded to try to exit the car park when gunfire

started. He was shot in the arm. About one mile away, he lost control and crashed the car. He denied any knowledge of the attack on the RUC station.

[204] Aidan McKeever made the case in interview on 17 February 1992 that he was visiting the graves of his father and grandmother. The lorry then arrived and shooting began, resulting in his injuries. He denied any knowledge of or connection to the attack at Coalisland.

[205] Kevin Coney made admissions that he knew of the attack at Coalisland RUC station and his role was to go to the chapel car park in the aftermath.

[206] In February 1992 Martin Francis Woods, Aidan Patrick McKeever and Kevin Martin Coney were each charged with attempted murder and with the possession of firearms with intent to endanger life.

[207] On 20 March 1992 CC1, CC2 and CC4 were arrested by An Garda Siochana in Monaghan. CC1 was observed to have a bullet wound to the left shoulder and CC2 a bullet wound to the left calf.

[208] On 17 September 1992 the DPP issued a direction to the investigating officers that the Captain in charge of the soldiers be interviewed and asked for a detailed account of the operation. In particular, he was to address:

- (i) The precise nature of the information in his possession;
- (ii) The precise nature of the information which he passed to Soldier A; and
- (iii) The precise nature of the plan to arrest the suspected terrorists.

[209] The context for this was the reply given in interview by Soldier A where he referenced the type of weapons in the possession of the men in the lorry and the lack of any hard cover for the soldiers.

[210] The statement was taken from Captain A on 24 September 1992 in which he stated that he made Soldier A aware of the intelligence information and his arrest plan. The patrol was to go to the church car park and "monitor the area for terrorist activity." He informed him that the only suitable position was the hedge line adjacent to the car park. The terrorists "must be arrested" and at all times the use of firearms was governed by the Yellow Card. Captain A also stated that the physical deployment of soldiers on the ground was a matter for Soldier A.

[211] Police statements were taken from Soldiers A to L between October and December 1992, save for that taken from Soldier F which was in August 1993.

[212] On 23 January 1995, Martin Francis Woods, Aidan Patrick McKeever and Kevin Martin Coney pleaded guilty to assisting offenders and were sentenced to three years' imprisonment, suspended for three years.

Chapter 13

Expert Evidence (1) - Ballistics

[213] Ann Kiernan, a ballistics expert with extensive experience of firearms and ammunition, as well as scene reconstruction and analysis, was instructed on behalf of the coroner. All PIPs had the opportunity to raise issues with the expert and to input into her letters of instruction. The inquest benefitted greatly from her extensive report and detailed evidence.

[214] Ms Kiernan's work built on the findings arrived at by Ms Collette Quinn of NIFSL. She also had access to all the materials disclosed to the inquest, including the statements made by soldiers to the police, photographs, maps, other police statements and autopsy reports.

(i) The weapons

[215] Eleven of the SMU soldiers at the scene were armed with G3 rifles and one with a GPMG. They used two types of ammunition – 7.62mm NATO armour piercing and 7.62mm NATO tracer. Both these types of cartridge can be fired from the G3 rifles or the GPMG.

[216] Ms Quinn test fired the G3 rifles and found that when the weapon is fired from a normal firing position, the fired cartridge cases would eject at right angles, or even behind and to the right of the firer. There are, of course, a number of variables in play such as the stance of the shooter, the surface upon which the cartridge lands and movement of the cartridges by external forces.

[217] The GPMG is belt-fed and its spent cartridges are normally found to the right of the firing position next to the weapon.

[218] Three Romanian 7.62 x 39mm calibre AKM rifles were recovered from the scene. These have elective levers on the right side of the receiver, with the letters S-safe, A-single shot, and R-repeat (automatic). The cartridges used in the AKM weapons are not interchangeable with those used in the G3. Two of these weapons were located close to the bodies on the grass to the nearside of the lorry and the third was found inside the lorry. Each of the rifles was set in the 'safe' position. The two found on the grass each had a magazine containing live cartridges and a cartridge in the chamber. The rifle found in the lorry had an empty magazine and no cartridge in its chamber.

[219] The 12.7 x 108mm calibre DShK was mounted onto the metal pipe on the tail gate, with the muzzle pointing towards the sky. A loaded cartridge case belt was attached to the weapon, with 17 unfired cartridges within the link to the left side of the weapon, and empty link belt to the right of the weapon. No rounds were in the chamber, and the weapon was not in a ready state of firing, the safety lever being set in the 'safe' position. Spent 7.62 x 39mm cartridge cases were strewn around the bed of the loading bay of the lorry.

[220] Screwdrivers were found near the bodies of Clancy and O'Donnell which could have been used to cock the DShK, as could an unspent round found in the pocket of O'Donnell.

(ii) The vehicles

[221] Ms Quinn's conclusions, with which Ms. Kiernan agreed, were that the lorry had been struck at least 68 times by both armour piercing and tracer bullets. Fire had been directed principally at the front offside cab door, the offside of the trailer and the rear of the trailer. Shots were fired from multiple locations and in different trajectories. The 'upwards' trajectories may have been explained by ricochets from the tarmac of the car park.

[222] The dark red/brown Cavalier, registration YIA 5904, was found burnt out on Annagher Hill close to the entrance to the GAA club. The rear seats were folded down, and the front passenger seat was fully reclined. SOCO recovered two rounds of ammunition, belt links and a bullet core from the front passenger footwell and a round from the interior of the passenger side door. These three cartridges had 'cooked off' as a result of the fire. Four spent 7.62 x 39mm cartridge cases were found on the opposite side of the road which had been fired from an AKM rifle.

[223] Ballistic damage on the shell of the vehicle indicated that it had been hit by at least four bullets, three to the nearside of the vehicle and the fourth bullet entered the tailgate whilst in an open position and exited the vehicle.

[224] The light blue Cavalier, registration IJI 9887, which belonged to Martin Woods, was found crashed on the Moor Road, was observed to have five bullet holes to the rear and two to the nearside rear.

[225] The black Cavalier, registration KIB 5878, driven by Aidan McKeever, was recovered at the scene. It was found to have been struck by at least 15 bullets and the direction of the bullets through the vehicle indicates that they were directed at the driver, with fire coming from the right hand side of the car park or hedgerow.

(iii) The ammunition recovered

[226] A total of 514 discharged 7.62 x 51mm NATO calibre cartridges were recovered from the scene. Ms Kiernan was able to allocate each of these to a specific weapon and

soldier. 138 cartridges were discharged by Soldier G from the GPMG. 376 rounds were discharged by the other soldiers from the Heckler & Koch G3 rifles. 56 cartridges issued to the soldiers with the G3 rifles remain unaccounted for. Somewhere between 514 and 570 rounds were therefore fired by the soldiers.

[227] No bullet or bullet fragments could be allocated to a specific rifle so it was not possible for Ms Kiernan to identify which soldier's shots caused the fatal injuries to the deceased.

[228] A total of 51 fired 7.62 x 39mm calibre cartridge cases were recovered. 30 of these were found from the area of the RUC station, 6 from the route the lorry took from Coalisland to the church along Annagher Road and 15 from within the bed of the lorry's cargo trailer. Ms Quinn concluded that 48 had been discharged in the three recovered AKM rifles. One of the remaining three cartridges was badly damaged and could not be associated with any weapon, and the remaining two could possibly have been discharged from a fourth unrecovered AKM.

[229] Ms Kiernan commented that AKMs normally eject their cartridge cases to the right and beyond six metres from the normal firing position, and therefore she would have expected any cartridges that were discharged at the scene to be found outside the lorry loading bay. However, she could not discount that cartridge cases ejected from these weapons could have subsequently bounced off the sides of the lorry cargo bay.

(iv) The movement of the soldiers

[230] Ms Kiernan allocated the fired cartridges to the individual soldier's weapons through comparison microscopy of firing marks. This enabled her to identify the movement of the individual soldiers from their initial firing point at the hedgerow by the approximate location of the fired cartridge cases. She found that the general location of the recovered fired cartridge cases was in line with the accounts given by the soldiers to the police.

[231] Her analysis revealed that the initial positions of the soldiers at the hedgerow were as follows:

L K F I G H J B C A D E

[232] Soldier A discharged 38 cartridges at the scene. 25 cartridges are unaccounted for although, as seems likely, 20 of these were in a full magazine which was not submitted after the incident. Soldier A initially fired from the hedgerow, then moved forward, shooting at the lorry and the other vehicles. He moved towards the dark blue Cavalier and shot at the man situated to the side of this car.

[233] Soldier B discharged 37 cartridges, of which 36 were located. He fired shots from the hedgerow and then moved forward through the car park towards the truck,

firing shots into the cab of the lorry and in the direction of one of the deceased who was sitting upright to the nearside of the lorry.

[234] Soldier C discharged 23 cartridges, 18 of which were recovered and allocated. He fired from the hedgerow then moved forward and fired further shots into the cab of the lorry from the passenger side.

[235] Soldier D discharged 41 cartridges, 38 of which have been recovered and allocated. He fired from the hedgerow towards the lorry then advanced and fired a single shot from the rear of the lorry at an individual.

[236] Soldier E discharged 25 cartridges, all of which were recovered and allocated. He fired some 20 rounds from the hedgerow then moved forward to the right of the scene, firing a further five rounds at the occupants of the lorry.

[237] Soldier F discharged 61 cartridges, 57 of which have been recovered and allocated. He initially fired from the hedgerow position towards the occupants of the lorry then moved forward and fired shots at one individual to the side of the lorry. He then shot at the driver of the lorry from the offside of the cab. He fired a further shot at one of the deceased from the front of the lorry.

[238] Soldier G fired 138 cartridges from the GPMG at the hedgerow. All of these were recovered.

[239] Soldier H discharged 34 cartridges, 33 of which have been recovered and allocated. He fired from the hedgerow and then moved forward and fired from a kneeling position. At this stage he was struck by a ricocheted bullet fired by one of his colleagues. He moved again towards the tailgate of the lorry and fired at two individuals. From there he moved to the front of the lorry and fired again at one person on the ground. He then proceeded to the Mountjoy Road and fired a burst of three to four shots towards an individual lying on the road. Two cartridge cases were recovered in the field to the right of the Mountjoy Road, consistent with Soldier H being on the roadway close to the body when firing at it.

[240] Soldier I discharged 32 cartridges, 27 of which have been recovered and allocated. He initially fired from the hedgerow towards the lorry, then moved forward to the left of the car park and shot at the dark Cavalier and its driver.

[241] Soldier J discharged 25 cartridges, 24 of which have been recovered and allocated. He fired from the hedgerow towards the lorry and then proceeded along the western boundary, firing at one of the cars and the driver of the dark Cavalier.

[242] Soldier K discharged 28 cartridges, 25 of which have been recovered and allocated. He fired from the hedgerow at the occupants of the lorry but after moving forward along the western boundary on the Cloghog Road, he did not fire again.

[243] Soldier L discharged 63 cartridges, 55 of which have been recovered and allocated. After firing from the hedgerow, he moved forward and fired at both the red and the dark Cavalier, and then engaged two men who were running away in the direction of the Mountjoy Road.

(v) *The deceased*

[244] In Ms Kiernan's opinion, the facial wounds sustained by Sean O'Farrell were consistent with him being shot three times from the same position whilst he was lying down, face upward. The shooter was located to his right and forward of his body. Two bullets had entered his left side and the path of these wound tracks was consistent with him being in a kneeling or crouched position, with his left side presented to the shooter. No bullets were found in his body but two cartridge cases which were discharged from Soldier H's weapon were located in the field next to his body.

[245] Patrick Vincent was hit by numerous bullets some of which perforated the driver's door of the lorry cab causing wounds from either unstable bullets or fragments. He sustained injuries consistent with two different direct shots, one from the driver's open doorway and a second from the open doorway of the passenger cab door. Their trajectories were consistent with him being in a lying down position when he sustained these wounds.

[246] The injuries sustained by Kevin Barry O'Donnell to both lower limbs were consistent with him receiving these whilst within the lorry cargo bay, the bullets having perforated the side of the lorry. In Ms Kiernan's opinion, it was not possible to determine the position or orientation of Mr O'Donnell's body when he sustained the shot to the head. The wound to the right lower back had an upward trajectory of 45 degrees. He could have been lying face downwards or crouched leaning forwards with his right side presented to the shooter.

[247] Peter Clancy had four wounds to his trunk, including one to the right armpit, and 25 in all. The three shots to his back were fired from different directions. Two of them were consistent with him being in a kneeling or crouching position whilst the third was consistent with a shot being discharged towards the body on the ground. A number of other wounds to his lower body were also consistent with him being kneeling or crouching. Ms Kiernan also concluded that the path of some of the bullet wounds could have been consistent with bullets striking the body as he got off the trailer of the lorry.

[248] Ms Kiernan was of the opinion that the gunshot wound to the axilla was more characteristic of an exit rather than an entrance wound.

Chapter 14

Expert Evidence (2) - Pathology

[249] The inquest had the benefit of both a detailed written report and the oral evidence of Professor Jack Crane, the State Pathologist for Northern Ireland from 1990 to 2014 and the Professor of Forensic Medicine at Queen's University Belfast. Prof Crane has unparalleled experience in autopsies arising out of violent Troubles-related deaths, including those involving the use of high velocity weapons.

[250] In preparing his evidence, Prof Crane reviewed both his own findings from examination of the bodies of the deceased in 1992 and those of the Deputy State Pathologist, the late Dr Derek Carson.

[251] Sean O'Farrell was wearing a black jacket, blue jeans and pink Marigold-type gloves at the time of his death. The following gunshot wounds were evident:

- (i) A shot to the head which entered in the area of the right cheek and nose and travelled upwards, backwards and to the left, leaving a large irregular lacerated exit wound;
- (ii) A shot which entered in the area of left eyebrow which travelled upwards and backwards and exited by the same wound as (i);
- (iii) A superficial wound to the left cheek;
- (iv) A shot entering the left side of the front of the chest which travelled downwards;
- (v) A shot entering at the left side of back of the lower chest and exiting through the right side; and
- (vi) A shot which entered the right upper limb.

[252] In Prof Crane's opinion, the shots to the deceased's head fractured the skull, lacerated his brain and would have caused rapid death. Gunshot (v) caused extensive damage to both lungs and would have contributed to his death.

[253] The photographs seen by Prof Crane showed the deceased lying on his back on the grass and the adjacent bloodstaining indicated that he had been turned over from the prone position. He was on the grass verge on the far side of the Mountjoy Road.

[254] The entry point of the bullet to the torso indicated that he was upright when struck with his back to the shooter whilst the bullet which entered via the left upper chest was indicative of him being shot whilst on the ground. The upward trajectory of the bullets which entered his face were also suggestive that he was shot whilst on the ground.

[255] Kevin Barry O'Donnell was wearing a balaclava, a green parka, blue jeans and pink gloves when he died. His body was found lying face down on the grass to the nearside of the lorry.

[256] He had sustained a shot to the head which entered to the left side of the back of his scalp and exited to the right side behind the ear. He was also shot in the chest, with the bullet entering at the lower right rear side and travelling at a 45° angle to emerge at the front near the left collarbone. Each of these bullets would have caused rapid death.

[257] In Prof Crane's opinion, it is unlikely that he received these injuries whilst on the lorry as he would not have been capable of purposeful movement thereafter. The trajectory of the chest bullet would suggest that he may have been bending forwards when shot, or possibly that the shooter was in a crouching position. At the time of the entry of the bullet to the lower right rear, he must have been presenting his back or right flank to the shooter.

[258] Peter Clancy was also wearing a balaclava, a parka, blue jeans and pink gloves at the time of his death. His body was found on the grass to the nearside of the lorry, somewhat further from the vehicle than Kevin Barry O'Donnell.

[259] He had been shot through the left side of his face and the bullet travelled upwards to the inner corner of the right eye. It was still in situ at the time of examination. This would have caused rapid death.

[260] The deceased was also struck by several bullets to his chest and abdomen which caused extensive damage to his internal organs. The following were identified on the back of the trunk:

- (i) An entrance wound to the left side of the lower chest;
- (ii) An entrance wound to the left flank;
- (iii) An entrance wound to the right flank; and
- (iv) A gaping hole at the right axilla.

[261] These would also have led to rapid death. Nine bullets went through his lower limbs.

[262] Prof Crane opined that the paths taken by the bullets indicated that the deceased was in a crouching or kneeling position at the time he was shot. The wound to the right armpit was regarded by Prof Crane as an entrance wound. No corresponding exit wound could be identified but Dr Carson had followed the bullet track through the chest to the tissue of the neck where a bullet was recovered.

[263] This wound could have been consistent with the deceased being shot whilst he had his hands in the air.

[264] Patrick Vincent was wearing a balaclava, a boiler suit, blue jeans and pink gloves when he was shot. His body was found in the cab of the lorry, slumped across with his head on the floor towards the nearside open door of the cab. His left leg extended to the open offside door. A number of bullets had passed through the bodywork of the vehicle, the windscreen and the driver's door window. These caused multiple injuries, principally to the legs and buttocks.

[265] One bullet had entered through his right shoulder and passed down into his chest. It lacerated his heart and right lung and caused rapid death. In Prof Crane's opinion it was likely that this deceased was in a horizontal position when struck by the bullets coming from the offside of the vehicle.

[266] In general terms, Prof Crane noted that there was no evidence of discharge which one would associate with bullets being fired from a range of one metre or less albeit this may not be evident when an individual is shot through clothing such as a balaclava.

Chapter 15

The Civil Action - McKeever v MOD

[267] Aidan McKeever commenced proceedings against the MOD seeking damages for assault, battery and trespass to the person. In that forum, it was incumbent upon the defendant to prove that the force used was justified.

[268] The plaintiff's case was that he was a getaway driver for the PIRA group who had mounted an attack at Coalisland RUC station using the DShK. The defendant admitted that the plaintiff had been shot by soldiers at the Clonoe chapel car park and pleaded that four soldiers had shot at him, namely Soldiers A, I, J and L.

[269] The case proceeded to hearing before Treacy J in 2010 and 2011. As the judge explained, the burden rested on the defendant to prove that the soldiers were justified in firing on the basis of what they believed were the relevant facts at the time of the shooting. He therefore expected the defendant to call each of the four soldiers who admitted firing at the plaintiff. In the event, however, only Soldier A testified. Once he had given evidence and been cross-examined, the other soldiers, who were available, declined to go into the witness box. It was made clear to the court that these decisions were made by the individual soldiers. As a result, Treacy J drew an adverse inference that the evidence of these three soldiers was likely to be unhelpful to the defendant's case. In the circumstances, the defendant was unable to discharge the burden in relation to the subjective element of the defence of justification.

[270] Treacy J went on to analyse the account given by Soldier A. His sworn evidence was that he opened fire on the plaintiff's fleeing car, a fact not mentioned in either his interview notes or police statement. He admitted that when engaging the driver of the vehicle, he intended to kill.

[271] The judge described the remainder of A's version of events as "utterly implausible", rejecting the idea that an unarmed man would have adopted a firing stance by his vehicle, thereby inviting further fire from the soldiers. The plaintiff was awarded £75,000 in damages.

Chapter 16

Findings of Fact

[272] There was a factual dispute as to whether the SMU was aware of aspects of the intelligence information, particularly as to the intention of the PIRA operatives to return to the Clonoe chapel car park after the attack at Coalisland in order to disassemble and disperse.

[273] The SB50 dated 16 February 1992 contained a specific reference to the chapel car park being used, after the event, to enable vehicles to collect the weapons and personnel and take them to a safe house. It also appears in an undated report prepared by RHSB Frank Murray in the aftermath of the shootings.

[274] The consistent evidence of the SMU soldiers who carried out the planning of the operation, namely Colonel A and Soldier A, as well as others, was that this information was not shared by SB or TCG.

[275] The NOK have submitted that it makes no sense for such relevant and important information to have been withheld from the unit which was to carry out a dangerous operation. The PIRA unit was known to be well armed, with a particularly powerful and prestigious weapon, and the risks of engagement and the use of lethal force would have been apparent to all. It was plainly relevant for the SMU to know as much as possible about the intentions of the PIRA unit, before, during and after the attack on the RUC station. If, as transpired to be the case, a different location was used for forming up and assembling the DShK, the knowledge that the unit may use the chapel car park to disperse would have been vital information.

[276] None of the SMU witnesses could think of a reason why the information would have been withheld from them. This is particularly so because the SMU would only become involved in operations when they were beyond the capability of the police or

the regular army. The evidence of the SMU witnesses is supported by CP8, an HMSU Sergeant, who did not recall any reference to the chapel car park being used as a dispersal point.

[277] It is clear from the evidence of Soldier A that the plan which was formulated was based on the use of the car park to form up. There is no evidence of any secondary or contingency plan based on the use of the car park after the Coalisland attack.

[278] There was also some dispute about whether the names of potential PIRA operatives were disclosed by TCG to the SMU. This is self-evidently of less significance than the issue of the movements of the PIRA unit on the night in question. In any event, Soldier A accepted, under cross examination, that names of individuals who could potentially have been involved were disclosed to him "at the last moment."

[279] Whilst such information may have its uses, those concerned in planning the operation were well aware of PIRA in Coalisland and had good reason to believe that O'Donnell and O'Farrell in particular were likely to be involved.

[280] The name of Kevin Barry O'Donnell does appear on one of the radio logs, timed at 2014 hours. The evidence of Soldier K was that anyone identified in advance would have received a particular 'bravo' designation.

[281] On balance, I have concluded that the intelligence information in relation to the potential use of the chapel car park as a disassembly and dispersal point was not shared by TCG with the SMU. The PSNI did not challenge the evidence of the SMU soldiers in relation to the provision of intelligence to them. No contemporaneous document or report casts any doubt on the position insofar as the availability of this intelligence is concerned.

[282] In closing submissions, counsel for the FMWs attempted to make a case that there may have been shots fired by members of the PIRA unit at the car park, based on the 'flashes' seen by soldiers and the presence of spent cartridges in the rear of the lorry and near the burnt out vehicle at Annagher Hill. It is also suggested that Soldier H may, in fact, have been struck by hostile incoming fire. Ann Kiernan in her evidence could not discount the possibility that the cartridges from the AKM weapons were discharged at the car park.

[283] However, the weapons recovered had their safety catches activated. It is wholly implausible that this would have occurred at the car park following an exchange of gunfire. If anyone else, such as a soldier or police officer, had put the weapons in safe mode, I have no doubt that this would have been recorded. There is no evidence of any AKM weapon being fired in an exchange of gunfire as stated in security and media reports. I find, as a matter of fact, that no member of the PIRA unit opened fire at the Clonoe chapel car park.

[284] There was a disagreement between the ballistics and pathology experts as to whether the gunshot wound to Peter Clancy's armpit was properly regarded as an entrance or an exit wound. On balance, I prefer the opinion of Prof Crane on this issue, based as it is on the contemporaneous findings of Dr Carson who tracked the course of the bullet through the body into the neck tissue. I have therefore concluded that this was an entrance rather than an exit wound.

Chapter 17

Conclusions (1) - The Use of Lethal Force

[285] None of the soldiers who opened fire at Clonoe gave evidence to the inquest about their subjective beliefs at the time of so doing. The inquest did have the benefit of the notes of their interviews after caution and the police statements prepared some eight to ten months after the event. However, none of the assertions made to the police could be challenged in light of the invocation of the privilege against self-incrimination by the witnesses.

[286] It is also palpably clear that there was no significant challenge of the accounts given by the FMWs by the police in interview. As DI Lyttle stated, these were just a record of their accounts of the incident.

[287] As I have made clear, this does not give rise to any adverse inference being drawn against any individual witness, or indeed the witnesses collectively, but it does result in a significant evidential gap insofar as the inquest is concerned.

[288] In order to ascertain if lethal force was justified, the inquest must first examine whether he who fired had an honest belief that he needed to use force to defend himself or others from unlawful violence. The second question is whether, in the circumstances which he believed existed at the time, the force used was reasonable.

[289] To answer these questions, it will be necessary to focus on those who may have inflicted lethal force. However, before doing so, there are a number of general points which arise.

[290] In the police interviews, only one of the twelve soldiers who opened fire referenced any intention to arrest the PIRA operatives. This was Soldier H who only mentioned it in the context of not giving a warning in advance of opening fire. He did not co-operate with the inquest.

[291] Secondly, several of the soldiers stated that when the lorry and car came into the car park they stood up, despite being aware that the PIRA unit was armed and in possession of a heavy machine gun. In those circumstances that course of action can only have exposed them to the risk of incoming fire. It is also difficult to reconcile with the statements to the effect that they believed their lives to be in danger.

[292] Furthermore, a number of highly trained SMU soldiers caused themselves to be illuminated in the headlights of the vehicles. This must have been an obvious risk during the hours of darkness when the vehicles arrived. If the reactive sub-unit intended to surprise the PIRA unit and effect arrests, this course of action was inimical to that aim.

[293] Four of the soldiers (B, D, J and K) told the police that they saw 'muzzle flashes' coming from the lorry and believed that there was incoming fire. The inquest was not able to scrutinise whether highly trained soldiers ought to be able to distinguish between flashes caused by bullets striking a vehicle from those caused by the firing of AKM rifles or a DShK.

[294] Seven of the soldiers, namely A, D, F, G, I, J and L all admitted to the police that they shot at vehicles exiting the car park and/or persons fleeing the scene.

[295] Three soldiers, including Soldier A, gave an account of the driver of the dark Cavalier adopting a firing stance by the vehicle and this led to further shots being fired. It later transpired that he was unarmed. This version of events was dismissed by Treacy J in the civil action as being utterly implausible.

[296] It is evident that there was no attempt to arrest any occupant of the lorry or the other vehicles in the car park. The radio log entry just minutes after the shootings is instructive. It states:

"... we saw truck with 12.7 with 2 B didn't challenge as no cover we engaged truck."

[297] This lack of cover was an issue which prompted the inquiry from the DPP in September 1992 and was also referenced by D/Supt Hart in his report. This is integral to the planning of the operation but is also relevant to the conduct of the soldiers when faced by the arrival of the lorry into the car park.

[298] Even absent the specific intelligence about the use of the car park as a point of dispersal, it must have been evident to experienced soldiers that the PIRA unit needed to dismount the DShK from the lorry and remove it to a safe place. The risk of a firefight involving such a weapon would have been significantly reduced by waiting for a short time for this disassembly to commence. Equally, the ability to arrest the suspects would have been substantially improved.

[299] The soldiers chose not to wait for this outcome but to stand up and open fire on the occupants of the lorry and the drivers of the cars.

[300] It must be recognised that the Yellow Card is not a statement of the law but nonetheless it provides important guidance on the use of firearms and lethal force and all the soldiers recognised it as the basis for engaging with an enemy. The Yellow Card makes it clear that the use of firearms must be a last resort and that a challenge

must be given before opening fire unless either doing so would increase the risk of death or serious injury or the soldier or his colleagues are already being engaged by terrorists.

[301] The guidance goes on to say that you may only open fire where the person is committing or about to commit an act likely to endanger life and there is no other way to prevent the danger. One example given of such danger is where a person is firing or is about to fire a weapon. When one has to open fire, the Yellow Card states that only aimed shots should be fired and no more rounds than are necessary.

[302] The indisputable circumstances of the incident at Clonoe are that:

- (i) No challenge was given;
- (ii) No person fired on the soldiers;
- (iii) Automatic fire was used as well as aimed shots;
- (iv) One of the deceased was shot in the back whilst running away; and
- (v) At least 514, and up to 570, rounds were fired by the soldiers.

[303] However, it is necessary to analyse the use of lethal force in each individual case. The focus of the inquest must be on the deaths and the use of force which caused or contributed to those deaths. I undertake this task on the basis of all the available evidence, including the statements and interviews of the soldiers and the expert ballistic and pathology reports.

[304] This evidence points clearly to the conclusion that the fatal shots were not fired during the initial burst of gunfire which emanated from the soldiers at the hedgerow. As such, these events provide important narrative and context to what ensued thereafter but do not answer the question as to whether any use of lethal force was justified.

[305] I have concluded, on balance, that Kevin Barry O'Donnell was shot first through the lower right flank. The trajectory of the bullet indicates that he was shot when his back was to the shooter and at a time when the shooter was at a level lower than the deceased, such as when he was dismounting the lorry. The shot to the head was inflicted later and not from the same position given the route taken by the bullet. The likelihood is that the shot to the head was inflicted after O'Donnell was lying incapacitated on the grass near the lorry.

[306] Kevin Barry O'Donnell was one of the occupants of the rear of the lorry and most, if not all, of the soldiers aimed their initial fire at them. However, given that he was first shot when descending from the lorry, I find that he was first struck by a bullet fired by Soldier F, as he admits in his police interview.

[307] Both Soldier F and Soldier H in their police statements make unequivocal admissions that they engaged two men when they were on the ground by the lorry. The head shot which killed O'Donnell was, on the balance of probability, inflicted by one of these two soldiers whilst he was on the ground.

[308] O'Donnell was in possession of an AKM rifle whilst on the lorry. Whilst it was subsequently found to be in the 'safe' position, this would not have been known to the soldiers. In his statement, Soldier F says that he opened fire initially when he believed the occupants of the lorry were about to open fire on the patrol. However, when he moved forward and approached the lorry, the four men he observed were not aiming any weapons at him or his colleagues but were attempting to descend and run away. This is consistent with O'Donnell being shot in the back - at that time he could not have presented a threat to Soldier F.

[309] Soldiers F and H made the case to the police that they engaged the two terrorists on the ground because they had weapons within reach and they still perceived them to be a threat. By the time he was on the ground, O'Donnell had sustained a serious and incapacitating injury from a high velocity bullet.

[310] In those circumstances, I reject the claim that these soldiers had an honest belief that they needed to use force, which was inevitably going to be lethal, in order to defend themselves or others. The reality must have been obvious to them that O'Donnell presented no viable threat in either situation.

[311] Peter Clancy was struck by multiple rounds. He was also dismounting the lorry when Soldier F claims his fire struck him and he fell down. There was considerable variation in the tracks of the bullets, indicating that he was struck from different directions. The trajectory of a number of the bullets was such that they must have been inflicted when he was in a kneeling or crouching position.

[312] Four soldiers, namely B, D, F and H admitted in interview that they shot Clancy when he was on the ground. The bullet entrance wound identified at the right axilla is suggestive of the deceased having his hands in the air at the time he was shot.

[313] The fatal injuries to Clancy were caused firstly when he was dismounting the lorry and secondly when he was shot repeatedly whilst incapacitated on the ground, in a kneeling or crouched position. He presented no threat to anyone and I reject the claim advanced by the soldiers that they had an honest belief that lethal force was required to be used to defend themselves or others. It is not possible to say which of the four soldiers fired the fatal shot which killed Peter Clancy.

[314] Patrick Vincent, the driver of the lorry, was struck by numerous bullets, some of which were fired through the driver's door. However, he had two injuries consistent with being shot through the open driver's door and the open passenger door. He was lying down when he received these shots.

[315] On balance, I find that Vincent was injured within the cab of the lorry when the doors were opened by soldiers and shots fired, inflicting fatal injuries. The justification offered by the shooters for their actions was that they were aware of movement or noise within the cab of the lorry.

[316] Soldiers B, C and F all admitted shooting into the cab of the lorry but none mentioned either opening the doors or the doors being open. Soldier C mentions a colleague opening the door after he had shot inside. It was not possible to test their accounts at the inquest due to the invocation of the privilege.

[317] I reject the claims advanced that these soldiers held an honest belief that lethal force was required in these circumstances to defend themselves or others. Patrick Vincent was lying down, wholly incapacitated within the cab of the lorry, when the fatal shots were fired. It is not possible to say which of Soldiers B, C or F inflicted the shot which killed him.

[318] Sean O'Farrell was shot in the back by Soldier L when he was running away and posed no threat to anyone. This caused him to collapse and, in the opinion of Prof Crane, was capable of little voluntary movement thereafter. One of the bullets had caused serious damage to his right arm. Soldier L told the police that O'Farrell was running in such a way that he believed he was carrying a weapon. He did not, however, make any case that he believed his life, or the life of anyone else, was in danger.

[319] Soldier H proceeded to shoot O'Farrell three times in the face while he was lying on the ground. Soldier D had already seen him on the ground and felt no need to engage this individual. Soldier H gave an account to the police that he could see the man on the ground "go for a metal object" and felt he was going for a weapon. This is despite the serious injury which he had received to his right arm.

[320] Given the condition which O'Farrell was in as he lay on the ground, I reject Soldier H's contention that he had an honest belief that the use of lethal force was required either to defend himself or others.

[321] No attempt was made by the soldiers to arrest any of the members of the PIRA unit, even as they lay seriously injured and incapacitated either on the ground or in the cab of the lorry.

[322] I have found, in each case, that the soldiers concerned did not have an honest and genuinely held belief that the use of force was necessary to defend themselves or others. It follows that use of force cannot have been reasonable.

[323] The findings of this inquest are that the deceased were shot by members of the SMU:

- (i) O'Donnell - in the back whilst attempting to flee and in the head whilst lying incapacitated on the ground;
- (ii) Clancy - whilst attempting to flee and then repeatedly whilst in a crouched or kneeling position on the ground;
- (iii) Vincent - whilst seated in the cab of the lorry and then when lying incapacitated across the seat of the lorry through its open doors; and
- (iv) O'Farrell - in the back whilst running away and then in the face whilst lying on the ground incapacitated.

[324] The use of lethal force was not justified at Clonoe on 16 February 1992.

Chapter 18

Conclusions (2) - The Planning of the Operation

[325] In light of my finding of fact relating to the sharing of intelligence information, it is apparent that the plan was conceived in circumstances where not all the pertinent details were known. Those who formulated the plan made it clear that intelligence to the effect that the PIRA unit would use the chapel car park to disperse would have been of real significance.

[326] In the event, and for whatever reason, this information was not shared by TCG. That alone constitutes a serious flaw in the planning of the operation.

[327] Soldier A gave evidence that he carried out recces of the chapel car park and identified the southern boundary of the car park as the only suitable place to locate the patrol. This was despite the fact that he assessed the cover as being "poor." The operation was to take place at night and the PIRA unit would be using vehicles. The likelihood, or possibility at least, of soldiers being 'skylined' and identified must have been an obvious consideration.

[328] The lack of any hard cover meant that this could not properly be described as a covert operation. The plan, as formulated, relied upon being able to surprise the PIRA unit when they were mounting the DShK and then to effect arrests. If, however, the PIRA unit arrived with the DShK already mounted, there was no alternative or contingency plan. In such circumstances, the SMU sub-unit would simply have to react to events as they unfolded, under the leadership on the ground of Soldier A.

[329] The actions of Soldier A are therefore of significance. There is nothing on the radio logs to indicate that he gave instructions to the unit to act in a particular manner

once the unanticipated had occurred. Instead, when the lorry arrived at the car park, he stood up, thereby breaking cover. This had the inevitable effect of significantly increasing the likelihood of engagement and therefore the use of lethal force. It should have been obvious to him, as the ground commander, that the PIRA unit would have to dismount the DShK from the lorry and place it into another vehicle in order to secure it and move it away from the scene. He could therefore have ordered his men to wait until these steps were being taken, which would have reflected the intention of the original plan. Instead, he and others stood up and opened fire on the lorry.

[330] This must cast doubt on whether, in fact, this was an arrest operation at all. It should be recalled that only one of the twelve soldiers mentioned the possibility of arresting suspects in the course of police interviews. Equally, none of the soldiers even contemplated effecting an arrest at any stage, including when the deceased were lying incapacitated on the ground or slumped across the seat in the cab of the lorry.

[331] It is also noteworthy that the terminology of “ambush” appears frequently in both RUC and MOD documents created after the event. Colonel A explained that, in the military context, ‘ambush’ has a particular meaning. It entails placing your enemies within a ‘killing zone’, with cut off groups on the outskirts to prevent any escape. Firepower is then unleashed on those within the killing zone. His evidence was that ambushes were not carried out in Northern Ireland. If that were the case, it is difficult to understand why experienced police and military officers would use that language.

[332] It is also the case that agencies of the state perpetuated falsehoods about the events which unfolded at Clonoe. The initial press release referred to an “exchange of gunfire”, thereby ensuring that this was the narrative conveyed by the media. No steps were taken to rectify this and ensure that the public were made aware of a true account of events. Indeed, in submissions made to the inquest, wholly implausible attempts continue to be made to assert that members of the PIRA unit opened fire at the car park. This demonstrably did not happen.

[333] Reports created by the SMU and the RUC in the aftermath, including those provided to Government Ministers, referred to “simultaneous firing” and a “fire-fight”, statements which were demonstrably untrue and must have been known to be untrue.

[334] The reasons for putting forward such false justifications for the actions of the soldiers are obvious. This, coupled with a lack of any proper challenge of their accounts by the RUC investigators, ensured there would be no actual accountability.

[335] The attitude of the state agencies to the events at Clonoe, where four men lost their lives, is best summarised by the MOD report of 24 April 1992, where the operation is referred to as:

“an excellent Security Forces success.”

[336] This operation was not planned and controlled in such a manner as to minimise, to the greatest extent possible, the need to have recourse to lethal force. Indeed, as is illustrated by the actions of the soldiers and the events which unfolded, the use of lethal force against the PIRA unit was the likely outcome of the operation.

Chapter 19

The Verdict

[337] The deceased were:

- (i) Kevin Barry O'Donnell, born in Dungannon on 24 March 1970, from Coalisland, Co Tyrone;
- (ii) Patrick Vincent, born in Dungannon on 17 July 1971, and from Dungannon, Co Tyrone;
- (iii) Peter Clancy, born in Dungannon on 31 October 1970, and from Coalisland, Co Tyrone; and
- (iv) Sean O'Farrell, born in Dungannon on 20 September 1969 and from Coalisland, Co Tyrone.

[338] Each of the deceased died around 2250 hours on 16 February 1992 at St Patrick's Church, Clonoe, Co Tyrone.

[339] Kevin Barry O'Donnell died as a result of gunshot wounds to the head and chest. The fatal shots were fired by either Soldier F or Soldier H.

[340] Patrick Vincent died as a result of gunshot wounds to the chest. The fatal shots were fired by either Soldier B, C or F.

[341] Peter Clancy died as a result of a gunshot wounds to the head and trunk. The fatal shots were fired by either Soldier B, D, F or H.

[342] Sean O'Farrell died as a result of gunshot wounds to the head and trunk. He was killed by shots fired by Soldier H, having previously been shot and wounded by Soldier L.

[343] In each case, the use of lethal force was not justified. The soldiers did not have an honest belief that it was necessary in order to prevent loss of life and the use of force by the soldiers was, in the circumstances they believed them to be, not reasonable.

[344] The operation was not planned and controlled in such a way as to minimise to the greatest extent possible the need for recourse to lethal force.